



# Ways & Means

**A Citizen's Guide  
to New York  
Tobacco Controls**

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This document may be periodically updated, and found online at

<http://www.tobaccopolicycenter.org/documents/CitizensGuide.pdf>

## Public Health and Tobacco Policy Center

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The Public Health and Tobacco Policy Center is a resource for the New York Department of Health. It is funded by the New York State Department of Health and works with the New York State Tobacco Control Program, the New York Cancer Prevention Program, as well as the programs' contractors and partners to develop and support policy initiatives that will reduce the incidence of cancer and tobacco-related morbidity and mortality.

**This work provides educational materials and research support for policy initiatives. The legal information provided does not constitute and cannot be relied upon as legal advice.**

# A Citizen's Guide to New York Tobacco Controls

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# Overview & Scope

Tobacco use is the leading cause of preventable death. Regulating tobacco products, including their marketing, sales, and use, can be an effective way to decrease tobacco use, thereby benefitting public health.

Accordingly, tobacco product packaging, marketing, promotions, sales, shipment, and use are subject to numerous restrictions and requirements: Tobacco controls are comprised of federal, state, and local laws, regulations, court orders, settlement agreements, and more. These controls are issued and enforced by various federal, state, and local entities. Private entities may enact and enforce their own tobacco controls.

The result is a confusing collection of tobacco controls. Many controls seem similar and may indeed overlap. On the other hand, some tobacco controls can significantly vary by state or county. Controls are often legally challenged and subsequently adjusted or repealed. Identifying the proper enforcement authority or authorities can pose its own challenge. In sum, tobacco controls are increasingly broad and complex, producing public uncertainty surrounding the rules and jurisdiction over them.

*A Citizen's Guide to New York Tobacco Controls* presents current federal and state legal constraints on tobacco products sales and use in New York, along with the agency or entity responsible for enforcing each control. The controls are organized by topic area, focusing on those most relevant and accessible to a typical consumer or tobacco control advocate.

This guide does not identify penalties associated with violating the described tobacco controls. Likewise, it does not address controls requiring specialized knowledge or investigation, such as compliance with product manufacturing practices, disclosures by or to federal agencies, or an individual's payment of use tax. Similarly, mandates related to healthcare or tobacco cessation treatment found in the Affordable Care Act and similar healthcare laws are beyond the scope of this guide. Finally and importantly, the guide does not include New York's many local tobacco controls, which may be stricter than federal or state controls. For more information on local tobacco controls in New York State, visit our online resources at [www.tobaccopolicycenter.org](http://www.tobaccopolicycenter.org).

## How to Use This Guide

The Guide is comprised of eight sections, each focused on a tobacco control topic observable by advocates and consumers. Each section has three components: 1) a summary of the tobacco controls pertinent to that section's subject; 2) a table reflecting the compliance issue, enforcement agency, and corresponding control presented in that section; and 3) a description of and contact information for each agency responsible for enforcing the tobacco controls discussed in that section. While the Guide may be viewed as a whole, each section is designed to serve as an independent guide for the identified topic.

# Where indoors is smoking, vaping, and/or OTP use prohibited?

## Indoor Locations

Smoking and vaping are generally prohibited inside places of employment in New York.<sup>1</sup> This use prohibition applies to all employees, patrons, visitors, etc.<sup>2</sup> State and federal restrictions on indoor smoking and vaping apply to indoor private and government workplaces, including company vehicles; bars and restaurants; public means of mass transportation including subways, underground subway stations, and, when occupied by passengers, buses, vans, taxicabs and limousines; and their ticketing, boarding and waiting areas; youth centers and youth detention centers; facilities that provide services to children, including day care centers, group homes, public institutions, and residential treatment facilities for children and youth; all public and private colleges, universities, and other educational institutions and their group residences; hospitals and health care facilities, commercial establishments used for trade, profession, vocation or charitable activity, such as retail stores; enclosed public swimming pools, zoos and indoor arenas; and bingo facilities, and casinos.<sup>3</sup>

## Schools

Smoking and vaping are prohibited on “school grounds.”<sup>4</sup> “School grounds” is defined as “any building, structure, and surrounding outdoor grounds, including entrances or exits, contained within a public or private pre-school, nursery school, elementary or secondary school’s legally defined property boundaries as registered in a county clerk’s office.”<sup>5</sup>

Smoking and vaping are prohibited within one hundred feet of the entrances, exits, or outdoor areas of any public or private elementary or secondary schools and after-school programs.<sup>6</sup> Smoking and vaping are prohibited inside buildings of public and private colleges, universities, and other educational and vocational institutions.<sup>7</sup> Many institutions have enacted more extensive use restrictions. Smoking and vaping are prohibited in “any vehicles used to transport children or school personnel.”<sup>8</sup>

## New York State Agencies Funded and/or Certified by Office of Alcoholism and Substance Abuse Services (“OASAS”)

All New York State agencies funded and/or certified by OASAS must establish a policy for all agency facilities that:

- defines the areas that are tobacco-free,
- prohibits all staff, visitors, volunteers, and patients from bringing tobacco products to agency services,
- prohibits staff from using tobacco products while at work, during work hours, and
- establishes treatment modalities for patients using tobacco.<sup>9</sup>

## Signs Required

Tobacco-free areas in New York, with the exception of school grounds,<sup>10</sup> should be clearly identified with prominently posted signs stating “No Smoking,” or “No Vaping,” or the international “No Smoking” symbol.<sup>11</sup> Note that a local government may more strictly regulate smoking and tobacco use above and beyond the requirements of state law.<sup>12</sup>

## Limited Exceptions

While smoking and vaping are generally prohibited in indoor areas of public access in New York, there are narrow exceptions. (Allowances aside, many institutions have enacted more extensive use restrictions.)

- Hotel or motel rooms;<sup>13</sup>
- Retail tobacco businesses;<sup>14</sup>
- Cigar bars, which in the preceding calendar year generated 10 percent or more of total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors;<sup>15</sup>
- Retail electronic cigarette stores (use of electronic cigarettes only);<sup>16</sup>
- Outdoor dining areas with no roof and comprising no more than 25 percent of all outdoor seating. Smoking areas must be clearly identified as a smoking area and located at least three feet away from the outdoor areas where smoking is prohibited;<sup>17</sup>
- Membership associations run by member volunteers;<sup>18</sup>
- Facilities used for the primary purpose of promoting and sampling tobacco products;<sup>19</sup>
- Buses, vans, taxicabs, and limousines when unoccupied by passengers;<sup>20</sup>
- Patients in separate enclosed rooms of residential health care facilities, adult care facilities, or facilities where day treatment programs are provided, which are designated as smoking rooms for patients of such facilities or programs;<sup>21</sup>
- Private homes used to provide child care services (if not required to be licensed or registered for such services), when enrolled children are not present;<sup>22</sup>
- Off-campus school housing occupied by a person not enrolled as a student in a college, university or other educational institution subject to the New York Clean Indoor Air Act;<sup>23</sup>
- Native American tribal establishments exempt from New York law.<sup>24</sup>

## Correctional Facilities

Smoking and vaping are generally prohibited inside federal correctional facilities.<sup>25</sup> New York State correctional facilities for youth do not allow indoor smoking or vaping.<sup>26</sup>

## Federal Facilities

Smoking is generally prohibited inside facilities owned, rented or leased by the executive branch the federal government.<sup>27</sup> Smoking is also prohibited in all Public Housing Authority (PHA) properties (both multi-unit and single-family detached housing), including administrative buildings.<sup>28</sup> This includes a smoking prohibition on balconies, porches, and attached structures if they are part of the building, and within 25 feet of the housing or building.<sup>29</sup> Each PHA must develop and implement a smoke-free policy consistent with or more stringent than the federal rule; the policy ought to describe how the



PHA will treat using e-cigarettes/vapor products on the property.<sup>30</sup> The federal rule prohibiting smoking at PHAs does not apply to Section 8 properties, mixed-finance project properties, nor tribal housing authorities.<sup>31</sup>

## Commercial Airlines

Smoking and vaping are prohibited on all commercial flights to, from, and within the U.S.<sup>32</sup>

## Citations

<sup>1</sup> N.Y. PUB. HEALTH LAW § 1399-o(1)(a) (McKinney 2020).

<sup>2</sup> *Id.* § 1399-o.

<sup>3</sup> Pro-Children Act of 2001, 20 U.S.C. §§ 7181-7183 (2020) (facilities that provide federal services to children); Exec. Order No. 13058, 62 Fed. Reg. 43451 (Aug. 9, 1997) (federal government workplaces); N.Y. PUB. HEALTH LAW § 1399-o; N.Y. RACING, PARI-MUTUEL WAGERING AND BREEDING LAW § 1364 (McKinney 2020) (casinos).

<sup>4</sup> N.Y. PUB. HEALTH LAW § 1399-o(5)(a) (McKinney 2020); N.Y. EDUC. LAW § 409 (McKinney 2020).

<sup>5</sup> N.Y. PUB. HEALTH LAW § 1399-n(6) (McKinney 2020); N.Y. EDUC. LAW § 409 (McKinney 2020).

<sup>6</sup> *Id.* § 1399-o(3),(4).

<sup>7</sup> *Id.* § 1399-o(1)(m) (including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities, and other educational and vocational institutions).

<sup>8</sup> N.Y. PUB. HEALTH LAW § 1399-n(6) (McKinney 2020); *see also* N.Y. COMP. CODES R. & REGS. tit. 8, § 156.3 (2020) (“Drivers, monitors and attendants shall not smoke at any time while within a school bus.”).

<sup>9</sup> N.Y. COMP. CODES R. & REGS. tit. 14 § 856 (2020).

<sup>10</sup> N.Y. PUB. HEALTH LAW § 1399-o (McKinney 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* § 1399-r(3).

<sup>13</sup> *Id.* § 1399-q.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (“Cigar bars that . . . (a) in the preceding calendar year. . . generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (b) the cigar bar has not expanded its size or changed its location from its size or location since December thirty-first, two thousand two[.]”).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (Membership associations, as long as the operations of the association are carried out by members of the association who do not receive compensation for their performance of these duties).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* § 1399-o(1)(e) (Smoking and vaping is prohibited on “public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines[.]”)

<sup>21</sup> *Id.* § 1399-o(1)(n).

<sup>22</sup> *Id.* § 1399-o(1)(h).

<sup>23</sup> *Id.* § 1399-o(1)(m).

<sup>24</sup> U.S. CONST. art. I, § 8 (identifying Native American tribes as sovereign nations not inherently subject to state or federal law.).

<sup>25</sup> 28 C.F.R. 551.162 (2020); U.S. DEPT. OF JUSTICE, Federal Bureau of Prisons, Program Statement 1640.06, November 9, 2017, *available at* [https://www.bop.gov/policy/progstat/1640\\_006.pdf](https://www.bop.gov/policy/progstat/1640_006.pdf) (last visited

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Jun 29, 2020) (allowing indoor vaping in perimeter towers and perimeter patrol vehicles when occupied by one person).

<sup>26</sup> N.Y. PUB. HEALTH LAW § 1399-o(1)(g) (McKinney 2020).

<sup>27</sup> 41 C.F.R. § 102-74.315 (2020); *but see* § 102-74.320 (listing exceptions to indoor smoking policy for federal facilities).

<sup>28</sup> 24 C.F.R. § 965.653 (2020).

<sup>29</sup> 24 C.F.R. § 965.653(b) (2020).







<sup>30</sup> See DEP'T OF HOUSING AND URBAN DEVELOPMENT, Implementing HUD's SMOKE-FREE POLICY in Public Housing, , 35-36 (undated), *available at* [https://www.hud.gov/sites/documents/SMOKEFREE\\_GUIDEBK.PDF](https://www.hud.gov/sites/documents/SMOKEFREE_GUIDEBK.PDF) (last visited Jun 25, 2020).







<sup>31</sup> 24 C.F.R. § 965.651 (2020).

<sup>32</sup> 49 U.S.C. § 41706 (2020); 14 C.F.R. §§ 252.1-252.19 (2020); DOT Policy on E-Cigarettes, *available at* <https://www.transportation.gov/sites/dot.gov/files/docs/PolicyOnECigarettes.pdf> (last visited Jun 22, 2020).



# Where indoors is smoking, vaping, and/or OTP use prohibited?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
<b>Indoor Locations</b> Smoking and Vaping Prohibited <ul style="list-style-type: none"> <li>• Workplaces</li> <li>• Commercial Establishments</li> <li>• Bars &amp; Restaurants</li> <li>• Mass Transit</li> <li>• Youth Centers</li> <li>• Childcare Centers</li> <li>• Educational Institutions</li> <li>• Hospitals &amp; HealthCare Facilities</li> <li>• Pools, Zoos, Bingo Facilities</li> <li>• NY Youth Correctional Facilities</li> </ul>	 <b>NY local enforcement officer</b> (typically local Board of Health (BOH))	<b>N.Y. PUB. HEALTH LAW</b> § 1399-o
<b>Indoor Locations</b> Smoking and Vaping Prohibited <ul style="list-style-type: none"> <li>• Commercial Flights</li> </ul>	 <b>Department of Transportation</b>   <b>Commercial Airlines</b>	<b>Wendell H. Ford Aviation Investment Reform Act</b> 49 U.S.C. § 41706
<b>Schools</b> Smoking and Use of E-cigarettes Prohibited in Schools, on School Grounds, in Higher Education Facilities, and in School Vehicles	 <b>U.S. Dept. of Health and Human Services</b>   <b>The New York State Education Department</b>   <b>NY local enforcement officer</b> (typically local BOH)	<b>Pro-Children Act of 2001</b> 20 U.S.C. § 7183  <b>N.Y. EDUC. LAW</b> § 409  <b>N.Y. COMP. CODES R. &amp; REGS.</b> tit. 8, § 156.3  <b>N.Y. PUB. HEALTH LAW</b> §1399-o(1)

<b>Federal Facilities</b> Indoor Smoking Prohibited	 Hheads of executive agencies are responsible for implementing and ensuring compliance with the provisions of this order.  <b>U.S. General Services Administration</b>	<b>Exec. Order No. 13058</b> , 62 Fed. Reg. 43451  <b>41 C.F.R. § 102–74.330</b>
<b>Federal Facilities</b> Smoking Prohibited at Correctional Facilities	 <b>Federal Bureau of Prisons</b>	<b>28 C.F.R §551.160</b>
<b>Public Housing Authorities (PHAs)</b> Smoking Prohibited	 The U.S. Department of Housing and Urban Development stipulates that each PHA will enforce its smoke-free policy through lease enforcement procedures.	<b>81 FR 87430</b>
<b>New York State Agencies Funded and/or Certified by Office of Alcoholism and Substance Abuse Services (“OASAS”)</b> Tobacco possession on agency premises prohibited	 <b>Office of Alcoholism and Substance Abuse Services</b>	<b>N.Y. COMP. CODES R. &amp; REGS. tit. 14 § 856</b>
<b>No Smoking and No Vaping Signs Required</b>	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW § 1399-p</b>

# Who enforces indoor tobacco use controls?

## Local Boards of Health

Local boards of health are charged with adopting the public health orders and regulations, consistent with state law, that they deem necessary and proper. Most New York counties rely on their local board of health to enforce the tobacco related provisions of the New York Public Health Law; in a minority of counties a District Office of the New York State Department of Health enforces these provisions.

County health department contact information can be accessed via the New York State Association of County Health Officials website: <http://www.nysacho.org/directory>

Contact information for the State District offices may be found here: <https://www.health.ny.gov/environmental/water/drinking/distphn.htm>



## U.S. Department of Transportation (U.S. DOT)

The mission of the U.S. DOT is to serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.

**Address:** US Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

**Phone:** (202) 366-4000

**Online:** <http://www.dot.gov/>



## Commercial Airlines

Individual commercial airliners are responsible for enforcing regulations prohibiting smoking on airplanes.



## U.S. Dept. of Health and Human Services (HHS)

The U.S. Department of Health and Human Services is the federal government's main agency tasked with protecting the health of all Americans and providing human services.

**Address:** The U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**Phone:** (877) 696-6775

**Online:** <http://www.hhs.gov/>



## New York State Department of Corrections and Community Supervision (DOCCS)

The New York State Department of Corrections and Community Supervision, guided by the Departmental Mission, is responsible for the confinement and habilitation of approximately 54,700 individuals under custody held at 58 state facilities and 36,500 parolees supervised throughout seven regional offices.

**Address:** NYS Department of Corrections and Community Supervision  
Building 2  
1220 Washington Ave  
Albany, New York 12226-2050

**Phone:** (518) 457-8126

**Online:** <http://www.doccs.ny.gov/>



## Executive Agency Heads

The President is the head of the Executive Branch of the federal government, which is responsible for enforcing federal laws. The Executive Branch includes many departments and agencies, each with a designated leader. For more information on these executive departments and agencies visit: <http://www.usa.gov/branches-of-government>



## U.S. General Services Administration (GSA)

The U.S. General Services Administration acts as the federal government's property manager. It constructs, manages, and preserves government buildings and also leases and manages commercial real estate.

**Address:** U.S. General Services Administration  
1800 F Street, NW  
Washington, DC 20405

**Phone:** (866) 606-8220

**Online:** <http://www.gsa.gov>



## Office of Alcoholism and Substance Abuse Services (OASAS)

The Office of Alcoholism and Substance Abuse Services oversees New York's addiction services system and offers prevention, treatment and recovery programs.

**Address:** Office of Alcoholism and Substance Abuse Services  
501 7<sup>th</sup> Avenue  
New York, N.Y. 10018

**Phone:** (518) 473-3460

**Online:** <https://oasas.ny.gov/index.cfm>



## Federal Bureau of Prisons (BOP)

The Federal Bureau of Prisons protects public safety, ensuring that federal offenders serve their sentences in safe, humane, secure, and cost-efficient facilities, as well as provide reentry programs to ensure a successful return to the community once a sentence has been served.

*Address:* Federal Bureau of Prisons  
320 First St., NW  
Washington, DC 20534

*Phone:* (202) 307-3198

*Online:* <http://www.bop.gov>



## The New York State Education Department

The New York State Education Department is part of the University of the State of New York and comprises more than 7,000 public and independent elementary and secondary schools. Its mission is to raise the knowledge, skill, and opportunity of all the people in New York.

*Address:* New York State Education Department  
89 Washington Avenue  
Albany, NY 12234

*Phone:* (518) 474-3852

*Online:* <http://www.nysed.gov/>

Directory of public and non-public schools and administrators in New York State,  
<http://www.p12.nysed.gov/irs/schoolDirectory/>

# Where outdoors is smoking, vaping and/or OTP use prohibited?

Smoking and vaping are prohibited in many outdoor areas in New York, including at railroad stations, hospitals, and school grounds.<sup>1</sup> Additionally, municipalities across the state have implemented local laws restricting smoking and other tobacco use in parks, playgrounds, beaches, correctional facilities, and other outdoor areas.

## Public Transportation

At railroad stations, smoking and vaping are prohibited in any “ticketing, boarding, or platform areas of railroad stations that are operated by the metropolitan transportation authority.”<sup>2</sup> Additionally, Niagara Frontier Transportation Authority prohibits smoking and vaping on its property.<sup>3</sup>

## Hospitals and Residential Health Care Facilities

Smoking and vaping are prohibited on the grounds of hospitals and residential health care facilities, including within 15 feet of a building entrance or exit or within 15 feet of the entrance to or exit from the grounds of those facilities.<sup>4</sup> Smoking and vaping by patients or their visitors or guests may be permitted at designated smoking areas located at least 30 feet from a residential health care facility,<sup>5</sup> and some types of health care facilities may designate patient smoking rooms for smoking.<sup>6</sup> On premises, employee smoking and vaping are prohibited.<sup>7</sup>

## Schools

Use of a tobacco product or electronic cigarette is prohibited on public or private pre-school, nursery school, or K-12 school grounds,<sup>8</sup> and smoking and vaping are further prohibited within 100 feet of the entrances, exits, or outdoor areas of any private or public K-12 schools.<sup>9</sup> “School grounds” are defined as “any building, structure, and surrounding outdoor grounds, including entrances or exits, contained within a public or private pre-school, nursery school, elementary or secondary school’s legally defined property boundaries as registered in a county clerk’s office.”<sup>10</sup> Additionally, New York school bus drivers, monitors, and attendants may not smoke inside a school bus or any other vehicle used by a school to transport students and/or teachers.<sup>11</sup>

## Child Day Care and After-School Care Providers

At licensed child day care facilities, smoking is prohibited in outdoor areas in use by children and in vehicles while children are being transported.<sup>12</sup> Additionally, smoking and vaping are prohibited within 100 feet of the entrances, exits, and outdoor areas of any licensed or registered after-school program during program operating hours.<sup>13</sup>

## New York State Parks and Playgrounds

Smoking and vaping are prohibited on any playground during daylight when one or more persons under the age of 12 are present.<sup>14</sup> Additionally, smoking is prohibited in certain areas of

State Parks as designated by the commissioner,<sup>15</sup> largely identified as places where people congregate, such as beaches, playgrounds, and within 50 feet of entrances and exits to buildings, among other areas.<sup>16</sup> A list of designated smoke-free areas is posted on the Department of Parks, Recreation and Historic Preservation website.<sup>17</sup>

## Federal Property

Smoking is prohibited, at a minimum, in courtyards and within 25 feet of doorways and air intake ducts on outdoor space controlled by the executive branch (President).<sup>18</sup> Further restrictions may be implemented at the discretion of each agency head.<sup>19</sup>

Smoking any substance is generally prohibited in and on the grounds of federal correctional facilities.<sup>20</sup> However, outdoor ritual smoking by inmates is permitted, as is smoking in designated outdoor areas by Bureau of Prisons staff and official visitors.<sup>21</sup> Bureau employees may vape in designated outdoor areas.<sup>22</sup> Designated smoking and vaping areas must be separate and distinct from one another.<sup>23</sup>

## Public Housing Authorities

Smoking is prohibited in all outdoor areas within 25 feet of Public Housing Authority (PHA) property, including administrative buildings.<sup>24</sup> A PHA must develop and implement an individual smoke-free policy consistent with or more stringent than this 25-foot rule.<sup>25</sup> A PHA policy may allow for designated smoking areas on the property grounds outside of the 25-foot buffer zone.<sup>26</sup>

## Signs

Prominently posted signs stating “No Smoking,” “No Vaping,” or the international “No Smoking” symbol must be posted and properly maintained wherever the New York Public Health Law prohibits indoor or outdoor smoking or vaping, including workplaces, restaurants, and railroads,<sup>27</sup> with the exception of school grounds.<sup>28</sup>

## Libraries








Smoking is prohibited within 100 feet of the entrances, exits, or outdoor areas of any public or association library.<sup>29</sup> State law does not prohibit use of vapor products at these locations.<sup>30</sup> Covered libraries include those established for public use, and/or accessible for free use by community members.<sup>31</sup>

## Citations

- <sup>1</sup> N.Y. PUB. HEALTH LAW § 1399-o (McKinney 2020), defining “vaping” as “use of an electronic cigarette.”
- <sup>2</sup> *Id.* § 1399-o(2)(a).
- <sup>3</sup> N.Y. COMP. CODES R. & REGS. tit. 21 § 1151.9 (2020) (prohibiting the use of e-cigarettes and smoking on Niagara Frontier Transportation Authority property).
- <sup>4</sup> *Id.* § 1399-o(2)(b).
- <sup>5</sup> *Id.* § 1399-o(2)(b).
- <sup>6</sup> *Id.* § 1399-o(1)(n) (permitting smoking in designated patient smoking rooms at residential health care facilities, adult care facilities, community mental health residences, or facilities providing day treatment programs).
- <sup>7</sup> *Id.* § 1399-o(2)(a).
- <sup>8</sup> N.Y. EDUC. LAW § 409 (McKinney 2020) (“notwithstanding any other law, tobacco use prohibited at school buildings/sites”); N.Y. PUB. HEALTH LAW § 1399-o(3) (McKinney 2020) (prohibiting tobacco use and use of e-cigarettes on school grounds).
- <sup>9</sup> N.Y. PUB. HEALTH LAW § 1399-o(3) (McKinney 2020).
- <sup>10</sup> N.Y. PUB. HEALTH LAW § 1399-n(6) (McKinney 2020); N.Y. EDUC. LAW § 409 (McKinney 2020).
- <sup>11</sup> N.Y. COMP. CODES R. & REGS. tit. 8, § 156.3 (2020).
- <sup>12</sup> N.Y. COMP. CODES R. & REGS. tit. 19, §§ 418-1.11, 418-2.11 (2020).
- <sup>13</sup> N.Y. PUB. HEALTH LAW § 1399-o(4) (McKinney 2020) (applying to after-school programs licensed or registered pursuant to N.Y. SOC. SERVS. LAW § 300 and exempting smoking in a residence, or within the real property boundary lines of residential real property).
- <sup>14</sup> *Id.* § 1399-o-1(1) (exempting playgrounds in NYC); N.Y.C. ADMIN. CODE, § 17-503(c)(5) (2020) (prohibiting smoking and vaping on NYC playgrounds).
- <sup>15</sup> N.Y. COMP. CODES R. & REGS. tit. 9 § 386.1 (2020).
- <sup>16</sup> *Id.* § 386.1(a)(1).
- <sup>17</sup> N.Y. DEPT. OF PARKS, RECREATION AND HISTORIC PRESERVATION, POLICY ON NO SMOKING AREAS AT STATE PARKS AND HISTORIC SITES, *available at* <https://parks.ny.gov/inside-our-agency/documents/GuidancePolicies/PolicyNonSmokingAreasStateParksHistoricSites.pdf> (last visited Jun 22, 2020).
- <sup>18</sup> 41 C.F.R. § 102–74.330 (2020).
- <sup>19</sup> Exec. Order No. 13058, 62 Fed. Reg. 43451(1997).
- <sup>20</sup> 28 C.F.R. 551.162 (2020).
- <sup>21</sup> *Id.* at (a)-(b) (allowing smoking as part of an authorized inmate religious activity).
- <sup>22</sup> U.S. DEPT. OF JUSTICE, Federal Bureau of Prisons, Program Statement 1640.06, November 9, 2017, *available at* [https://www.bop.gov/policy/progstat/1640\\_006.pdf](https://www.bop.gov/policy/progstat/1640_006.pdf) (last visited Jun 29, 2020).
- <sup>23</sup> *Id.*
- <sup>24</sup> 24 C.F.R. § 965.653 (2020).
- <sup>25</sup> 24 C.F.R. § 965.655 (2020).
- <sup>26</sup> 24 C.F.R. § 965.653(b) (2020).
- <sup>27</sup> N.Y. PUB. HEALTH LAW § 1399-p (McKinney 2020).
- <sup>28</sup> *Id.* § 1399-o.
- <sup>29</sup> *Id.* § 1399-o(6).
- <sup>30</sup> *Id.* § 1399-n(8).
- <sup>31</sup> N.Y. EDUC. LAW § 253(2) (McKinney 2020).



## Where outdoors is smoking, vaping, and/or OTP use prohibited?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
<b>Public Transportation</b> Smoking and Vaping Prohibited on Ticketing, Boarding or Platform Areas	 <b>N.Y. local enforcement officer</b> (typically local Board of Health (BOH))	<b>N.Y. PUB. HEALTH LAW</b> § 1399-o
<b>Hospital Grounds, Residential Health Care Facilities</b> Smoking and Vaping Prohibited	 <b>N.Y. local enforcement officer</b> (typically local Board of Health (BOH))	<b>N.Y. PUB. HEALTH LAW</b> § 1399-o
<b>Schools</b> Tobacco Use, Including Use of E-cigarettes, Prohibited on School Grounds	 <b>The New York State Education Department</b>   <b>N.Y. local enforcement officer</b> (typically local BOH)	<b>N.Y. EDUC. LAW</b> § 409  <b>N.Y. PUB. HEALTH LAW</b> § 1399-o
<b>Schools</b> Smoking Prohibited on School Buses	 <b>The New York State Education Department</b>	<b>N.Y. COMP. CODES R. &amp; REGS.</b> tit. 8, § 156.3
<b>Schools</b> Smoking and Vaping Prohibited 100ft from School Entrance or Exit	 <b>N.Y. local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW</b> § 1399-o
<b>Libraries</b> Smoking Prohibited 100ft from Entrance, Exit or Outdoor Areas of Public or Association Library	 <b>N.Y. local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW</b> § 1399-o

<b>Child Day Care Providers</b> Smoking Prohibited		<b>New York State Office of Children and Family Services</b>	<b>N.Y. COMP. CODES R. &amp; REGS.</b> tit.19, §§ 418-1.11, 418-2.11
<b>After School Care Providers</b> Smoking and Vaping Prohibited		<b>N.Y. local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW</b> § 1399-o
<b>New York State Parks and Playgrounds</b> Smoking and Vaping Prohibited at playgrounds and certain State Parks	 	<b>N.Y. Office of Parks, Recreation, and Historic Preservation</b>  <b>N.Y. local enforcement officer</b> (typically local BOH)	<b>N.Y. COMP. CODES R. &amp; REGS.</b> tit. 9 § 386.1  <b>N.Y. PUB. HEALTH LAW</b> § 1399-o-1
<b>Federal Property</b> Smoking and Vaping Prohibited at Correctional Facilities		<b>Federal Bureau of Prisons</b>	<b>28 C.F.R. § 551.160</b>
<b>Federal Property</b> Smoking Prohibited in Courtyards and Doorways		<b>U.S. General Services Administration</b>	<b>41 C.F.R. § 102–74.330</b>
<b>Federal Property</b> Smoking Prohibited in Front of Air-ducts		Heads of executive agencies are responsible for implementing and ensuring compliance with the provisions of this order.	<b>Exec. Order No. 13058</b> , 62 Fed. Reg. 43451
<b>Public Housing Authorities (PHAs)</b> Use of Lit Tobacco Products and Waterpipes Prohibited In 25ft Perimeter		The U.S. Department of Housing and Urban Development stipulates that each PHA will enforce its smoke-free policy through lease enforcement procedures.	<b>81 FR 87430</b>
<b>Signs</b> Requires “No Smoking” or “No Vaping” signs		<b>N.Y. local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW</b> §§ 1399-o, p

# Who enforces outdoor tobacco use controls?



## Local Boards of Health

Local boards of health are charged with adopting the public health orders and regulations, consistent with state law, that they deem necessary and proper. Most New York counties rely on their local board of health to enforce the tobacco related provisions of the New York Public Health Law; in a minority of counties a District Office of the New York State Department of Health enforces these provisions.

County health department contact information may be accessed via the New York State Association of County Health Officials website: <http://www.nysacho.org/directory>

Contact information for the State District offices can be found here:  
<https://www.health.ny.gov/environmental/water/drinking/distphn.htm>



## New York State Office of Children and Family Services

The New York State Office of Children and Family Services provides resources to help parents, people who want to start or are currently running child care programs, and anyone with a concern about the health or safety of a child in a day care program.

**Address:** Capital View Office Park  
52 Washington Street  
Rensselaer, New York 12144-2834

**Phone:** (518) 473-7793

**Online:** <http://ocfs.ny.gov/main/>

Regional office listings, <http://www.ocfs.state.ny.us/main/childcare/regionaloffices.asp>

## Executive Agency Heads



The President is the head of the Executive Branch of the federal government, which is responsible for enforcing federal laws. The Executive Branch includes many departments and agencies, each with a designated leader. For more information on these executive departments and agencies visit: <http://www.usa.gov/branches-of-government>

## The New York State Education Department (NYSED)



The New York State Education Department is part of the University of the State of New York and comprises more than 7,000 public and independent elementary and secondary schools. Its mission is to raise the knowledge, skill, and opportunity of all people in New York.

**Address:** New York State Education Department  
89 Washington Avenue  
Albany, NY 12234

Phone: (518) 474-3852

Online: <http://www.nysed.gov/>

Directory of public and non-public schools and administrators in New York State,  
<http://www.p12.nysed.gov/irs/schoolDirectory/>



## Federal Bureau of Prisons (BOP)

The Federal Bureau of Prisons protects public safety, ensuring that federal offenders serve their sentences in safe, humane, secure, and cost-efficient facilities, as well as provide reentry programs to ensure a successful return to the community once a sentence is served.

Address: Federal Bureau of Prisons  
320 First St., NW  
Washington, DC 20534

Phone: (202) 307-3198

Online: <http://www.bop.gov>



## U.S. General Services Administration (GSA)

The U.S. General Services Administration acts as the federal government's property manager. It constructs, manages, and preserves government buildings and also leases and manages commercial real estate.

Address: U.S. General Services Administration  
1800 F Street, NW  
Washington, DC 20405

Phone: (866) 606-8220

Online: <http://www.gsa.gov>

## Public Housing Agencies

Each PHA enforces its own smoke-free policy. Contact information for PHAs can be accessed via the U.S. Department of Housing and Urban Development website:

[https://www.hud.gov/sites/dfiles/PIH/documents/PHA\\_Contact\\_Report\\_NY.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_NY.pdf)



## N.Y. Office of Parks, Recreation, and Historic Preservation

The N.Y. Office of Parks, Recreation, and Historic Preservation provides safe and enjoyable recreational and interpretive opportunities for all New York State residents and visitors and protects N.Y. valuable natural, historic, and cultural resources.

Address: NYS Office of Parks, Recreation and Historic Preservation  
625 Broadway  
Albany, NY 12207

Phone: (518) 237-8643

Online: <https://parks.ny.gov/>

# When looking at a package of cigarettes, what should you see?

## Minimum Package Size

An unopened package of cigarettes must contain at least 20 cigarettes.<sup>1</sup>

## Health Warning

The Surgeon General's health warning must be prominently displayed on all packages of cigarettes.<sup>2</sup> Beginning October 16, 2021, you should see a graphic health warning covering 50 percent of the cigarette package.<sup>3</sup>

## No False Labels

The cigarette package must not have false or misleading labels.<sup>4</sup>

Cigarette packages must accurately identify the origin of the product (such as the country from which they were imported)<sup>5</sup> and the product characteristics (such as net quantity and size)<sup>6</sup> and state "sale only allowed in the United States."<sup>7</sup> If a package states the cigarettes are "Made in the U.S.A." or a similar claim, that statement must be accurate and may not be misleading or otherwise unfair or deceptive.<sup>8</sup>

Cigarette packages may not be labeled in a manner that misleads consumers into believing the cigarettes have been approved or endorsed by the Food and Drug Administration (FDA), or deemed safe or less harmful either by the FDA or due to compliance with FDA requirements.<sup>9</sup>

You should not see cigarette packages labeled as "light," "mild," "low" or with similar terms unless the FDA has issued a Modified Risk Tobacco Product order for that product.

## Safety Compliance

The package must have the proper fire safety compliance designation. All cigarettes sold in New York must meet the New York fire safety standards for cigarettes.<sup>10</sup> In order to indicate compliance with these standards, the letters "FSC" must be printed in eight point font on all packs, cartons, and master cases of cigarettes offered for sale in New York.<sup>11</sup> If cigarettes appear unsafe because they are damaged, defective, or causing unexpected health problems, these concerns may be reported to the FDA.<sup>12</sup>

## No Immoral or Indecent Material

Tobacco products and cigarette papers or tubes cannot display or contain any immoral or indecent pictures, representations, or print.<sup>13</sup>



## Larger and Graphic Health Warnings: The Future of Cigarette Packages?

The Family Smoking Prevention and Tobacco Control Act requires that cigarettes packages and advertisements display a textual warning statement and an accompanying color graphic that covers at least the top 50 percent of the front and rear panels of each carton and package and 20 percent of the area at the top of advertisements.<sup>(1)</sup> For cartons, the required warning must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping. All required warnings must be irremovable or permanent.

While the law requires these specifications, the FDA has not yet implemented the graphic warning requirement. At the time of writing, graphic warnings will be required on packages by October 16, 2021.<sup>(2)</sup>

- (1) Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776, 1845 (2009) (codified at 15 U.S.C. § 1333 (2018)).
- (2) See *R.J. Reynolds Tobacco Co., et al. v. FDA* (E.D. Tex., April 3, 2020) (6:20-cv-00176) (complaint challenging specific graphic warnings within FDA's 2020 proposed rule).

## No Lottery Features

Packages of cigarettes may not display any features that represent a ticket, chance, share, or interest in the event of a lottery.<sup>14</sup>

## Industry Statements

Between November 21, 2018 and November 20, 2020, you should see occasional onserts to packages of cigarettes made by the largest cigarette companies, including Philip Morris and R.J. Reynolds. As per federal court order, these onserts must display statements that acknowledge past deceit by these manufactures in the areas of:

- Health effects of smoking
- Addictiveness of smoking and nicotine
- Low tar and light cigarettes being as harmful as regular cigarettes
- Designing cigarettes to enhance the delivery of nicotine
- Health effects of secondhand smoke

Each package must contain one of the five required statements for a total of twelve weeks spread out over two years.<sup>15</sup>

## Tax Compliance Indicators

Cigarette packages must display proof of compliance with applicable federal, state, and local excise tax laws. Tax compliance indicators vary depending on the qualities of the product, such as whether the product is intended for import, export, or domestic sale.

### Tax Stamps

Packages of cigarettes must show evidence of tax payment. Cigarettes offered for sale in New York must display a New York tax stamp attached to the bottom of the package. This tax stamp is evidence that the New York State tobacco tax was collected and remitted to the state.<sup>16</sup> Cigarette packages offered for sale in New York City must have a joint state/city tax stamp reflecting that both New York State and City excise taxes were paid.<sup>17</sup> New York retail cigarette packages may not be unstamped,<sup>18</sup> display the tax stamp of a different state, nor display a counterfeit tax stamp.<sup>19</sup> Note that packages of cigarettes manufactured by eligible New York Native American tribes may be exempt from exhibiting proof of compliance with New York excise tax.<sup>20</sup>

### Product Designations

Packages of cigarettes must carry the designation “cigarettes,” correctly identify the quantity of cigarettes contained in the package, and display the proper tax classification, such as “Class A” for packages of small cigarettes (the type most typically sold).<sup>21</sup>

### Labels for U.S. Manufactured Cigarettes

In addition to the requirements listed above, you should find that packages of cigarettes made and sold in the U.S. are properly labeled with the name of the manufacturer which removed the product from the factory and the location or permit number of the factory from which product was removed.<sup>22</sup> On cigarette packages that are manufactured in the U.S. for export, you should find a notice on the package, stating: “U.S. Tax-exempt. For use outside the U.S.”<sup>23</sup> Packages bearing the export mark may not be sold or held for sale for domestic consumption in the U.S. and are subject to seizure by U.S. officials.<sup>24</sup> However, note that the label of a product for export may identify the country of export, as required by that country, instead of the general notice described above.<sup>25</sup>

### Labels for Imported Manufactured Cigarettes

If the cigarettes were made outside of the U.S. but were sold in the U.S., you should find the cigarette package labeled with the quantity of cigarettes, the name and address of the manufacturer, distributor, or packer of the product, the percentage of the tobacco which is foreign rather than domestic, and the statement: “Sale only allowed in the United States.”<sup>26</sup> Also, the package must be labeled with the English name of the country of origin of cigarettes.<sup>27</sup>



## Citations

<sup>1</sup> Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. §§ 387a-1, 387f (2020); 21 C.F.R. §§ 1140.14(d), 1140.16(b) (2020) [hereinafter TCA]; N.Y. PUB. HEALTH LAW § 1399-gg(2) (McKinney 2020); Master Settlement Agreement (1998) at § III(k).

<sup>2</sup> *Id.* § 387(n); Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333, 1338-1339 (2018) (requiring cigarette packages and advertisements to bear one of these warnings: "WARNING: Cigarettes are addictive, WARNING: Tobacco smoke can harm your children, WARNING: Cigarettes cause fatal lung disease, WARNING: Cigarettes cause cancer, WARNING: Cigarettes cause strokes and heart disease, WARNING: Smoking during pregnancy can harm your baby, WARNING: Smoking can kill you, WARNING: Tobacco smoke causes fatal lung disease in nonsmokers, WARNING: Quitting smoking now greatly reduces serious risks to your health. Packages of smokeless tobacco products must bear one of the following approved health warnings: WARNING: This product can cause mouth cancer, WARNING: This product can cause gum disease and tooth loss, WARNING: This product is not a safe alternative to cigarettes, WARNING: Smokeless tobacco is addictive.").

<sup>3</sup> 21 CFR Part 1141 [Docket No. FDA-2019-N-3065] RIN 0910-A139, Tobacco Products; Required Warnings for Cigarette Packages and Advertisements (effective October 16, 2021) (requiring graphic warning to cover 50% of cigarette packages); *but see R.J. Reynolds Tobacco Co., et al. v. FDA* (E.D. Tex., April 3, 2020) (6:20-cv-00176) (challenging FDA authority to impose graphic warnings and also the specific graphics selected); *Philip Morris USA, Inc. and Sherman Group Holdings, LLC v. FDA, et al.* (D.D.C., May 6, 2020) No. 1:20-cv-0118 (challenging FDA authority to impose graphic warnings and also the specific graphics selected).

<sup>4</sup> Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-1461 (2020).

<sup>5</sup> Tariff Act of 1930, 19 U.S.C. § 1304 (2020). Imported cigarettes must be labeled with English name of country of origin. TCA, 21 U.S.C. § 387c (2020). Cigarettes must be labeled with the name and address of the manufacturer, packer, or distributor.

<sup>6</sup> See *e.g.*, Packaging Requirements, 27 C.F.R. § 45.45 (2020).

<sup>7</sup> TCA, 21 U.S.C. §§ 387c, 387t (2020).

<sup>8</sup> See Federal Trade Commission Labels on Products, 15 U.S.C. § 45a (2020).

<sup>9</sup> TCA, 21 U.S.C. § 331(tt)(2018).

<sup>10</sup> N.Y. EXECUTIVE LAW § 156-c (McKinney 2020); Fire Safety Standards for Cigarettes, N.Y. COMP. CODES R. & REGS. tit.19, § 429.1 (2018).

<sup>11</sup> N.Y. EXECUTIVE LAW § 156-c (McKinney 2020); Fire Safety Standards for Cigarettes, N.Y. COMP. CODES R. & REGS. tit.19, § 429.8 (2020).

<sup>12</sup> U.S. FOOD AND DRUG ADMINISTRATION, Safety Reporting Portal, <https://www.safetyreporting.hhs.gov/> (last visited Jun 22, 2020).

<sup>13</sup> 26 U.S.C. § 5723 (2018); 27 C.F.R. § 45.41 (2018).

<sup>14</sup> 26 U.S.C. § 5723 (2018); 27 C.F.R. § 45.41 (2018).

<sup>15</sup> *United States v. Philip Morris USA, Inc., et al.*, Civ. Action No. 99—2496 (GK) (D.C. Cir. 2006).

<sup>16</sup> N.Y. TAX LAW § 471 (McKinney 2020); *Cigarette and tobacco products tax*, THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, <http://www.tax.ny.gov/bus/cig/cigidx.htm> (last visited Sept. 17, 2019).

<sup>17</sup> N.Y. TAX LAW § 470 (McKinney 2020); *Cigarette and tobacco products tax*, *supra* note 16.

<sup>18</sup> 18 U.S.C. §§ 2342-43 (2018).

<sup>19</sup> National Stolen Property Act, 18 U.S.C. § 2315 (2020).

<sup>20</sup> U.S. CONST. art. I, § 8 (identifying Native American tribes as sovereign nations not inherently subject to state or federal law).

<sup>21</sup> Tax Reform Act of 1976, 26 U.S.C. § 5723 (2020); 27 C.F.R. § 41.74 (2018); 27 C.F.R. § 45.45 (2020).

<sup>22</sup> Tariff Suspension and Trade Act of 2000, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 40.212 (2020).

<sup>23</sup> 26 U.S.C. § 5704 (2020); 7 C.F.R. § 44.185 (2020).



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<sup>24</sup> 26 U.S.C. § 5704 (2020); 27 C.F.R. § 44.185 (2020).










<sup>25</sup> 27 C.F.R. § 44.185 (2020).

<sup>26</sup> TCA, 21 U.S.C. § 387c (2020); and Fair Packaging and Labeling Act, 15 U.S.C. §§1451- 1461 (2020).










<sup>27</sup> Tariff Act of 1930, 19 U.S.C. § 1304 (2020).




## When looking at a package of cigarettes, what should you see?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
Minimum Package Size	 <b>FDA</b>   <b>N.Y. local enforcement officer</b> (typically local Board of Health (BOH))   <b>NY AGO</b>	<b>Family Smoking Prevention and Tobacco Control Act (TCA)</b> 21 U.S.C. §§ 387a-1, 387f 21 C.F.R. §§ 1140.14(d), 1140.16(b)  <b>N.Y. PUBLIC HEALTH LAW</b> § 1399-gg(2)  <b>Master Settlement Agreement</b> § III(k)
Health Warning	 <b>FTC</b>   <b>U.S. AGO</b>	<b>Federal Cigarette Labeling and Advertising Act (FCLAA)</b> 15 U.S.C. §§ 1333-1334, 1338-1339  <b>TCA</b> 21 U.S.C. § 387(n)
<b>Labels</b> conforming with product description requirements ( <i>i.e.</i> , net quantity of contents)	 <b>FDA</b>	<b>Fair Packaging and Labeling Act</b> 15 U.S.C. §§ 1451-1461
<b>Labels</b> that are not misbranded ( <i>i.e.</i> , not false or misleading)	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. § 387c
<b>Labels</b> that identify origin of imported product	 <b>CBP</b>	<b>Tariff Act of 1930</b> 19 U.S.C. § 1304

<b>Labels</b> that are not misbranded ( <i>i.e.</i> , indicate product quantity and size)	 <b>FDA</b>  <b>TTB</b>	<b>TCA</b> 21 U.S.C. § 387c 27 C.F.R. § 45.45
<b>Labels</b> that are not misbranded ( <i>i.e.</i> , must state “sale only allowed in the United States”)	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. §§ 387c, 387t
<b>(No) False Labels</b> “Made in U.S.A.” only if accurate	 <b>FTC</b>	<b>15 U.S.C. § 45a</b>
<b>(No) Misleading Labels</b> ( <i>i.e.</i> , indicate the FDA has approved the cigarettes; cigarettes are less harmful)	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. § 331(tt)
<b>Safety Compliance</b> “FSC” printed near UPC code	 <b>New York State Office of Fire Prevention and Control</b>	<b>N.Y. EXEC. LAW § 156-c</b> <b>N.Y. Fire Safety Standards for Cigarettes</b> <b>N.Y. COMP. CODES R. &amp; REGS. tit. 19, §§ 429.1, 429.8</b>
Undamaged, non-defective, non-contaminated cigarettes	 <b>FDA</b>	<b>FDA Safety Reporting Portal</b> <a href="https://www.safetyreporting.hhs.gov">https://www.safetyreporting.hhs.gov</a>
<b>No Indecent or Immoral Material</b>	 <b>TTB</b>	<b>26 U.S.C. § 5723</b> <b>27 C.F.R. § 45.41</b>
<b>No Lottery Features</b>	 <b>TTB</b>	<b>26 U.S.C. § 5723</b> <b>27 C.F.R. § 45.41</b>

## Tax Compliance

<b>Tax Stamps</b> New York tax stamp	 <b>NYSDTF</b>  <b>NY AGO</b>	<b>N.Y. TAX LAW</b> § 471
<b>Tax Stamp</b> Joint NY/NYC	 <b>NYSDTF</b>	<b>N.Y. TAX LAW</b> § 470
<b>Tax Stamps</b> No counterfeit stamps	 <b>FBI</b>  <b>ATF</b>	<b>National Stolen Property Act</b> 18 U.S.C. § 2315
<b>Tax Stamps</b> Contraband (e.g., no state/local tax stamps)	 <b>ATF</b>  <b>U.S. AGO</b>  <b>N.Y. AGO</b>	<b>Contraband Cigarettes and Smokeless Tobacco Act</b> 18 U.S.C. §§ 2342-43
<b>Labels</b> indicating “Cigarettes” with Quantity and Class Designation	 <b>TTB</b>	<b>26 U.S.C. § 5723</b> <b>27 C.F.R. § 41.74</b> <b>27 C.F.R. § 45.45</b>
<b>U.S. Manufacturer</b> Identified, where relevant	 <b>TTB</b>	<b>26 U.S.C. § 5704</b> <b>27 C.F.R. § 40.212</b>
<b>Export Labels on U.S. Manufactured Cigarette Packages</b>	 <b>FTC</b>  <b>TTB</b>	<b>26 U.S.C. § 5704</b>  <b>27 C.F.R. § 44.185</b>

<b>Imported Manufactured Cigarette Packages</b> Properly labeled	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. § 387c <b>Fair Packaging and Labeling Act</b> 15 U.S.C. §§ 1451- 1461
<b>Imported Manufactured Cigarette Packages</b> Origin labels	 <b>CBP</b>	<b>Tariff Act of 1930</b> 19 U.S.C. § 1304
<b>Manufacturer name or factory permit</b> on packages sent to a federal agency	 <b>TTB</b>	<b>27 C.F.R. § 45.31</b> <b>27 C.F.R. § 45.42</b> <b>27 C.F.R. § 45.41</b> <b>26 U.S.C. § 5704</b>

## Who enforces controls on cigarette packaging?



### Food and Drug Administration (FDA)

The FDA enforces the provision of the Family Smoking Prevention and Tobacco Control Act prohibiting packages of cigarettes from being labeling in a false or misleading manner.

The FDA is one of a handful of federal agencies whose mission is to protect public health. The FDA works to ensure that foods are safe, wholesome, properly labeled, and sanitary; that drugs, vaccines, biological products, and medical devices are safe and effective; proper labeling and safety of cosmetics and dietary supplements; protects from electronic product radiation; regulates tobacco products; and works to help speed product innovation. The Center for Tobacco Products is part of the FDA and oversees the implementation of the Family Smoking Prevention and Tobacco Control Act.

**Address:** FDA Center for Tobacco Products, c/o Document Control Center  
9200 Corporate Boulevard  
Rockville, MD 20850

**Phone:** (877) CTP-1373, #3

**Online:** <http://www.fda.gov/TobaccoProducts>

**E-mail:** [AskCTP@fda.hhs.gov](mailto:AskCTP@fda.hhs.gov)  
[ctpcompliance@fda.hhs.gov](mailto:ctpcompliance@fda.hhs.gov)

Report of products that may be unsafe because they are damaged, defective, or causing unexpected health problems may be reported to the FDA online at:  
<https://www.safetyreporting.hhs.gov>



### Federal Trade Commission (FTC)

The FTC, with the U.S. DOJ, is responsible for enforcing provisions of the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act requiring tobacco product health warnings. It also enforces laws regarding deceptive tobacco package labels.

The FTC's mission is to prevent anticompetitive and deceptive behavior in the marketplace to both maintain competition and protect consumers. The FTC investigates unfair business practices by the tobacco industry and enforces laws prohibiting false and deceptive advertising of tobacco. The FTC also issues annual reports on tobacco industry spending for advertising and promotion.

*Address:* Federal Trade Commission  
445 12<sup>th</sup> Street, SW  
Washington D.C., 20554

*Phone:* (888) 225-5322

*Online:* <http://fcc.gov/complaints>



## U.S. Office of the Attorney General (US AGO)

The U.S. AGO at the U.S. Department of Justice (DOJ), with the FTC, is responsible for enforcing provisions of the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act which require tobacco products to be properly labeled and to display health warnings. DOJ's mission is to defend and enforce the laws of the United States. DOJ represents the interests of the United States in federal litigation involving tobacco companies and enforcement of federal tobacco control laws. Within the U.S. DOJ is the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF).

*Address:* U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

*Phone:* (202) 353-1555

*Online:* <http://www.justice.gov>

*E-mail:* [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)



## U.S. Customs and Border Protection (CBP)

The U.S. CBP is responsible for enforcing provisions of the Family Smoking Prevention and Tobacco Control Act related to mislabeled or misbranded tobacco products that are imported into the U.S. for sale. The U.S. CBP's mission is to protect our borders. The CBP works to prevent terrorists and terrorist weapons from entering the U.S. and enforces U.S. law by stopping narcotics, agricultural pests, and smuggled goods from crossing the border. The U.S. CBP oversees the proper importation of tobacco products, including proper labeling and branding.

*Phone:* (800) BE-ALERT (to report suspicious activity)  
(877) CBP-5511 (to ask questions)

*Online:* To report illegal import and export activity,  
<https://eallegations.cbp.gov/Home/Index2>

Field operations offices, <https://www.cbp.gov/contact/cbp-hq/office-field-operations-contact-numbers>



## Federal Bureau of Investigation (FBI)

The FBI's mission is to protect and defend from terrorist and foreign threats with intelligence and law enforcement responsibilities. It also works with federal, state, municipal, and international organizations to provide leadership and criminal justice services.

**Address:** Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, DC 20535-0001

**Online:** <https://tips.fbi.gov/>  
Field offices, <http://www.fbi.gov/contact-us/field>



## Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF)

The ATF is responsible for enforcing the Contraband Cigarettes and Smokeless Tobacco Act, which applies to packages of cigarettes displaying no tax stamp. The mission of the ATF, as an law enforcement agency of the U.S. DOJ, is to protect communities from criminals, organized crime, firearm trafficking, arson, bombings, acts of terrorism, and illegal smuggling of alcohol and tobacco products. The ATF works to reduce cigarette trafficking and decrease tax revenue lost by the States as a result of trafficking.

**Address:** Enforcement Programs and Services  
99 New York Avenue, NE  
Washington, DC 20226

**Phone:** (202) 648-7080

**Online:** <http://www.atf.gov/>  
<https://www.atf.gov/new-york-field-division>



## Alcohol, Tobacco Tax and Trade Bureau (TTB)

The mission of the TTB, a bureau under the Department of Treasury, is to protect the public and collect revenue by ensuring compliance with federal tobacco and alcohol permitting, labeling, and marketing, and collecting federal excise taxes on alcohol, tobacco, firearms, and ammunition.

**Address:** Alcohol and Tobacco Tax and Trade Bureau  
1310 G Street, NW., Box 12  
Washington, DC 20005

**Phone:** (202) 453-2000

**Online:** <http://www.ttb.gov/>

**E-mail:** [TTBInternetQuestions@ttb.gov](mailto:TTBInternetQuestions@ttb.gov)





## New York State Office of Fire Prevention and Control

The New York State Office of Fire Prevention and Control provides services to firefighters, emergency responders, state and local government agencies, public and private colleges, and the citizens of New York. The Office's mission is to be nationally recognized as a leader in fire services. The New York State Office of Fire Prevention and Control can be reached at:

**Address:** State Office Campus  
1220 Washington Avenue  
Building 7A, Floor 2  
Albany, NY 12226

**Phone:** (518) 474-6746

**Fax:** (518) 474-3240

**E-mail:** [fire@dhsses.ny.gov](mailto:fire@dhsses.ny.gov)

**Online:** <http://www.dhsses.ny.gov/ofpc/>



## NY Department of Taxation and Finance (NYSDTF)

The NYSDTF is responsible for enforcing New York tax laws which require a New York tax stamp on cigarettes. The NYSDTF's mission is to serve as the state's taxation and revenue agency. It is responsible for the administration and enforcement of state cigarette and tobacco product taxes, licensing of tobacco wholesale dealers, and registration of tobacco retail dealers and vending machines.

**Address:** NYS Department of Taxation and Finance  
Report Suspected Tax Evasion/Fraud  
Information Referral Unit  
Building 9 Room 480  
W.A. Harriman Campus  
Albany, N.Y. 12227

**Phone:** (518) 457-0578

**Online:** <http://www.tax.ny.gov/>



## NY AGO

The Attorney General's Office is charged with the statutory and common law powers to protect consumers and investors, charitable donors, the public health and environment, civil rights, and the rights of wage-earners and businesses across the State.

*Address:* Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

*Phone:* (800) 771-7755  
(800) 788-9898 (TDD/TTY Toll Free Line)

*Online:* <http://www.ag.ny.gov/>



## Local Boards of Health

Local boards of health are charged with adopting the public health orders and regulations, consistent with state law, that they deem necessary and proper. Most New York counties rely on their local board of health to enforce the tobacco related provisions of the New York Public Health Law; in a minority of counties a District Office of the New York State Department of Health enforces these provisions.

County health department contact information may be accessed via the New York State Association of County Health Officials website: <http://www.nysacho.org/directory>

Contact information for the State District offices can be found here:  
<https://www.health.ny.gov/environmental/water/drinking/distphn.htm>

# When looking at a package of OTP, what should you see?

Packages of non-cigarette tobacco products, referred to as “other tobacco products” (“OTP”), for sale at New York tobacco retail outlets must be labeled in compliance with state and federal tobacco controls. OTP includes anything made or derived from tobacco, including smokeless tobacco, cigars, loose tobacco (hookah, roll-your-own, pipe), tobacco-containing wrappers, dissolvable tobacco products, and, in this section, nicotine-containing e-cigarettes. While packaging and label requirements will vary depending on the type and class of product, you may notice that many of these standards are consistent across product types.

## Minimum Package Sizes

### Roll-Your-Own

A package of roll-your-own tobacco must contain a minimum of six-tenths of an ounce of tobacco.<sup>1</sup>

### Cigarette Wrapping Papers, Wrapping Leaves, or Tubes

Packages of materials meant to wrap tobacco for smoking must contain the minimum number of sheets or tubes. A package of cigarette wrapping papers, wrapping leaves, or tubes must contain at least 20 sheets, leaves, or tubes.<sup>2</sup>

## Health Warning

You should see a textual health warning on packaging of smokeless tobacco,<sup>3</sup> shisha, roll-your-own cigarette tobacco, nicotine-containing e-cigarettes, and dissolvable tobacco products.<sup>4</sup> While federal law also requires health warnings on packaging for cigars and pipe tobacco, FDA is not enforcing this law while a court-ordered injunction is in effect, so you may see cigars or pipe tobacco offered for sale without requisite health warnings.<sup>5</sup> At the same time, packaging for cigars made by most of the large cigar companies *must* display the requisite health warnings, by court order.<sup>6</sup>

In general, health warnings on tobacco product packages must be located on the two principal display panels and comprise at least 30 percent of each panel; be printed in black and white.<sup>7</sup> Warning displays must comply with additional size, placement, and message rotation requirements.<sup>8</sup>

### Larger, Graphic Health Warnings: The Future of Smokeless Tobacco Packages?

The Family Smoking Prevention and Tobacco Control Act authorizes FDA to require graphic health warnings on smokeless tobacco packages and advertisements.<sup>(1)</sup> However, the FDA has not implemented this requirement for graphic health warnings on packaging for smokeless tobacco products.

(1) Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776, 1848-9 (2009) (codified at 15 U.S.C. § 4402 (2018)).



## Cigars, Little Cigars, Cigarillos

You may see packaging for cigars, including little cigars and cigarillos display a prominent health warning.<sup>9</sup> The FDA has approved six warning statements for cigar packaging. However, the agency is not enforcing the warnings requirement while a court-ordered injunction is in effect, so you may see some cigars offered for sale without one of these health warnings:

- WARNING: Cigar smoking can cause cancers of the mouth and throat, even if you do not inhale.
- WARNING: Cigar smoking can cause lung cancer and heart disease.
- WARNING: Cigars are not a safe alternative to cigarettes.
- WARNING: Tobacco smoke increases the risk of lung cancer and heart disease, even in nonsmokers.
- WARNING: Cigar use while pregnant can harm you and your baby.
  - **Alternative:** SURGEON GENERAL WARNING: Tobacco Use Increases the Risk of Infertility, Stillbirth and Low Birth Weight.
- WARNING: This product contains nicotine. Nicotine is an addictive chemical.

When FDA resumes enforcement, where cigars are sold individually and not in a product package, you should see all six warnings displayed on or within three inches of each cash register.<sup>10</sup> The warning sign must be a minimum of 8.5 x 11 inches, printed in black text on white background in at least 17-point font.<sup>11</sup>

## Smokeless Tobacco

Smokeless tobacco advertisements must prominently display one of four Surgeon General's health warnings on a rotating basis:<sup>12</sup>

- WARNING: This product can cause mouth cancer.
- WARNING: This product can cause gum disease and tooth loss.
- WARNING: This product is not a safe alternative to cigarettes.
- WARNING: Smokeless tobacco is addictive.



OTP  
Packaging

## Roll-Your-Own, Pipe Tobacco, and E-cigarettes, Other Covered Products

You should see a prominently displayed health warning on packaging and advertisements for roll-your-own, pipe tobacco, e-cigarettes and nicotine solutions, and other tobacco products regulated by the FDA that reads:

- WARNING: This product contains nicotine. Nicotine is an addictive chemical.<sup>13</sup>

The FDA is not enforcing the warnings requirement for packages of pipe tobacco while a court-ordered injunction is in effect, so you may see this offered for sale without one of these health warnings.<sup>14</sup>



## Child-Resistant Packages

### Liquid Nicotine

Both federal and New York state law require that liquid nicotine be sold in a child-resistant package.<sup>15</sup> The federal law extends this requirement to "open system" liquid nicotine



containers.<sup>16</sup> The federal law further applies to containers for “any form of chemical nicotine, . . . whether the chemical is naturally or synthetically derived.”<sup>17</sup>

## No False Labels

A tobacco product package may not be labeled in a manner that is false or misleading. A tobacco product is misbranded if the origin of the product is absent,<sup>18</sup> misleading, false, or if the label misstates product characteristics (such as net quantity),<sup>19</sup> or fails to state “Sale only in the U.S.A.”<sup>20</sup>

Likewise, package statements with respect to “made in U.S.A.” must be accurate and not misleading.<sup>21</sup> Also, the package may not be labeled in a manner that misleads consumers to believe the tobacco product has been approved or endorsed by the FDA, or deemed safe or less harmful, whether by the FDA or due to compliance with FDA requirements.<sup>22</sup>

You should not see tobacco packages labeled with the descriptors “light,” “mild,” “low,” or similar descriptors unless the FDA has issued a Modified Risk Tobacco Product order for that product.

## No Lottery Features

Packages of tobacco products may not display any features that represent a ticket, chance, share, or interest in the event of a lottery.<sup>23</sup>

## Safety Compliance

A tobacco product should not appear unsafe due to damage or defect, nor cause unexpected health problems.<sup>24</sup>

## No Immoral Images

Tobacco product packaging cannot display or contain any immoral or indecent pictures, representations, or print.<sup>25</sup>

## Tax Compliance Indicators

New York applies a tobacco excise tax to sales of most OTP.<sup>26</sup> New York does not require OTP packages to exhibit proof of tax compliance.<sup>27</sup>

## Product Designations

All packages of OTP must be properly labeled with: An accurate statement of the net quantity; the name and address of the manufacturer, distributor, or packer of the product; the percentage of tobacco which is foreign rather than domestic; and the statement: “Sale only allowed in the United States.”<sup>28</sup>

### Cigars

Packages of cigars must have the designation “cigars,” the quantity of cigars contained in the package, and, for small cigars, the tax classification of the product, such as “small” or “little.”<sup>29</sup>

These requirements apply to the following commonly available cigar products:



- Small cigars (also known as “little cigars”)
- Large cigars
- Cigarillos (which are classified as “large cigars” for tax purposes)

### Smokeless Tobacco

Packages of snuff or chewing tobacco must have the designation “snuff” or “chewing tobacco” before removal from the factory.<sup>30</sup> Alternatively, packages may be designated “Tax Class C” for chewing tobacco or “Tax Class M” for snuff.<sup>31</sup>

### Roll-Your-Own

Before removal from the factory, packages of taxable roll-your-own tobacco must be labeled with the appropriate product category designation (“roll-your-own tobacco,” “cigarette tobacco,” “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper”) along with the accurate weight of the product contained within the package.<sup>32</sup>

### Pipe Tobacco

Before removal from the factory, packages of taxable pipe tobacco must be labeled with the designation “pipe tobacco” along with the accurate weight of the product contained inside.<sup>33</sup>

### Manufacturer ID on U.S. Manufactured OTP

Packages of certain OTP<sup>34</sup> must be traceable to the factory where they were packaged. All products meeting the FDA’s definition of “tobacco product”, including loose tobacco (hookah, roll-your-own, pipe), nicotine-containing e-cigarettes, dissolvable tobacco, and all cigars made and sold in the U.S. must be labeled with the name of the manufacturer which removed the product from the factory and the location or permit number of the factory from which product was removed.<sup>35</sup> Tobacco products not subject to tax, such as those delivered to a federal agency,<sup>36</sup> must have packages imprinted or labeled with the name of the manufacturer removing the product and, either the location or permit number of the factory from which the product will be removed.<sup>37</sup>

### Country of Origin on OTP Imports

In general, an article of foreign origin or its container that is imported into the U.S. must be conspicuously marked with the English name of the country of origin of the article.<sup>38</sup>

### Export Mark on OTP Exports

Tobacco products manufactured in the U.S. for export are required to have packaging stating, in essence: “U.S. Tax-exempt. For use outside the U.S.”<sup>39</sup> Packages bearing the export mark may not be sold or held for sale for domestic consumption in the U.S. and are subject to seizure by U.S. officials.<sup>40</sup> Note that the package label of a product for export may identify the country of export, as required by that country, instead of the general notice described above.<sup>41</sup> This labeling requirement applies to all products meeting the FDA’s definition of “tobacco product,” including loose tobacco (hookah, roll-your-own, pipe), nicotine-containing e-cigarettes, dissolvable tobacco, and all cigars.



## Citations

<sup>1</sup> N.Y. PUB. HEALTH LAW § 1399-gg(2) (McKinney 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Comprehensive Smokeless Tobacco Health Education Act, 15 U.S.C. § 4402(b)(1) (2020) [hereinafter CSTHEA].

<sup>4</sup> 21 C.F.R. § 1143.5(a)(1).

<sup>5</sup> U.S. FOOD AND DRUG ADMIN, “Cigar Labeling and Warning Statement Requirements,” (August 13, 2018), *available at* <https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigar-labeling-and-warning-statement-requirements> (last visited Jun 30, 2020) (explaining noncompliance non-enforcement policy).

<sup>6</sup> CSTHEA, 15 U.S.C. § 4402(b)(1) (2020) (smokeless tobacco); 15 CFR §§ 1143.3(a), 1143.5(a); FED. TRADE COMM., “FTC Announces Settlements Requiring Disclosure of Cigar Health Risks,” *available at* <http://www.ftc.gov/news-events/press-releases/2000/06/ftc-announces-settlements-requiring-disclosure-cigar-health-risks> (last visited Jun 18, 2020) (identifying settling cigar manufacturers obligated to display health warnings).

<sup>7</sup> 21 C.F.R. §§ 1141.1(b), 1143.3(b), 1143.5(n) (2020); CSTHEA, 15 U.S.C. § 4402(b)(2) (2020).

<sup>8</sup> 21 C.F.R. §§ 1141.1(b), 1143.3(b), 1143.5(n) (2018); CSTHEA, 15 U.S.C. § 4402(b)(2).

<sup>9</sup> 21 C.F.R. § 1143.5(a)(1).

<sup>10</sup> 15 C.F.R. § 1143.5(a)(3).

<sup>11</sup> *Id.*

<sup>12</sup> CSTHEA, 15 U.S.C. § 4402(a) (2020).

<sup>13</sup> 21 C.F.R. § 1143.3; 21 C.F.R. § 1140.3 (covering any product “made or derived from tobacco that is intended for human consumption” except components or parts not made or derived from tobacco).

<sup>14</sup> U.S. FOOD AND DRUG ADMIN, *supra* note 5.

<sup>15</sup> Child Nicotine Poisoning Prevention Act, 15 U.S.C. § 1472a(a) (2020); N.Y. GEN. BUS. LAW § 399-gg (McKinney 2020).

<sup>16</sup> 15 U.S.C. § 1472(a)(a) (2020).

<sup>17</sup> *Id.* § 1472(a)(d)(3).

<sup>18</sup> North American Free Trade Agreement Implementation Act, 19 U.S.C. § 1304 (2020).

<sup>19</sup> Tax Reform Act of 1976 [hereinafter TRA], 26 U.S.C. § 5723 (2018); 27 C.F.R. § 41.72 (2018) (smokeless); 27 C.F.R. § 41.72a (2020) (pipe tobacco); 27 C.F.R. § 41.72b (2018) (roll-your-own tobacco); 27 C.F.R. § 41.73 (2020) (cigars).

<sup>20</sup> TCA, 21 U.S.C. § 387t (2020).

<sup>21</sup> See Violent Crime Control and Law Enforcement Act of 1994 [hereinafter VCCLEA], 15 U.S.C. § 45a (2020).

<sup>22</sup> TCA, 21 U.S.C. § 331(tt) (2020).

<sup>23</sup> TRA, 26 U.S.C. § 5723(c) (2020); 27 C.F.R. § 45.41 (2020).

<sup>24</sup> FDA, Safety Reporting Portal, <https://www.safetyreporting.hhs.gov/> (last visited Jun 18, 2020).

<sup>25</sup> TRA, 26 U.S.C. § 5723 (2020); 27 C.F.R. § 45.41 (2020).

<sup>26</sup> N.Y. TAX LAW § 470, 471-b (McKinney 2020) (including cigars, little cigars, and tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff).

<sup>27</sup> *Id.* (requiring a dealer/distributor/wholesaler to furnish proof of tax compliance to the Commissioner of Taxation and Finance upon request).

<sup>28</sup> TCA, 21 U.S.C. § 387c (2020); Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1451-1461 (2020).

<sup>29</sup> TRA, 26 U.S.C. § 5723 (2020); 27 C.F.R. § 45.44 (2020).

<sup>30</sup> TRA, 26 U.S.C. § 5723 (2020); 27 C.F.R. § 45.43 (2020).

<sup>31</sup> *Id.*

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<sup>32</sup> TRA, 26 U.S.C. § 5723 (2020); 27 C.F.R. § 45.45.b (2020).

<sup>33</sup> TRA, 26 U.S.C. § 5723 (2020); 27 C.F.R. § 45.45.a (2020).

<sup>34</sup> Tariff Suspension and Trade Act of 2000 [hereinafter TSTA], 26 U.S.C. § 5704 (2020); 27 C.F.R. § 40.212 (2020).

<sup>35</sup> TSTA, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 40.212 (2020).

<sup>36</sup> TSTA, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 45.31 (2020).

<sup>37</sup> TSTA, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 45.42 (2020).

<sup>38</sup> Tariff Act of 1930, 19 U.S.C. § 1304 (2020).








<sup>39</sup> TSTA, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 44.185 (2020).











<sup>40</sup> TSTA, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 44.185 (2020).











<sup>41</sup> TSTA, 26 U.S.C. § 5704 (2020); 27 C.F.R. § 44.185 (2020).



## When looking at a package of OTP, what should you see?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
<b>Minimum Package Size</b> Roll-Your-Own Wrapping Papers Wrapping Leaves Tubes	 <b>NY local enforcement officer</b> (typically local Board of Health)	<b>N.Y. PUB. HEALTH LAW</b> § 1399-gg
<b>Health Warning</b>	 <b>FTC</b>  <b>U.S. AGO</b>	<b>21 C.F.R.</b> § 1143.5(a)(1) (cigars, little cigars, cigarillos) § 1143.3(a)(1) (RYO, pipe, e-cigarettes, other covered products)  <b>Comprehensive Smokeless Tobacco Health Education Act (CSTHEA)</b> 15 U.S.C. § 4402 (smokeless)
<b>Child-Resistant Packages</b> Liquid Nicotine	 <b>FDA</b>  <b>N.Y. AGO</b>	<b>Child Nicotine Poisoning Prevention Act</b> 15 U.S.C. § 1472a(a)(2018)  <b>N.Y. GEN. BUS. LAW</b> § 399-gg
<b>No False Labels</b> Origin of Product	 <b>CBP</b>	<b>North American Free Trade Agreement Implementation Act</b> 19 U.S.C. § 1304
<b>No False Labels</b> Quantity of Product	 <b>TTB</b>	<b>Tax Reform Act of 1976 (TRA)</b> 26 U.S.C. § 5723  <b>27 C.F.R. § 41.72</b> (smokeless) <b>27 C.F.R. § 41.72a</b> (pipe tobacco) <b>27 C.F.R. § 41.72b</b> (roll-your-own tobacco) <b>27 C.F.R. § 41.73</b> (cigars)

<b>No False Labels</b> “Sale only in the U.S.A.”	 <b>FDA</b>	<b>Family Smoking Prevention and Tobacco Control Act (TCA)</b> 21 U.S.C. §§ 387c, 387t
<b>No False Labels</b> “Made in the U.S.A.”	 <b>FTC</b>	<b>Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA)</b> 15 U.S.C.A. § 45a
<b>No False Labels</b> FDA approval	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. § 331(tt)
<b>No Lottery Features</b>	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723  <b>27 C.F.R. § 45.41</b>
<b>Safety Compliance</b> Report to FDA	 <b>FDA</b>	<b>FDA Safety Reporting Portal</b> <a href="https://www.safetyreporting.hhs.gov">https://www.safetyreporting.hhs.gov</a>
<b>No Immoral Images</b>	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723  <b>27 C.F.R. § 45.41</b>
<b>Tax Compliance</b>		
<b>Tobacco Product Taxes</b>	 <b>NYSDTF</b>	<b>N.Y. TAX LAW</b> §§ 470, 471-b
<b>Product Designations</b> Properly Labeled	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. § 387c  <b>Fair Packaging and Labeling Act</b> 15 U.S.C. §§ 1451- 1461
<b>Product Designations</b> Identify Manufacturer	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723 <b>27 C.F.R. § 40.212</b>
<b>Product Designations</b> Sale Only in U.S.A.	 <b>FDA</b>	<b>TCA</b> 21 U.S.C. § 387t
<b>Product Designations</b> Made in U.S.A.	 <b>FTC</b>	<b>VCCLEA</b> 15 U.S.C. § 45a

<b>Product Designations</b> Cigars	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723 <b>27 C.F.R. § 45.44</b>
<b>Product Designations</b> Smokeless Tobacco	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723 <b>27 C.F.R. § 45.43</b>
<b>Product Designations</b> Roll-Your-Own	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723 <b>27 C.F.R. § 45.45b</b>
<b>Product Designations</b> Pipe Tobacco	 <b>TTB</b>	<b>TRA</b> 26 U.S.C. § 5723 <b>27 C.F.R. § 45.45a</b>
<b>Manufacturer ID on U.S. Manufactured OTP</b>	 <b>TTB</b>	<b>Tariff Suspension and Trade Act of 2000 (TSTA), TRA</b> 26 U.S.C. §§ 5704, 5723 <b>27 C.F.R. §§ 40.212, 45.42</b>
<b>Manufacturer ID on U.S. Manufactured OTP</b> Removal without Tax Payment	 <b>TTB</b>	<b>TSTA</b> 26 U.S.C. § 5704 <b>27 C.F.R. § 45.31</b>
<b>Country of Origin on OTP Imports</b>	 <b>CBP</b>   <b>TTB</b>	<b>Tariff Act of 1930</b> 19 U.S.C. § 1304
<b>Export Mark on OTP Exports</b>	 <b>FTC</b>   <b>TTB</b>	<b>VCCLEA</b> 15 U.S.C. § 45a  <b>TSTA, TRA</b> 26 U.S.C. §§ 5704, 5723 <b>27 C.F.R. § 44.185</b>

# Who enforces controls on OTP packaging?

## Local Boards of Health

Local boards of health are charged with adopting the public health orders and regulations, consistent with state law, that they deem necessary and proper. Most New York counties rely on their local board of health to enforce the tobacco related provisions of the New York Public Health Law; in a minority of counties a District Office of the New York State Department of Health enforces these provisions.

County health department contact information can be accessed via the New York State Association of County Health Officials website: <http://www.nysacho.org/directory>

Contact information for the State District offices can be found here: <https://www.health.ny.gov/environmental/water/drinking/distphn.htm>



## Federal Trade Commission (FTC)

The FTC, with the U.S. DOJ, is responsible for enforcing federal laws, such as the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act, which require tobacco products to be properly labeled and to display health warnings. The FTC's mission is to prevent anticompetitive and deceptive behavior in the marketplace to both maintain competition and protect consumers. The FTC investigates unfair business practices by the tobacco industry, including enforcing laws prohibiting false and deceptive advertising of tobacco products and unfair methods of competition. The FTC also issues annual reports on tobacco industry spending for advertising and promotion.

**Address:** Federal Trade Commission  
445 12<sup>th</sup> Street, SW  
Washington D.C., 20554

**Phone:** (888) 225-5322

**Online:** <http://fcc.gov/complaints>



## U.S. Office of the Attorney General (US AGO)

The U.S. AGO at the U.S. Department of Justice (DOJ), with the FTC, is responsible for enforcing federal laws, such as the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act, which require tobacco products to be properly labeled and to display health warnings. The U.S. DOJ's mission is to defend and enforce the laws of the United States. It administers justice in a fair and impartial manner, seeking punishment for the guilty. The U.S. DOJ represents the interests of the United States in litigation involving

tobacco companies and enforcement of federal tobacco control laws. Within the U.S. DOJ is the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF).

**Address:** U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Phone:** (202) 353-1555

**Online:** <http://www.justice.gov/>

**E-mail:** [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)



## U.S. Customs and Border Protection (CBP)

The U.S. CBP is responsible for enforcing provisions of the Family Smoking Prevention and Tobacco Control Act related to mislabeled or misbranded tobacco products that are imported into the U.S. for sale. The U.S. CBP's mission is to protect our borders. The CBP works to prevent terrorists and terrorist weapons from entering the U.S. and enforces U.S. law by stopping narcotics, agricultural pests, and smuggled goods from crossing the border. The U.S. CBP oversees the proper importation of tobacco products, including proper labeling and branding.

**Phone:** (800) BE-ALERT (to report suspicious activity)  
(877) CBP-5511 (to ask questions)

**Online:** To report illegal import and export activity,  
<https://eallegations.cbp.gov/Home/Index2>

Field operations offices, <https://www.cbp.gov/contact/cbp-hq/office-field-operations-contact-numbers>



## Alcohol, Tobacco Tax and Trade Bureau (TTB)

The mission of the TTB, a bureau under the Department of Treasury, is to protect the public and collect revenue by ensuring compliance with federal tobacco and alcohol permitting, labeling, and marketing, and collecting federal excise taxes on alcohol, tobacco, firearms, and ammunition.

**Address:** Alcohol and Tobacco Tax and Trade Bureau  
1310 G Street, NW., Box 12  
Washington, DC 20005

**Phone:** (202) 453-2000

**Online:** <http://www.ttb.gov/>

**E-mail:** [TTBInternetQuestions@ttb.gov](mailto:TTBInternetQuestions@ttb.gov)



## Food and Drug Administration (FDA)

The FDA enforces provision of the Family Smoking Prevention and Tobacco Control Act which prohibit packages of cigarettes from being labeling in a false or misleading manner. The FDA is one of a handful of federal agencies whose mission is to protect public health. The FDA works to ensure that foods are safe, wholesome, properly labeled, and sanitary; that drugs, vaccines, biological products, and medical devices are safe and effective; proper labeling and safety of cosmetics and dietary supplements; protects from electronic product radiation; regulates tobacco products; and works to help speed product innovation. The Center for Tobacco Products is part of the FDA and oversees the implementation of the Family Smoking Prevention and Tobacco Control Act.

**Address:** FDA Center for Tobacco Products  
c/o Document Control Center  
9200 Corporate Boulevard  
Rockville, MD 20850

**Phone:** 1-877-CTP-1373, #3

**Online:** <http://www.fda.gov/TobaccoProducts>

**E-mail:** [AskCTP@fda.hhs.gov](mailto:AskCTP@fda.hhs.gov)  
[ctpcompliance@fda.hhs.gov](mailto:ctpcompliance@fda.hhs.gov)

Report of products that may be unsafe because they are damaged, defective or causing unexpected health problems may be reported to the FDA online at:  
<https://www.safetyreporting.hhs.gov>



## NY Department of Taxation and Finance (NYSDTF)

The NYSDTF is responsible for enforcing New York tax laws which require a New York tax stamp on cigarettes. The NYSDTF's mission is to serve as the state's taxation and revenue agency. It is responsible for the administration and enforcement of state cigarette and tobacco product taxes, licensing of tobacco wholesale dealers, and registration of tobacco retail dealers and vending machines.

**Address:** NYS Department of Taxation and Finance  
Report Suspected Tax Evasion/Fraud  
Information Referral Unit  
Building 9 Room 480  
W.A. Harriman Campus  
Albany, N.Y. 12227

**Phone:** (518) 457-0578

**Online:** <http://www.tax.ny.gov/>



## Federal Bureau of Investigation (FBI)

The FBI's mission is to protect and defend from terrorist and foreign threats with intelligence and law enforcement responsibilities. It also works with federal, state, municipal, and international organizations to provide leadership and criminal justice services.

**Address:** Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, DC 20535-0001

**Online:** <https://tips.fbi.gov/>

Local offices, <http://www.fbi.gov/contact-us/field>



## Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF)

The ATF is responsible for enforcing the Contraband Cigarettes and Smokeless Tobacco Act which applies to packages of cigarettes displaying no tax stamp. The mission of the ATF, as an law enforcement agency of the U.S. DOJ, is to protect communities from criminals, organized crime, firearm trafficking, arson, bombings, acts of terrorism, and illegal smuggling of alcohol and tobacco products. The ATF works to reduce cigarette trafficking and decrease tax revenue lost by the States as a result of trafficking.

**Address:** Enforcement Programs and Services  
99 New York Avenue, NE  
Washington, DC 20226

**Phone:** (202) 648-7080

**Online:** <http://www.atf.gov/>  
Local offices, <https://www.atf.gov/new-york-field-division>



## NY AGO

The Attorney General's Office is charged with the statutory and common law powers to protect consumers and investors, charitable donors, the public health and environment, civil rights, and the rights of wage-earners and businesses across the State.

**Address:** Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

**Phone:** (800) 771-7755  
(800) 788-9898 (TDD/TTY Toll Free Line)

**Online:** <http://www.ag.ny.gov/>



# When at the point of sale, what should you see?

## Limited Types of Tobacco Products

You should see cigarettes and cigarette “component parts” (*i.e.*, tobacco, filter, paper) offered for sale only in unflavored, menthol- or tobacco-flavored varieties.<sup>1</sup> You should see nicotine vapor products (or those likely to be used with nicotine) offered for sale in New York only in unflavored or tobacco-flavored varieties, unless the FDA authorized marketing for the specific flavored vapor product.<sup>2</sup> You should not see gutka or bidis for sale unless the retailer is a “tobacco business,” meaning the retailer’s primary business activity is the sale of tobacco products.<sup>3</sup>

## Properly Packaged Tobacco Products

You should see sales of cigarettes and smokeless tobacco only when in their sealed original packaging.<sup>4</sup> Cigarettes must be sold in packages containing at least 20 cigarettes and roll-your-own tobacco must be packaged with a minimum of 0.6 ounces of tobacco.<sup>5</sup> Packages of cigarette wrapping papers, wrapping leaves, or tubes must contain 20 sheets, leaves, or tubes.<sup>6</sup> Package labeling requirements for specific products vary and are described in this Citizens’ Guide in the chapters discussing “Cigarette Packaging” and “OTP Packaging.”

## Exterior Marketing at Limited Locations

You should not see smoking paraphernalia or advertising for tobacco products or nicotine vapor products from outside a retailer that is located within 1,500 feet of a school (or 500 feet in New York City).<sup>7</sup> Marketing subject to this restriction includes advertisements that bear a health warning required by federal law, including free standing advertisements, advertisements attached to fixtures such as gas pumps or perimeter fencing, and indoor displays that can be seen from outside a store within the school buffer zone.

## Self-Service Displays and Vending Machines Limited to Age-Restricted Venues

In general, at the point of sale, you should see tobacco products, herbal cigarettes, liquid nicotine, shisha, and electronic cigarettes only when these products are stored in a locked container or behind a counter of a staff-only area.<sup>8</sup>

New York permits vending machine sales of tobacco products, herbal cigarettes, and e-cigarettes only in bars (including bar area of a restaurant), private clubs, retail tobacco businesses, and in 21+ age-restricted areas of businesses that primarily serve and employ adults 21 or older.<sup>9</sup> A permissible vending machine will be in plain view and under the direct supervision of an employee of the hosting business,<sup>10</sup> and display an affixed registration certificate from the NY Department of Taxation and Finance.<sup>11</sup>



## No Free Samples or Customer Discounts

In general, you should not see a retailer offer samples or otherwise distribute free tobacco products, nicotine vapor products, vapor products likely to be used with nicotine, nor herbal cigarettes.<sup>12</sup> In New York, you should not see in-store distribution of coupons that would reduce the cost of these products to free.<sup>13</sup> Further, at the point of sale, you should not see a customer receive a non-tobacco product gifted or discounted in exchange for the purchase of one of these products.<sup>14</sup> You should not see discounted sales of these products, meaning you should not see them discounted through a coupon, multi-pack offer (such as “buy-one-get-one”), nor other promotion that reduces the purchase price below the price advertised or posted in the store.<sup>15</sup> Finally, you should not see cigarettes advertised as priced “below the state minimum.”<sup>16</sup>

## No Sales to Persons Under Age 21

In New York, you should see tobacco products and tobacco product paraphernalia sold only to persons ages 21 or older.<sup>17</sup> The prohibition on sales and distribution to persons under age 21 applies to sales of cigarettes, e-cigarettes, e-liquid, herbal cigarettes, shisha, cigars, chewing tobacco, powdered tobacco, smoking paraphernalia, rolling papers, bidis,<sup>18</sup> and gutka.<sup>19</sup> You should see the retailer verify, through government-issued photo identification, the age of a tobacco product purchaser who appears younger than 27 years.<sup>20</sup>



## Collection of Excise Taxes

You should generally see federal and state taxes on tobacco products collected from the purchaser at the point of sale.<sup>21</sup> The federal government imposes an excise tax on cigars, cigarettes, papers, tubes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco,<sup>22</sup> but does not impose an excise tax on e-cigarette products. New York State imposes additional taxes on:

- Cigarettes and little cigars (\$4.35/pack of 20; plus \$1.0875 per each five additional in same pack)<sup>23</sup>
- Snuff (\$2.00 per ounce)<sup>24</sup>
- Vapor products (20 percent of sales receipt)<sup>25</sup>
- All other tobacco products (75 percent of wholesale price)<sup>26</sup>

Federal tobacco product taxes and New York State cigarette tax apply to sales within an Indian reservation to non-members of the Indian nation or tribe and to non-Indians.<sup>27</sup>

## Tobacco-Free Pharmacies

You should not see tobacco products, nicotine vapor products, vapor products likely to be used with nicotine, nor herbal cigarettes for sale in a New York retail pharmacy.<sup>28</sup> This includes large stores that contain a pharmacy.

## Prominent Signs

At New York retail outlets selling tobacco products you should see a conspicuous sign declaring that the sale of tobacco products to anyone under the minimum purchase age is prohibited by law. Specifically, the sign shall read “SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW” in red letters at least a half an inch tall and printed on a white card.<sup>29</sup>

New York tobacco businesses that sell bidis and gutka must post additional signage, which shall read “SALE OF BIDIS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW” and/or “SALE OF GUTKA TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW” in red letters at least a half an inch tall and printed on a white card.<sup>30</sup>

You should also see certificates of registration with the state posted at each retail location in New York. Retailers of cigarettes or other tobacco products must display a certificate of registration as a “tobacco products dealer” obtained annually from the New York State Department of Taxation and Finance.<sup>31</sup> Retailers of vapor products must display a certificate of registration as a “vapor products dealer,” also obtained annually from the New York State Department of Taxation and Finance.<sup>32</sup> A retailer offering for sale tobacco products and vapor products must obtain certificates of registration as both a tobacco product dealer and a vapor product dealer.

Vapor product retailers must display a safety warning at the point of sale that reads, “Vaping can expose you to toxic chemicals and kill you.”<sup>33</sup>

## Enforcement

You should see consistent enforcement of federal, state, and local tobacco controls.<sup>34</sup> Accordingly, you may see New York state and local officials, or contracted agents of federal, state, or local government agencies conducting inspections and compliance checks of tobacco retail outlets, including enforcing the minimum legal sales age and other federal, state, and local controls on the sale of tobacco products.

## Citations

<sup>1</sup> Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. § 387g(a)(1)(A) (2020) [hereinafter TCA]; Press Release, N.Y. STATE OFFICE OF THE ATT’Y GEN., Att’y Gen. and R.J. Reynolds Reach (Oct. 11, 2006), *available at* <https://ag.ny.gov/press-release/attorneys-general-and-rj-reynolds-reach> (last visited August 21, 2019).

<sup>2</sup> N.Y. PUB. HEALTH LAW § 1399-mm(1) (prohibiting the sale of flavored nicotine vapor products lacking an FDA marketing order, e.g., orders listed at <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-orders> (last visited June 30, 2020)).

<sup>3</sup> N.Y. PUB. HEALTH LAW § 1399-aa (McKinney 2020) (“Tobacco business” is a one in which tobacco products and accessories are the primary business enterprise and other products are merely incidental.).

- <sup>4</sup> 21 C.F.R. § 1140.14(a)(4) (2020) (prohibiting sale of open packages of cigarettes or smokeless tobacco); N.Y. PUB. HEALTH LAW § 1399-gg (McKinney 2020) (prohibiting sale open packages of cigarettes).
- <sup>5</sup> 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b) (2020) (prohibiting the sale of open packages of cigarettes or smokeless tobacco); Master Settlement Agreement at § III(k) (1998) (requiring minimum package size of 20 cigarettes); N.Y. PUB. HEALTH LAW § 1399-gg (McKinney 2020) (requiring minimum package size of 20 cigarettes).
- <sup>6</sup> N.Y. PUB. HEALTH LAW § 1399-gg (McKinney 2020).
- <sup>7</sup> N.Y. PUB. HEALTH LAW § 1399-dd-1; N.Y. GEN. BUS. LAW § 396-aaa.
- <sup>8</sup> N.Y. PUB. HEALTH LAW § 1399-cc(7) (McKinney 2020).
- <sup>9</sup> N.Y. PUB. HEALTH LAW § 1399-dd (McKinney 2020).
- <sup>10</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d); 21 C.F.R. §§ 1140.14(a)(3), 1140.16(c)(2)(ii) (2020); N.Y. PUB. HEALTH LAW § 1399-dd (McKinney 2020); N.Y. PUB. HEALTH LAW § 1399-dd (McKinney 2020).
- <sup>11</sup> N.Y. TAX LAW § 480-a (McKinney 2020).
- <sup>12</sup> TCA, 21 U.S.C. § 387a-1(a)(2)(G) (prohibiting free distribution of cigarettes or other federally regulated tobacco products while limiting free distribution of smokeless tobacco to age-restricted facilities); 21 C.F.R. § 1140.16(d) (2020); N.Y. PUB. HEALTH LAW § 1399-bb (McKinney 2020) (limiting the distribution of free herbal cigarettes to qualified age-restricted venues or businesses and distribution of free non-nicotine e-cigarettes to an individual under the age of 21).
- <sup>13</sup> N.Y. PUB. HEALTH LAW § 1399-bb(1)(b) (McKinney 2020) (restricting the distribution of coupons redeemable for free tobacco products, nicotine vapor products, and herbal cigarettes to limited venues including tobacco businesses); *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of New York*, 27 F. Supp. 3d 415, 430 (S.D.N.Y. 2014) (interpreting § 1399-bb(1)(b) to prohibit coupons at the retailer that would reduce the product's price to free).
- <sup>14</sup> N.Y. PUB. HEALTH LAW § 1399-bb(1a(c)) (McKinney 2020).
- <sup>15</sup> N.Y. PUB. HEALTH LAW § 1399-bb(1a) (McKinney 2020).
- <sup>16</sup> Cigarette Marketing Standards Act, N.Y. TAX LAW §§ 483-489 (McKinney 2020).
- <sup>17</sup> TCA, 21 U.S.C. §§ 387f(d)(3)(A)(ii); N.Y. PUB. HEALTH LAW § 1399-cc (McKinney 2020) (requiring minimum sales age of 21 years for tobacco products and paraphernalia).
- <sup>18</sup> N.Y. PUB. HEALTH LAW § 1399-ll\*2 (McKinney 2020) (restricting the sale of bidis to tobacco businesses).
- <sup>19</sup> N.Y. PUB. HEALTH LAW § 1399-mm (McKinney 2020) (restricting the sale of gutka to tobacco businesses).
- <sup>20</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2020) (requiring age verification through photo identification reflecting purchaser's birth date for tobacco product sales); 21 C.F.R. § 1140.14(a)(2) (2020) (requiring age verification through photo identification reflecting purchaser's birth date for cigarette and smokeless tobacco sales for purchasers under age 27); N.Y. PUB. HEALTH LAW §§ 1399-cc(3), 1399-ll, 1399-mm (McKinney 2020) (requiring age verification through government issued photo identification for tobacco products purchased other than through a vending machine to a purchaser appearing younger than age 25, but allowing sales of gutka or bidis with age verification through photo identification issued by an educational institution or government entity).
- <sup>21</sup> Consolidated Appropriations Act, 26 U.S.C. § 5701 (2020) (imposing federal excise tax on cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco); N.Y. TAX LAW § 471 (McKinney 2020) (imposing a state cigarette tax, duty of tax collection from the purchaser on the cigarette dealer, and ultimate tax liability on the consumer; N.Y. TAX LAW § 471-b(1) (McKinney 2020) (imposing tax payment upon the sale of a tobacco product); N.Y. TAX LAW § 1181 (imposing a vapor product tax, duty of payment on the purchaser, and duty of tax collection on the vapor products dealer); *but see* N.Y. TAX LAW § 471(1) (McKinney 2020) (exempting state tax imposition on cigarette sales to qualified Indians for their own use and consumption on their Nations' or Tribes' qualified reservation; cigarette or tobacco sales to the United States; and, cigarette or tobacco sales tax to or by a military Base Exchange store).
- <sup>22</sup> 26 U.S.C. § 5701 (2020).
- <sup>23</sup> N.Y. TAX LAW §§ 471(1) (McKinney 2020) (cigarettes), 471-b(1)(c) (McKinney 2020) (little cigars).
- <sup>24</sup> N.Y. TAX LAW § 471-b (McKinney 2020).

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<sup>25</sup> N.Y. TAX LAW § 1181 (McKinney 2020).

<sup>26</sup> N.Y. TAX LAW § 471-b (McKinney 2020).

<sup>27</sup> Indian Tribal Government Tax Status Act of 1982, Pub. L. No. 97-473, 96 Stat. 2605 § 7871(1983) (expressly providing Indian tribes the same treatment as states with regard for federal taxes, including cigarette manufacturer excise taxes); N.Y. TAX LAW § 471(1) (McKinney 2020).

<sup>28</sup> N.Y. PUB. HEALTH LAW § 1399-mm(2) (McKinney 2020).

<sup>29</sup> N.Y. PUB. HEALTH LAW § 1399-cc (McKinney 2020).

<sup>30</sup> N.Y. PUB. HEALTH LAW § 1399-ll (McKinney 2020).










<sup>31</sup> N.Y. TAX LAW § 480 (McKinney 2020).









<sup>32</sup> N.Y. TAX LAW § 1183 (McKinney 2020).










<sup>33</sup> N.Y. COMP. CODES R. & REGS. tit. 10 § 9-2 (2020).

<sup>34</sup> Synar Amendment, 42 U.S.C. § 300x-26 (2020); 45 C.F.R. § 96.130 (2020); N.Y. PUB. HEALTH LAW § 1399-hh (McKinney 2020) (requiring states to enact and enforce state laws to prevent youth tobacco access).

## When at the point of sale, what should you see?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
<b>Limited Types of Tobacco Products</b> Flavored Cigarettes and Flavored “Component Parts” Prohibited	 <b>FDA</b>   <b>NY AGO</b>	<b>TCA</b> 21 U.S.C. § 387g(a)(1)(A)
<b>Limited Types of Tobacco Products</b> Sale of Gutka and Bidis Restricted	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N. Y. PUB. HEALTH LAW</b> §§ 1399-mm (gutka), 1399-ll*2 (bidis)
<b>Limited Types of Tobacco Products</b> Flavored nicotine vapor products restricted	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N. Y. PUB. HEALTH LAW</b> §§ 1399-mm-1
<b>Properly Packaged Tobacco Products</b> Cigarettes and Smokeless Tobacco Sold in Sealed, Original Packaging	 <b>FDA</b>   <b>NY local enforcement officer</b> (typically local BOH)	<b>TCA</b> 21 U.S.C. §§ 387a-1, 387f(d)  <b>FDA Rules</b> 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b)  <b>N.Y. PUB. HEALTH LAW</b> § 1399-gg (cigarettes)
<b>Properly Packaged Tobacco Products</b> Minimum Package Size	 <b>FDA</b>   <b>NY AGO</b>   <b>NY local enforcement officer</b> (typically local BOH)	<b>TCA</b> 21 U.S.C. §§ 387a-1, 387f(d)  <b>FDA Rules</b> 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b)  <b>MSA</b> § III(k)  <b>N.Y. PUB. HEALTH LAW</b> § 1399-gg

<b>Exterior Marketing at Limited Locations</b>	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW</b> §§ 1399-cc, 1399-dd-1
<b>Self-Service Displays/Vending Machines Limited to Age-Restricted Venues</b>	 <b>FDA</b>   <b>NY local enforcement officer</b> (typically local BOH)	<b>FDA Rules</b> 21 C.F.R. §§ 1140.14(a)(3); 1140.16(c)  <b>N.Y. PUB. HEALTH LAW</b> §§ 1399-cc, 1399-dd
<b>No Free Samples</b>	 <b>FDA</b>   <b>NY local enforcement officer</b> (typically local BOH)	<b>TCA</b> 21 U.S.C. §§ 387f(d), 387a-1(a)(2)(G)  <b>FDA Rule</b> 21 C.F.R. § 1140.16(d)  <b>N.Y. Pub. Health Law</b> § 1399-bb
<b>No Customer Discounts</b>	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N.Y. Pub. Health Law</b> § 1399-bb
<b>No Sales to Persons Under Age 21</b>	 <b>FDA</b>   <b>NY local enforcement officer</b> (typically local Board of Health (BOH))	<b>Family Smoking Prevention and Tobacco Control Act (TCA)</b> 21 U.S.C. §§ 387f(d)(3)(A)(ii)  <b>FDA Rule</b> 21 C.F.R. §§ 1140.14(a)(1) (cigarettes and smokeless tobacco), 1140.14(b)(1) (other covered tobacco products)  <b>N.Y. PUB. HEALTH LAW</b> §§ 1399-cc (all tobacco products, electronic and herbal cigarettes, shisha, smoking paraphernalia, etc.), 1399-mm (gutka), 1399-ll*2 (bidis)

<b>Collection of Excise Taxes</b>	 <b>TTB</b>   <b>NYSDTF</b>	<b>26 U.S.C. § 5701</b>  <b>N.Y. TAX LAW</b> §§ 471, 471-b, 1181
<b>Tobacco-Free Pharmacies</b>	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N. Y. PUB. HEALTH LAW</b> §§ 1399-mm-2
<b>Prominent Signs</b> No Sales to Persons under 21 Years of Age	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N.Y. PUB. HEALTH LAW</b> § 1399-cc
<b>Prominent Signs</b> Sale of Gutka and Bidis Prohibited to Persons Under 21 Years of Age	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N. Y. PUB. HEALTH LAW</b> §§ 1399-mm (gutka), 1399-ll*2 (bidis)
<b>Prominent Signs</b> Certificates of Registration for Tobacco Product and E-Cigarette Sales	 <b>NYSDTF</b>	<b>N.Y. TAX LAW</b> §§ 480, 1183
<b>Prominent Signs</b> Warning signage required for selling e-cigarettes	 <b>NY local enforcement officer</b> (typically local BOH)	<b>N.Y. CODES, RULES, REGULATIONS</b> tit. 10 § 9-3
<b>Enforcement</b> Enact and enforce state laws prohibiting youth access	 <b>SAMHSA</b>   <b>FDA</b>	<b>Synar Amendment to the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA)</b> 42 U.S.C. § 300x-26



## Who enforces tobacco product point of sale controls?



### Food and Drug Administration (FDA)

The FDA enforces the provision of the Family Smoking Prevention and Tobacco Control Act prohibiting packages of cigarettes from being labeling in a false or misleading manner.

The FDA is one of a handful of federal agencies whose mission is to protect public health. The FDA works to ensure that foods are safe, wholesome, properly labeled, and sanitary; that drugs, vaccines, biological products, and medical devices are safe and effective; proper labeling and safety of cosmetics and dietary supplements; protects from electronic product radiation; regulates tobacco products; and works to help speed product innovation. The Center for Tobacco Products is part of the FDA and oversees the implementation of the Family Smoking Prevention and Tobacco Control Act (FSPTCA).

Address: FDA Center for Tobacco Products  
c/o Document Control  
Center 9200 Corporate Boulevard  
Rockville, MD 20850-3229

Phone: 1-877-CTP-1373, select option #3

E-mail: [ctpcompliance@fda.hhs.gov](mailto:ctpcompliance@fda.hhs.gov)  
[AskCTP@fda.hhs.gov](mailto:AskCTP@fda.hhs.gov)

Online: <http://www.fda.gov/TobaccoProducts/>

### ◆ Local Boards of Health

Local boards of health are charged with adopting the public health orders and regulations, consistent with state law, that they deem necessary and proper. Most New York counties rely on their local board of health to enforce the tobacco related provisions of the New York Public Health Law; in a minority of counties a District Office of the New York State Department of Health enforces these provisions.

County health department contact information can be accessed via the New York State Association of County Health Officials website: <http://www.nysacho.org/directory>

Contact information for the State District offices can be found here:  
<https://www.health.ny.gov/environmental/water/drinking/distphn.htm>





## NY AGO

The Attorney General's Office is charged with the statutory and common law powers to protect consumers and investors, charitable donors, the public health and environment, civil rights, and the rights of wage-earners and businesses across the State.

**Address:** Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

**Phone:** (800) 771-7755  
(800) 788-9898 (TDD/TTY Toll Free Line)

**Online:** <http://www.ag.ny.gov/>



## NY Department of Taxation and Finance (NYSDTF)

The NYSDTF is responsible for enforcing New York tax laws which require a New York tax stamp on cigarettes. The NYSDTF's mission is to serve as the state's taxation and revenue agency. It is responsible for the administration and enforcement of state cigarette and tobacco product taxes, licensing of tobacco wholesale dealers, and registration of tobacco retail dealers and vending machines.

**Address:** NYS Department of Taxation and Finance  
Report Suspected Tax Evasion/Fraud  
Information Referral Unit  
Building 9 Room 480  
W.A. Harriman Campus  
Albany, N.Y. 12227

**Phone:** (518) 457-0578

**Online:** <http://www.tax.ny.gov/>



## Substance Abuse and Mental Health Services Administration (SAMSHA)

The SAMHSA is a public agency within the U.S. Department of Health and Human Services (HHS) and provides prevention, treatment, and recovery support services for behavioral health. The SAMHSA's mission is to make substance use and mental disorder information, services, and research more accessible.

**Address:** SAMHSA  
5600 Fishers Lane  
Rockville, MD 20857

**Phone:** (877) 726-4727

**Online:** <https://www.samhsa.gov/>

# When, where, and how should you see tobacco product marketing?

## Controls on Marketing Tobacco Products

Tobacco product manufacturers are limited in how they may advertise and promote their products.<sup>1</sup> Restrictions on tobacco product marketing are derived federal law, state law, and, for the major tobacco companies, court-ordered consent decrees such as the Master Settlement Agreement (“MSA”). These controls, along with others, can partially or completely overlap with one another. Importantly, MSA marketing restrictions may not apply to all manufacturers, including Native American manufacturers.

Many federal restrictions on tobacco marketing do not apply to vapor products.<sup>2</sup> Thus, you may see e-cigarette advertising and promotions that are impermissible for other tobacco products.

### Health Warnings on Advertising

Tobacco product advertising must display a health warning.<sup>3</sup> You should find textual health warnings on advertisements, including print, online, and outdoor advertising, for cigarettes,<sup>4</sup> smokeless tobacco,<sup>5</sup> e-cigarettes, hookah, pipe tobacco, dissolvable tobacco, and all cigars.<sup>6</sup> The FDA specifies health warnings for different tobacco products, as detailed in this chapter.

Federal law requires that health warnings cover at least 20% of print advertisements<sup>7</sup> and must further comply with font, size, placement, and message rotation specifications.<sup>8</sup> For advertisements appearing in U.S. non-English language publications, health warnings should appear in the predominant language of that publication.<sup>9</sup>



### Larger and Graphic Health Warnings: The Future of Cigarette Advertising?

The TCA requires cigarette advertisements to display health warnings in large text accompanied by a graphic warning that covers at least 20 percent of the advertisement.<sup>(1)</sup> However, the FDA has not yet implemented these provisions. Tobacco companies successfully challenged the agency’s 2011 graphic warning rule<sup>(2)</sup> and are currently challenging the FDA’s March 2020 rule, as well the TCA’s mandate requiring graphic warnings.<sup>(3)</sup>

(1) Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776, 1845 (2009) (codified at 15 U.S.C. § 1333 (2012)).

(2) See *R.J. Reynolds Tobacco Co. v. FDA*, 845 F. Supp. 2d 266 (2012), *aff’d* by 696 F.3d 1205 (D.C. Cir. 2012).

(3) *R.J. Reynolds Tobacco Co., et al. v. FDA* (E.D. Tex. April 3, 2020) (6:20-cv-00176); *Philip Morris USA, Inc. and Sherman Group Holdings, LLC v. FDA, et al.* (D.D.C. May 6, 2020). No. 1:20-cv-01181).

## Required Health Warnings

### Cigarettes

Cigarette advertising must prominently display one of four Surgeon General health warnings:<sup>10</sup>

- SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.
- SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
- SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.
- SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

The phrase "SURGEON GENERAL'S WARNING" must appear in capital letters.<sup>11</sup> The warning statement must be enclosed in a rectangle and the font must meet size requirements.<sup>12</sup>

### Smokeless Tobacco

Smokeless tobacco advertising must prominently display one of four health warnings:<sup>13</sup>

- WARNING: This product can cause mouth cancer.
- WARNING: This product can cause gum disease and tooth loss.
- WARNING: This product is not a safe alternative to cigarettes.
- WARNING: Smokeless tobacco is addictive.

The warnings must also comply with size requirements based on the advertisement size.<sup>14</sup>

### Cigars, Little Cigars, Cigarillos

Advertising for cigars, including little cigars and cigarillos, must prominently display one of the six health warnings:<sup>15</sup>

- WARNING: Cigar smoking can cause cancers of the mouth and throat, even if you do not inhale.
- WARNING: Cigar smoking can cause lung cancer and heart disease.
- WARNING: Cigars are not a safe alternative to cigarettes.
- WARNING: Tobacco smoke increases the risk of lung cancer and heart disease, even in nonsmokers.
- WARNING: Cigar use while pregnant can harm you and your baby.
  - **Alternative:** SURGEON GENERAL WARNING: Tobacco Use Increases the Risk of Infertility, Stillbirth and Low Birth Weight.
- WARNING: This product contains nicotine. Nicotine is an addictive chemical.<sup>16</sup>

### Roll-Your Own and Pipe Tobacco, E-Cigarettes and Other FDA Regulated Tobacco Products

Packaging and advertising for roll-your-own and pipe tobacco, e-cigarettes and all other FDA-regulated tobacco products,<sup>17</sup> other than cigars, must prominently display a warning label that reads:

- WARNING: This product contains nicotine. Nicotine is an addictive chemical.<sup>18</sup>



## Limited Outdoor Advertising

Tobacco products are heavily marketed at stores that sell them, including via advertisements visible from outside the store. However, in New York, you should not see smoking paraphernalia or advertising for tobacco products or nicotine vapor products from outside a retailer that is located within 1,500 feet of a school (or 500 feet in New York City).<sup>19</sup> Marketing subject to this restriction includes advertisements that bear a health warning required by federal law, including free standing advertisements, advertisements attached to fixtures such as gas pumps or perimeter fencing, and indoor displays that can be seen from outside a store within the school buffer zone.



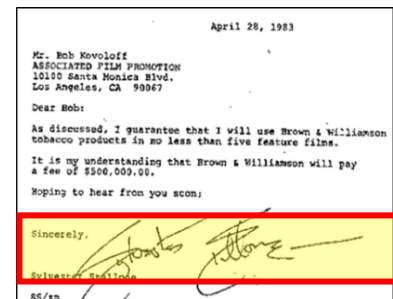
Outdoor advertising for most brands of cigarettes and smokeless tobacco products is limited to the property of a retail store. However, you may see the rare outdoor temporary tobacco advertising on the premises of a special event that is restricted to adults.<sup>20</sup> This exception for outdoor advertising is limited to these event venues and must not exceed 14 square feet, nor form a mosaic or otherwise circumvent the size requirement.<sup>21</sup>

## Billboards, Large Signs

You should not see large outdoor advertising of most brands of cigarettes and smokeless tobacco products.<sup>22</sup> You should not see billboards or other advertisements larger than 14 square feet in outdoor spaces, such as in arenas, shopping malls, stadiums, and video game arcades.<sup>23</sup>

## Transit Locations Advertising

Tobacco product advertising for most brands is also restricted at transit locations.<sup>24</sup> Transit advertising is prohibited on or within private or public vehicles, as well as at, on, or within a bus stop, train station, airport, taxi stand, transportation waiting area, or any other similar area.<sup>25</sup>



## Media Advertising

### Television, Radio, Cinema

Television and radio may not air advertisements for most types of tobacco products (e.g., cigarettes, little cigars, smokeless tobacco, or chewing tobacco).<sup>26</sup> However, the depiction of tobacco use on television programs is unregulated and does not factor into parental guidelines.

Tobacco use in movies is likewise unregulated. With limited results, three of the largest movie studios have voluntarily adopted policies designed to: Limit onscreen smoking in movies rated youth-appropriate; ensure no payment for depiction of tobacco products; and/or include an anti-smoking public service announcement in theaters or on DVDs of films depicting smoking.<sup>27</sup>

## Product Placement

The largest tobacco companies may not pay to place any item bearing a tobacco product brand name in the media, including movies, television shows, theatrical productions or other live performances.<sup>28</sup> This provision does not apply to media shown in an adult-only facility, media not intended for public distribution, and instructional media about non-conventional cigarettes viewed only by adult smokers.<sup>29</sup>



## Internet, Mobile Phones

All online tobacco product advertising, including websites for manufacturers, e-commerce, social networking, and search engines must display health warnings.<sup>30</sup> A tobacco company must notify the FDA at least 30 days before advertising tobacco products through “online or electronic media,” which include mobile phone applications and text messaging.<sup>31</sup>

## Video Games

Tobacco use may be depicted in video games, however, advertisements for tobacco products must display a health warning.<sup>32</sup> Video game publishers may voluntarily restrict tobacco product references to games rated for adults.

## Implied Health Claims

Tobacco marketing, including product packaging, may not mislead consumers into believing the FDA has sanctioned use of the product.<sup>33</sup> Therefore, you should not see tobacco product advertising that implies that the FDA has deemed a product safe for use, the product is approved or endorsed by the FDA, or that the product is less harmful by virtue of being compliant with FDA requirements.<sup>34</sup> Further, a tobacco product may not be promoted in combination with any other product regulated by the FDA, such as prescription drugs, cosmetics, dietary supplements, and medical devices.<sup>35</sup> Accordingly, you should not see a tobacco product marketed in conjunction with, for example, a weight loss product.

You should not see a tobacco product characterized as less harmful without FDA authorizing this characterization.<sup>36</sup> Hence, descriptors such as “light,” “low tar,” or “mild” are prohibited.<sup>37</sup> Further prohibited is tobacco product advertising with other misrepresentations, including claims regarding tobacco additives, filters, paper, or other ingredients.<sup>38</sup> Impermissible claims include those that falsely imply that a tobacco product: is safe or safer for use, contains a reduced level of a given substance, has a lower risk of tobacco related disease, free of a specific substance, or is “less irritating.”<sup>39</sup>

## Youth Marketing

### Youth Targeting

Many restrictions on tobacco product marketing intend to reduce marketing aimed at youth. Tobacco companies may not take any action with the primary purpose of initiating, maintaining, or increasing youth tobacco use, or otherwise target youth through advertising, promotion, or marketing of tobacco products.<sup>40</sup> Advertisements





that disproportionately speak to youth may be a violation of this prohibition on youth targeting.<sup>41</sup>

## Magazine Advertising

You should not see a tobacco product advertisement in a magazine with a high youth audience.<sup>42</sup> Specifically, no tobacco product advertisement should appear in any publication with either two million readers below age 18, or with a 15 percent total readership younger than 18 years old.<sup>43</sup>



## Cartoons in Advertising

You should not see a cartoon in the advertising, promotion, packaging, or labeling of a tobacco product.<sup>44</sup> “Cartoon” includes the depiction or drawing of an animal, person, or object that may exhibit exaggerated features, the attribution of human-like qualities to animals or other objects or creatures, or the attribution of super-human or unnatural abilities.<sup>45</sup>

## Free Samples

Generally, you should not see distribution of free tobacco products, or coupons for free tobacco products, including cigars, nicotine vapor products (and their components and parts), and herbal cigarettes.<sup>46</sup> In very limited circumstances, you may see distribution of free smokeless tobacco products or the coupons making them free: You may see smokeless tobacco samples (up to a single 0.53 ounce package per day) distributed to an age-verified adult 21 years or older within a qualified “adult-only facility.” These are typically set up at special events, and must be temporary; operated within an opaque barrier; located away from youth-oriented activity and marketing; have licensed security verifying each person’s age; and, may not have tobacco product advertising or branding visible from the exterior nor permit alcohol within.<sup>47</sup>



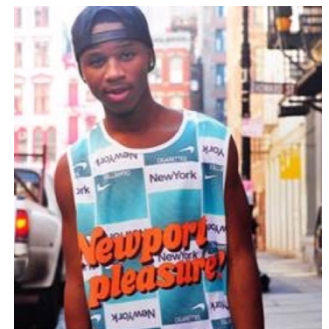
# Tobacco Product Brand Names

## Product Brand Name

A cigarette or smokeless tobacco product entering the U.S. market may not establish itself with the same brand name as a non-tobacco product already on the market,<sup>48</sup> or with the name of any nationally recognized celebrity, sports team, or entertainment group.<sup>49</sup> The law exempts a cigarette or smokeless tobacco product with a brand name shared with a non-tobacco product if sold in the U.S. as of January 1, 1995.<sup>50</sup>

## Brand Name Merchandise

Non-tobacco merchandise may not bear a cigarette or smokeless tobacco product brand name or recognizable indicia of that brand.<sup>51</sup> Accordingly, you should not see the sale or distribution of non-tobacco merchandise, such as t-shirts or other apparel, baggage, equipment, lighters, collectables, gadgets, or



smoking paraphernalia displaying the brand name, logo, recognizable color patterns, or any other brand identifier of cigarette or smokeless tobacco products.<sup>52</sup> (For example, neither tobacco's iconic Joe Camel, nor tobacco's equivalent of Nike's "swoosh" (e.g., the red and white Marlboro) is permitted where a brand name is not.) Roll-your-own paper, cigarettes and smokeless tobacco products and packaging, as well tobacco coupons, are not considered non-tobacco merchandise<sup>53</sup> and may therefore appear branded.<sup>54</sup>

## Brand Name Sponsorship

Companies may not sponsor an event using the brand name or identity of a cigarette or smokeless tobacco product.<sup>55</sup> The prohibition includes brand name sponsorship of an athletic, musical, artistic, social, cultural, or entertainment event.<sup>56</sup> Prohibited sponsorship branding includes a brand-identifiable logo, symbol, selling message, or recognized color or pattern of colors that indicate a specific brand of cigarettes or smokeless tobacco product.<sup>57</sup> (For example, neither tobacco's iconic Joe Camel, nor tobacco's equivalent of Nike's "swoosh" (e.g., the red and white Marlboro) is permitted where a brand name is not.) Likewise, a tobacco company may not cause a stadium or arena to be named with tobacco product brand name.<sup>58</sup>

Notably, sponsorships are permitted in the corporate name of a tobacco product manufacturer, such as "Reynolds American," so long as the corporate name is not identifiable with any brand of cigarettes or smokeless tobacco product and was registered in the U.S. prior to 1995.<sup>59</sup>

## Citations

<sup>1</sup> See, generally Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. §§ 387a-1, 387f (2020) [hereinafter TCA]; 21 C.F.R. § 1140.30(a)(1) (2020) (limiting marketing of cigarettes, smokeless tobacco to print [e.g., publications, posters, direct mail, point-of-sale promotional material]; audio or video formats delivered at the point-of-sale; the internet).

<sup>2</sup> See Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 79 Fed. Reg. 23141 (proposed April 25, 2014) (codified at 21 C.F.R. §§ 1100, 1140, and 1143 (2018)).

<sup>3</sup> Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(b) (2020) [hereinafter FCLAA] (cigarette advertising); 21 C.F.R. § 1143.5(a)(1) (2018) (cigar, little cigar, and cigarillo advertising after August 20, 2018); 15 U.S.C. § 4402(b) (2020) (smokeless tobacco advertising); 21 C.F.R. § 1143.3 (2020) (roll-your-own tobacco, pipe tobacco, e-cigarettes and covered tobacco products).

<sup>4</sup> FCLAA, 15 U.S.C. § 1333(b) (2020) (requiring, also, matchbooks "customarily given away with the purpose of tobacco products" comply with advertising health warning requirements).

<sup>5</sup> Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. § 4402(b)(1) (2020) [hereinafter CSTHEA].

<sup>6</sup> 21 C.F.R. § 1143.3(b) (2020) (cigarette tobacco, roll-your-own tobacco, and covered tobacco product advertising); 21 C.F.R. § 1143.5(b) (2020) (cigar advertising).

<sup>7</sup> 21 C.F.R. § 1141.10(b)(5) (2020) (requiring health warning to occupy 20% of each cigarette advertisement); 21 C.F.R. § 1143.3 (2020) (requiring health warning to occupy at least 20% of each roll-your-own and pipe tobacco, e-cigarettes, and covered tobacco products advertisement); CSTHEA, 15 U.S.C. § 4402(b) (2020) (requiring health warning to occupy 20% of each smokeless tobacco advertisement); *but see R.J. Reynolds Tobacco Co., et al. v. FDA* (E.D. Tex., April 3, 2020) (6:20-cv-00176); *Philip Morris USA, Inc. and Sherman Group Holdings, LLC v. FDA, et al.* (D.D.C., May 6, 2020) No. 1:20-cv-01181 (challenging federal rule requiring a health warning covering 20% of tobacco products and advertisements).

<sup>8</sup> FCLAA, 15 U.S.C. § 1333(4) (2020) (cigarettes); CSTHEA, 15 U.S.C. § 4402(b)(1) (2020) (smokeless tobacco); 21 C.F.R. § 1143.3(b)(2) (2020) (cigarette tobacco, roll-your-own, and covered tobacco products other than cigars).

<sup>9</sup> FCLAA, 15 U.S.C. § 1333(4)(b)(2)(a) (2020) (cigarettes); *In the Matter of Consolidated Cigar Corp.*, Docket No. C-3966 II(C)(2)(a) (Aug. 18, 2000), *available at* <https://www.ftc.gov/sites/default/files/documents/cases/2000/08/consolidatedcmp.htm> (last visited Sept 17, 2019) (applying rule to cigars); CSTHEA, 15 U.S.C. § 4402(b)(2)(G)(i) (2020) (smokeless tobacco).

<sup>10</sup> FCLAA, 15 U.S.C. § 1333(b) (2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; FCLAA, 15 U.S.C. § 1333(4)(b) (2020) (“The text of such label statements shall be in a typeface proportionate to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.”).

<sup>13</sup> CSTHEA, 15 U.S.C. § 4402(b) (2020).

<sup>14</sup> CSTHEA, 15 U.S.C. § 4402 (2020).

<sup>15</sup> 21 C.F.R. § 1143.5(a)(1) (2020).

<sup>16</sup> *Id.*

<sup>17</sup> Any product “made or derived from tobacco that is intended for human consumption” except components or parts not made or derived from tobacco. 21 C.F.R. § 1140.3 (2020).

<sup>18</sup> 21 C.F.R. § 1143.3 (2020).

<sup>19</sup> N.Y. PUB. HEALTH LAW § 1399-dd-1; N.Y. GEN. BUS. LAW § 396-aaa.

<sup>20</sup> Master Settlement Agreement (1998) [hereinafter “MSA”] at § III(d)(6) (allowing tobacco advertising at Adult-Only Facilities); *id.* at § II(c) (defining “Adult-Only Facility” to include locations that are only temporarily restricted to adults).

<sup>21</sup> *Id.* at § III(d)(6) (allowing tobacco product outdoor advertising at Adult-Only Facilities) and MSA at § II(ii) (limiting size of outdoor advertising at Adult-Only Facilities); *but see, id.* at § II(ii) (exempting from ads placed outside of a tobacco product manufacturing facility).

<sup>22</sup> *Id.* at § III(d).

<sup>23</sup> *Id.* at § II(ii).

<sup>24</sup> *Id.* at § III(d).

<sup>25</sup> *Id.* at § II(xx).

<sup>26</sup> *Id.* at § III (e); FCLAA, 15 U.S.C. § 1335 (2020) (prohibiting cigarette and little cigar advertising through electronic communications subject to FCC jurisdiction, e.g., communications by radio, television, wire, satellite, and cable.); CSTHEA, 15 U.S.C. §§ 4402, 4404, 4405 (prohibiting smokeless tobacco and chewing tobacco advertising through electronic communications subject to FCC jurisdiction).

<sup>27</sup> INSTITUTE OF MEDICINE, *Ending the Tobacco Problem: Resources for Local Action*, <https://www.nap.edu/catalog/11795/ending-the-tobacco-problem-a-blueprint-for-the-nation> (last visited Jun 22, 2020) (reporting Warner Bros., Universal Studios, Walt Disney Company adopted policies designed to limit onscreen smoking).

<sup>28</sup> MSA at § III(e); SMOKELESS TOBACCO MASTER SETTLEMENT AGREEMENT § III(e) (1998) [hereinafter STMSA], *available at* <http://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/1stmsa.pdf> (last visited Jun 25, 2020).

<sup>29</sup> *Id.* at § III(e).

<sup>30</sup> FCLAA, 15 U.S.C. § 1333(b) (2020) (cigarette advertising); C.F.R. § 1143.5(a)(1) (2020) (cigar, little cigar, and cigarillo advertising); CSTHEA, 15 U.S.C. § 4402(b) (2020) (smokeless tobacco advertising); 21 C.F.R. § 1143.3 (2020) (roll-your-own tobacco, pipe tobacco, e-cigarettes and covered tobacco products).

<sup>31</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d); 21 C.F.R. § 1140.30(a)(2) (2020); *see also* U.S. FOOD AND DRUG ADMIN., *Understanding FDA Requirements: We Card's Summary for Retailers*, <https://www.wecard.org/sites/default/files/WeCardUnderstandingFDAReq.pdf> (last visited Jun 25, 2020) (applying notice requirement to advertising through internet web sites, movie product placement, music videos, and television, when done at the expense of tobacco manufacturer, distributor, retailers; blogs or weblogs, emails sent to consumers, microblogs (e.g., Twitter), podcasts (e.g., audio sharing), social



networks and online communities, video sharing, widgets or window gadgets, wikis, applications for smart phones and tablet computers, text messaging, instant messaging, pop up or roll-over advertisements on web sites).

<sup>32</sup> FCLAA, 15 U.S.C. § 1333(b) (2020) (cigarette advertising); 21 C.F.R. § 1143.5(a)(1) (2020) cigar, little cigar, and cigarillo advertising); 15 U.S.C. § 4402(b) (2020) (smokeless tobacco advertising); 21 C.F.R. § 1143.3 (2020) (roll-your-own tobacco, pipe tobacco, e-cigarettes and covered products).

<sup>33</sup> TCA, 21 U.S.C. § 331tt (2020).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* §§ 321(rr), 333, 372.

<sup>36</sup> *Id.* § 387k (prohibiting marketing of “modified risk tobacco products” without prior authorization).

<sup>37</sup> *Id.* § 387k(b)(2)(ii).

<sup>38</sup> *Id.* § 387k; MSA, *supra* note 20, at § III(r).

<sup>39</sup> TCA, 21 U.S.C. § 387k (b)(2)(i),(ii) (prohibiting tobacco product advertising that would mislead consumers to believe that the product is demonstrably less harmful or less risk of disease than other marketed tobacco products or has a reduced level of a given substance); see e.g., *State of Vermont v. R.J. Reynolds Tobacco Co.*, No. S1087-05 CnC (Pearson, J., June 3, 2013) (finding that R.J. Reynolds’ claims of a “reduced risk” cigarette constituted deceptive and misleading advertising, in violation of the MSA); see also FED. TRADE COMM’N., In the Matter of Santa Fe Natural Tobacco Company, Inc., FILE NO. 992-3026 (2000), available at <http://www.ftc.gov/sites/default/files/documents/cases/2000/04/santafeagree.htm> (last visited Jun 25, 2020) (requiring Santa Fe Tobacco Company to display disclosure that products advertised as “no additives,” “no chemicals,” “additive-free,” “chemical-free,” “chemical-additive-free,” “100% tobacco,” “pure tobacco,” or with substantially similar terms do not mean those tobacco products are safer); *P. Lorillard Co. v. Fed. Trade Comm’n*, 186 F.2d 52, 58 (4th Cir. 1950) (upholding FTC order forbidding plaintiff-tobacco company from advertising products as “less irritating”).

<sup>40</sup> MSA, *supra* note 20 at § III(a).

<sup>41</sup> See, e.g., *State of California v. RJ Reynolds Tobacco Company*, Case No. GIC 764118 (2002), available at [https://oag.ca.gov/system/files/attachments/press\\_releases/02-067-rj\\_ad\\_1.pdf](https://oag.ca.gov/system/files/attachments/press_releases/02-067-rj_ad_1.pdf) (last visited Jun 22, 2020) (finding that RJ Reynolds Tobacco Company was in violation of the MSA for targeting youth in its tobacco advertising campaigns).

<sup>42</sup> MSA, *supra* note 20 at § III(a).

<sup>43</sup> See generally, *supra* note 41 (finding that RJ Reynolds had advertised tobacco products in youth centered publications).

<sup>44</sup> MSA, *supra* note 20 at §§ II(l), II(j), III(b).

<sup>45</sup> MSA, *supra* note 20 at § II(l).

<sup>46</sup> TCA, 21 U.S.C. § 387a-1 (2020); 21 C.F.R. § 1140.16(d)(1) (2020); N.Y. PUB. HEALTH LAW § 1399-bb1(a) (McKinney 2020); MSA, *supra* note 20 at § III(g) (allowing coupons in adult-only facilities); STMSA, *supra* note 28 § III(g) (allowing coupons in adult-only facilities).

<sup>47</sup> TCA, 21 U.S.C. §§ 387a-1(2020), 21 C.F.R. § 1140.16(d)(2) (2020).

<sup>48</sup> TCA, 21 C.F.R. § 1140.16(a); MSA, *supra* note 20 at § III(j); STMSA, *supra* note 29 at § III(j).

<sup>49</sup> MSA, *supra* note 20 at § III(j), STMSA, *supra* note 30 at § III(j).

<sup>50</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2020); 21 C.F.R. § 1140.16(a) (2020).

<sup>51</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2020); 21 C.F.R. § 1140.34(a) (2020); MSA, *supra* note 21 at § III(f); STMSA, *supra* note 28 at § III(f).

<sup>52</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2020); 21 C.F.R. § 1140.34(a) (2020); MSA, *supra* note 21 at § III(f); STMSA, *supra* note 28 at § III(f).

<sup>53</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2020); 21 C.F.R. § 1140.34(a) (2020); MSA, *supra* note 21 at §§ III(f), III(c)(3)(C); STMSA, *supra* note 28 at § III(f), III(c)(3)(C).

<sup>54</sup> See also MSA, *supra* note 21, at §§ III(f)(3) (noting additional exceptions, superseded by the TCA).

<sup>55</sup> TCA, 21 U.S.C. § 387a-1 (2020); MSA, *supra* note 20 at § III(c); STMSA, *supra* note 28 at § III(c) (allowing settling tobacco companies a single brand name sponsorship event per calendar year; event must not have paid participant younger than 18 years, nor intend an audience of a significant percentage of youth [relevant only if the TCA prohibition is deemed unenforceable]).

<sup>56</sup> MSA, *supra* note 20 at § III(c); STMSA, *supra* note 28 at § III(c); see TCA, 21 U.S.C. § 387a-1 (2020), 61 Fed. Reg. 44396-01 (Aug. 28, 1996) (to be codified at 21 C.F.R. pt. 801, 803, 804, 807, 820, 897).









<sup>57</sup> TCA, 21 U.S.C. § 387a-1(a)(2) (2020); 21 C.F.R. § 1140.34 (2020); MSA, *supra* note 20 at § III(c), STMSA, *supra* note 28 at § III(c).










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<sup>58</sup> MSA, *supra* note 20 at § III(c), STMSA, *supra* note 28 at § III(c).



<sup>59</sup> TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2020); 21 C.F.R. § 1140.34(c) (2020); MSA, *supra* note 20 at § III(c), STMSA, *supra* note 28 at § III(c).

# When, where, and how should you see tobacco product marketing?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
<b>Controls on Marketing Tobacco Products</b>		
<b>Required Health Warnings</b> Cigarettes	 <b>FTC</b>   <b>U.S. AGO</b>	<b>Comprehensive Smoking Education Act</b> Pub. L. 98-474  <b>Federal Cigarette Labeling and Advertising Act (FCLAA)</b> 15 U.S.C. § 1333  <b>Family Smoking Prevention and Tobacco Control Act (TCA)</b> 21 U.S.C. § 387n
<b>Required Health Warnings</b> Smokeless Tobacco	 <b>FTC</b>   <b>U.S. AGO</b>	<b>Comprehensive Smokeless Tobacco Health Education Act (CSTHEA)</b> 15 U.S.C. § 4402
<b>Required Health Warnings</b> Cigars	 <b>FTC</b>	<b>FTC Legal Settlements</b>
<b>Required Health Warnings</b> Roll-Your Own and Pipe Tobacco, E-Cigarettes and Other FDA Regulated Tobacco Products	 <b>FTC</b>   <b>U.S. AGO</b>	<b>21 CFR § 1143.3(b)(1)</b>
<b>Outdoor Advertising</b> Exterior Displays near Schools	 <b>NY local officer</b>	<b>N.Y. PUBLIC HEALTH LAW</b> § 1399-dd-1  <b>N.Y. GENERAL BUSINESS LAW</b> § 396-aaa.

<b>Outdoor Advertising</b>	 <b>NY AGO</b>	<b>Master Settlement Agreement (MSA)</b> §§ II(ii), II(xx), III(c), III(d) <b>Smokeless Tobacco Master Settlement Agreement (STMSA)</b> §§ II(dd), II(rr), III(c), III(d)
<b>Outdoor Advertising</b> Transit Locations Advertising	 <b>NY AGO</b>	<b>MSA</b> §§ II(xx), III(d) <b>STMSA</b> §§ II(rr), III(d)
<b>Media Advertising</b> Television, Radio, Cinema	 <b>NY AGO</b>  <b>FTC</b>	<b>MSA</b> § III(e) <b>FCLAA</b> 15 U.S.C. § 1335 <b>CSTHEA</b> 15 U.S.C. §§ 4402, 4404, 4405
<b>Media Advertising</b> Product Placement	 <b>NY AGO</b>	<b>MSA</b> § III(e) <b>STMSA</b> § III (e)
<b>Media Advertising</b> Internet, Mobile Phones	 <b>FDA</b>	<b>21 C.F.R. § 1140.30(a)(2)</b>
<b>Media Advertising</b> Video Games	 <b>FDA</b>	<b>21 C.F.R. § 1143.5(a)(1)</b> <b>21 C.F.R. § 1143.3</b> <b>FCLAA</b> 15 U.S.C. § 1333(b) <b>CSTHEA</b> 15 U.S.C. § 4402(b)
<b>Implied Health Claims</b> Joint Marketing, Modified Risk Misrepresentations	 <b>FDA</b>  <b>NY AGO</b>	<b>TCA</b> 21 U.S.C. §§ 331tt, 321(rr), 387k <b>MSA</b> § III(r)
<b>Youth Marketing</b>		

<b>Youth Targeting</b>	 <b>NY AGO</b>	<b>MSA</b> § III(a) <b>STMSA</b> § III(a)
<b>Magazine Advertising</b>	 <b>NY AGO</b>	<b>Legal Agreement</b>
<b>Cartoons in Advertising</b>	 <b>NY AGO</b>	<b>MSA</b> §§ II(l); III(b) <b>STMSA</b> §§ II(j), III(b)
<b>No Free Samples</b> Tobacco products, Nicotine vapor products, Herbal cigarettes	 <b>FDA</b>  <b>NY AGO</b>  <b>NY local officer</b>	<b>TCA</b> 21 U.S.C. § 387a-1, 21 C.F.R. § 1140.16 <b>MSA</b> § III(g) <b>STMSA</b> § III(g) <b>N.Y. PUBLIC HEALTH LAW</b> § 1399-bb
<b>Tobacco Product Brand Names</b>		
<b>Product Brand Name</b>	 <b>FDA</b>  <b>NY AGO</b>	<b>TCA</b> 21 C.F.R. §1140.16 <b>MSA</b> § III(j) <b>STMSA</b> § III(j)
<b>Brand Name Merchandise</b>	 <b>FDA</b>  <b>NY AGO</b>	<b>TCA</b> 21 C.F.R. § 1140.34(a) <b>MSA</b> §§ III(f), III(c)(3)(C) <b>STMSA</b> §§ III(f), III(c)(3)(C)
<b>Brand Name Sponsorship</b> Product Name Events Logo/symbol/color	 <b>FDA</b>  <b>NY AGO</b>	<b>TCA</b> 21 C.F.R. § 1140.34 <b>MSA</b> § III(j) <b>STMSA</b> § III(j)

<b>Brand Name Sponsorship</b> Stadium and arena names	 <b>NY AGO</b>	<b>MSA</b> §II(j), III(c)  <b>STMSA</b> §§ II(h), III(c)
<b>Brand Name Sponsorship</b> Name permitted	 <b>FDA</b>	<b>TCA</b> 21 C.F.R. § 1140.34

# Who enforces controls on tobacco product marketing?



## Federal Trade Commission (FTC)

The FTC, with the U.S. DOJ, is responsible for enforcing federal laws, such as the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act, which require tobacco products to be properly labeled and to display health warnings. The FTC's mission is to prevent anticompetitive and deceptive behavior in the marketplace to both maintain competition and protect consumers. The FTC investigates unfair business practices by the tobacco industry, including enforcing laws prohibiting false and deceptive advertising of tobacco products and unfair methods of competition. The FTC also issues annual reports on tobacco industry spending for advertising and promotion.

**Address:** Federal Trade Commission  
445 12<sup>th</sup> Street, SW  
Washington D.C., 20554

**Phone:** 1-888-225-5322

**Online:** <http://fcc.gov/complaints>



## U.S. Department of Justice (US DOJ)

The U.S. DOJ at the U.S. Department of Justice (DOJ), with the FTC, is responsible for enforcing federal laws, such as the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act, which require tobacco products to be properly labeled and to display health warnings. The U.S. DOJ's mission is to defend and enforce the laws of the United States. It administers justice in a fair and impartial manner, seeking punishment for the guilty. The U.S. DOJ represents the interests of the United States in litigation involving tobacco companies and enforcement of federal tobacco control laws. Within the U.S. DOJ is the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF).

**Address:** U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Phone:** 1-202-353-1555

**E-mail:** [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)

**Online:** <http://www.justice.gov/>



## NY AGO

The Attorney General's Office is charged with the statutory and common law powers to protect consumers and investors, charitable donors, the public health and environment, civil rights, and the rights of wage-earners and businesses across the State.

**Address:** Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

**Phone:** 1-800-771-7755  
1-800-788-9898 (TDD/TTY Toll Free Line)

**Online:** <http://www.ag.ny.gov/>



## Food and Drug Administration (FDA)

The FDA enforces provision of the Family Smoking Prevention and Tobacco Control Act which prohibit packages of cigarettes from being labeling in a false or misleading manner. The FDA is one of a handful of federal agencies whose mission is to protect public health. The FDA works to ensure that foods are safe, wholesome, properly labeled, and sanitary; that drugs, vaccines, biological products, and medical devices are safe and effective; proper labeling and safety of cosmetics and dietary supplements; protects from electronic product radiation; regulates tobacco products; and works to help speed product innovation. The Center for Tobacco Products is part of the FDA and oversees the implementation of the Family Smoking Prevention and Tobacco Control Act.

**Address:** FDA Center for Tobacco Products  
c/o Document Control Center  
9200 Corporate Boulevard  
Rockville, MD 20850-3229

**Phone:** 1-877-CTP-1373, select option #3

**E-mail:** [ctpcompliance@fda.hhs.gov](mailto:ctpcompliance@fda.hhs.gov)  
[AskCTP@fda.hhs.gov](mailto:AskCTP@fda.hhs.gov)

**Online:** <http://www.fda.gov/TobaccoProducts/>

Report of products that may be unsafe because they are damaged, defective or causing unexpected health problems may be reported to the FDA online at:

<https://www.safetyreporting.hhs.gov>



## Local Boards of Health

Local boards of health are charged with adopting the public health orders and regulations, consistent with state law, that they deem necessary and proper. Most New York counties rely on their local board of health to enforce the tobacco related provisions of the New York Public Health Law; in a minority of counties a District Office of the New York State Department of Health enforces these provisions.

County health department contact information can be accessed via the New York State Association of County Health Officials website: <http://www.nysacho.org/directory>

Contact information for the State District offices can be found here:  
<https://www.health.ny.gov/environmental/water/drinking/distphn.htm>

## Should you see tobacco products delivered through the mail?

Remotely purchased tobacco products (*i.e.*, via internet, telephone, catalog) for mail delivery more easily circumvent a number of tobacco controls. Specifically, mail order shipments risk underage sales and undermining controls that keep the price of tobacco products high, such as application of excise and sales taxes. To combat sales to youth and tax evasion, governments restrict businesses from shipping and delivering many types of tobacco products and require remote sellers to comply with the same laws that apply to brick and mortar tobacco retailers. These controls are aimed at businesses and do not stop consumers' attempts to order tobacco products for delivery.

### Shipment and Delivery of Cigarettes, Nicotine Vapor Products, Roll-Your-Own Tobacco, and Smokeless Tobacco

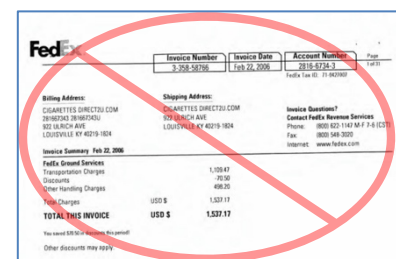
Generally, you should not see cigarettes, roll-your-own tobacco (RYO), smokeless tobacco, or (in New York) nicotine vapor products directly delivered to residential addresses. Shipments and delivery of these products are largely reserved for transport between licensed tobacco businesses, such as manufacturers, distributors, and retailers, and must be clearly labeled to identify their contents.

#### Postal Service Deliveries

USPS may accept only packages containing less than 10 ounces of cigarettes, RYO, or smokeless tobacco, and the package must display a bill of lading on the outside of the shipping package, on the same surface as the delivery address.<sup>1</sup> You should also see the package display the marking "PERMITTED TOBACCO MAILING" and a clear and conspicuous statement: "CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS."<sup>2</sup> USPS must verify that both the age of the shipper and receiver comply with the minimum legal sales age in the delivery jurisdiction.<sup>3</sup> Customers are restricted to sending a maximum of 10 such mailings in a 30-day period.<sup>4</sup>

#### Private Shipments and Deliveries

In New York, you should only see a registered retailer, export warehouse, or government official receive a delivery of cigarettes or nicotine vapor products. Sellers of cigarettes or nicotine vapor products are prohibited from shipping these products to anyone else, and contract carriers (such as UPS, DHL, and FedEx) and others are prohibited from delivering these products to anyone else.<sup>5</sup> There is an exception for individuals transporting smaller amounts of cigarettes or nicotine vapor products, essentially intended for personal use (up to 800 cigarettes, or four cartons, or the lessor of 500 milliliters of nicotine liquid or 3 total grams of nicotine).<sup>6</sup> The major common carriers have voluntary policies further prohibiting delivery of other kinds of tobacco products directly to consumers.<sup>7</sup> Further, the major credit card companies



agreed to take steps to ensure that their cards are not used to process payments for cigarettes likely to be illegally delivered.<sup>8</sup>

These restrictions are applicable to shipments to and from sovereign Native American tribes.

## Shipments and Deliveries to Adult Inmates

Packages containing tobacco products may be sent or brought to an inmate 21 years or older residing in a New York State correctional facility. These packages, including when delivered by individuals, must comply with federal and state shipping laws, as well as Department of Corrections and Community Supervision policy, which requires that tobacco products bear New York tax stamps and limits the quantity and frequency of tobacco products delivered.<sup>9</sup>

## Citations

<sup>1</sup> The Prevent All Cigarette Trafficking Act, 18 U.S.C. § 1716E (2020); 15 U.S.C. § 376a (2020) (applying to “tobacco products mailed by individuals who are not minors for noncommercial purposes,” with exceptions for delivery for certain business and regulatory purposes, returns of damaged or unacceptable products to the manufacturer, and mailing for consumer testing purposes).

<sup>2</sup> 15 U.S.C. § 376b(1) (2020).

<sup>3</sup> See 18 U.S.C. § 1716E (2020) (assigning to U.S.P.S. duty to verify recipient age).

<sup>4</sup> 18 U.S.C. § 1716E(b)(4)(B)(ii)(VII).

<sup>5</sup> N.Y. PUB. HEALTH LAW § 1399-II (McKinney 2020); N.Y. STATE DEPT. OF TAX’N AND FIN., Office of Tax Policy Analysis Technical Services Division, TSB-M-03(1)M (June 2, 2003), *available at* [http://www.tax.ny.gov/pdf/memos/cigarette/m03\\_1m.pdf](http://www.tax.ny.gov/pdf/memos/cigarette/m03_1m.pdf) (last visited May 27, 2020) (describing enforcement provisions and registration requirements for shippers and recipients of cigarettes and other tobacco products in New York State).






<sup>6</sup> N.Y. PUB. HEALTH LAW § 1399-II (McKinney 2020).

<sup>7</sup> UNITED PARCEL SERVICE, “Shipping Tobacco,” *available at* <https://www.ups.com/us/en/help-center/packaging-and-supplies/special-care-shipments/tobacco.page> (last visited Jun 25, 2020) (requiring shipper’s assurance of compliance for tobacco product shipments and indicating UPS does not ship vapor products to any New York addresses); FedEx Express Terms and Conditions, 13 (January 1, 2018), *available at* [https://www.fedex.com/content/dam/fedex/us-united-states/services/SG\\_TermsCond\\_US\\_2018.pdf](https://www.fedex.com/content/dam/fedex/us-united-states/services/SG_TermsCond_US_2018.pdf) (last visited Jun 25, 2020) (instructing FedEx customers that FedEx prohibits shipping packages containing cigarettes, cigars, loose tobacco, smokeless tobacco, hookah nor shisha).

<sup>8</sup> N.Y. ATTORNEY GENERAL, *Attorney General James, NYC Corp. Counsel Announce \$35 Million Settlement With Fedex Over Shipping Of Illegal Cigarettes*, 1 (January 14, 2019), *available at* <https://ag.ny.gov/press-release/2019/attorney-general-james-nyc-corp-counsel-announce-35-million-settlement-fedex-over> (last visited Jun 25, 2020).

<sup>9</sup> N.Y. DEP’T OF CORRECTIONS AND COMMUNITY SERVICES, Directive 4911, Packages & Articles Sent or Brought to Facilities (July 23, 2018), *available at* <https://doccs.ny.gov/system/files/documents/2019/08/4911%20Packages%20%26%20Articles%20Sent%20or%20Brought%20to%20Facilities.pdf> (last visited Jun 25, 2020).

## Should you ever see tobacco products delivered through the mail?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
<b>Shipment and Delivery of Cigarettes, Roll-Your-Own Tobacco, Smokeless Tobacco</b> United States Postal Service	 <b>Postal Inspector</b>	<b>The Prevent All Cigarette Trafficking Act (Pact Act)</b> 18 U.S.C. § 1716e
<b>Shipment and Delivery of Cigarettes, Roll-Your-Own Tobacco, Smokeless Tobacco</b> Private Common Carriers	 <b>U.S. AGO</b>  <b>NY AGO</b>  <b>NY Tobacco Tax Administrator</b>	<b>In the Matter of DHL Holdings U.S.A., Assurance of Discontinuance, July 2005.</b>
<b>Shipment and Delivery of Cigarettes, Roll-Your-Own Tobacco, Smokeless Tobacco, and Nicotine Vapor Products</b> NY Tobacco Shipping Restrictions	 <b>NY local enforcement officer</b> (typically local Board of Health (BOH))	<b>N.Y. PUB. HEALTH LAW</b> § 1399-II

# Who enforces controls on mail order deliveries of tobacco products?



## Postal Inspector

Postal Inspectors are federal law enforcement agents responsible for enforcing federal postal laws. Postal Inspectors are authorized to serve warrants and subpoenas, make arrests for postal related offenses, and make seizures of property as provided by law.

**Address:** Criminal Investigations Service Center  
Attn: Mail Fraud  
433 W. Harrison Street Room 3255  
Chicago, IL 60699-3255

**Phone:** 1-877-876-2455

**Online:** Find Nearest Office, <http://locator.uspis.gov/locator/Default.aspx>

File a Complaint, <https://postalinspectors.uspis.gov/contactUs/filecomplaint.aspx>



## U.S. Office of the Attorney General (US AGO)

The U.S. AGO at the U.S. Department of Justice (DOJ), with the FTC, is responsible for enforcing federal laws, such as the Federal Cigarette Labeling and Advertising Act and the Family Smoking Prevention and Tobacco Control Act, which require tobacco products to be properly labeled and to display health warnings. The U.S. DOJ's mission is to defend and enforce the laws of the United States. It administers justice in a fair and impartial manner, seeking punishment for the guilty. The U.S. DOJ represents the interests of the United States in litigation involving tobacco companies and enforcement of federal tobacco control laws. Within the U.S. DOJ is the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF).

**Address:** U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Phone:** (202)353-1555

**Online:** <http://www.justice.gov/>

**E-mail:** [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)



## NY AGO

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The Capitol  
Albany, NY 12224-0341

*Phone:* 1-800-771-7755  
1-800-788-9898 (TDD/TTY Toll Free Line)

*Online:* <http://www.ag.ny.gov/>



## Local Boards of Health

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Contact information for the State District offices can be found here:  
<https://www.health.ny.gov/environmental/water/drinking/distphn.htm>

# What curricula should you see in New York schools regarding tobacco use?

## Health Education

All grade schools in New York must provide instruction to students discouraging misuse and abuse of drugs, including preventing use of tobacco.<sup>1</sup>

In elementary schools this instruction must be given by the regular classroom teacher or by a teacher certified in health education.<sup>2</sup> For junior and senior high school students, the instruction must be integrated into the required health education course and provided by a teacher certified in health education.<sup>3</sup> Students must either be tested or complete a project or report to demonstrate their knowledge.<sup>4</sup>

Each school district must employ a designated and trained counselor to provide information to students, parents, or staff on where to find substance use related services.<sup>5</sup>



## National Health Education Standards<sup>1</sup>

### Tobacco Use Prevention Curriculum

*A pre-K–12 tobacco-free curriculum should enable students to:*

1. *Avoid using (or experimenting with) any form of tobacco.*
2. *Avoid second-hand smoke.*
3. *Support a tobacco-free environment.*
4. *Support others to be tobacco-free.*
5. *Quit using tobacco, if already using.*

(1) CTRS. FOR DISEASE CONTROL, Health Education Curriculum Analysis Tool T-1 (2012).



## Citations

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<sup>1</sup> N.Y. EDUC. LAW § 804 (McKinney); N.Y. PUB. HEALTH LAW § 1399 -ii (2)(b) (McKinney2020) (requiring the health department to support school-based programs to prevent and reduce tobacco use, including e-cigarette use); N.Y. MEN. HYG. LAW § 19.07(l) (McKinney2020) (requiring office of alcoholism and substance abuse services, in consultation with the education department, to provide educational materials supporting drug, tobacco education curriculum); N.Y. COMP. CODES R. & REGS. tit. 8, § 135.3 (2020) (regulating state health education program, including instruction concerning misuse of tobacco); N.Y. Exec. Order. No. 196 (Sept 12, 2019), [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_196.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_196.pdf) (ordering expansion of school-based tobacco prevention curriculum to include e-cigarette use); N.Y. EDUC. LAW § 3204.2 (McKinney 2020) (applying to independent educators by requiring instruction given to a minor to be substantially equivalent to the instruction given at the local public school).


<sup>2</sup> N.Y. EDUC. LAW § 804 (McKinney 2020); N.Y. COMP. CODES R. & REGS. tit. 8, § 135.3 (2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> N.Y. EDUC. LAW § 3038 (McKinney 2020).

## What curricula should you see in New York schools<sup>i</sup> regarding tobacco use?

COMPLIANCE ISSUE	ENFORCEMENT ENTITY	TOBACCO CONTROL
Health Education Tobacco Use	 <b>The New York State Education Department</b>	<b>N.Y. EDUC. LAW</b> § 804  <b>N.Y. COMP. CODES R. &amp; REGS.</b> tit. 8, § 135.3  <b>N.Y. MEN. HYG. LAW</b> § 19.07

<sup>i</sup> Schools includes both public and private elementary, junior and senior high schools. N.Y. EDUC. LAW § 804 (McKinney); N.Y. COMP. CODES R. & REGS..tit. 8, § 135.3 (2018); N.Y. MEN. HYG. LAW § 19.07 (McKinney); *see also* U.S. DEPT. OF EDUCATION, STATE REGULATION OF PRIVATE 192 (2009), <https://www2.ed.gov/admins/comm/choice/regprivschr/regprivschr.pdf> (last visited Jun. 6, 2019).

# Who enforces tobacco use education requirements in New York's schools?



## The New York State Education Department

The New York State Education Department is part of the University of the State of New York and comprises more than 7,000 public and independent elementary and secondary schools. Its mission is to raise the knowledge, skill, and opportunity of all the people in New York.

*Address:* New York State Education Department  
89 Washington Avenue  
Albany, NY 12234

*Phone:* (518) 474-3852

*Online:* <http://www.nysed.gov/>

Directory of public and non-public schools and administrators in New York State,  
<http://www.p12.nysed.gov/irs/schoolDirectory/>



## *Providing legal expertise to support policies benefiting the public health.*

The **Public Health and Tobacco Policy Center** is a legal research Center within the Public Health Advocacy Institute. Our shared goal is to support and enhance a commitment to public health in individuals and institutes who shape public policy through law. We are committed to research in public health law, public health policy development; to legal technical assistance; and to collaborative work at the intersection of law and public health. Our current areas of work include tobacco control and chronic disease prevention. We are housed at the Northeastern University School of Law in Boston, Massachusetts.

### What We Do

#### Research & Information Services

- analyze and contextualize the legal landscape and scientific evidence base for emerging issues in tobacco control and other public health policy areas
- develop model policies for implementation at the organizational, municipal, or state level
- compile and analyze policy initiatives and litigation related to impactful health policy

#### Legal Technical Assistance

- assist local governments with identifying effective, feasible policy responses addressing public health concerns
- draft tailored policies to address municipalities' unique concerns
- assist local governments with policy enactment and implementation

#### Education & Outreach

- conduct in-person and online trainings that convey the legal landscape for promising policy interventions, their potential impact on a public health problem, best practices, common obstacles, and lessons learned
- facilitate strategic planning for public health agencies and other regulators
- maintain website featuring technical reports, model policies, fact sheets, toolkits, story maps, summaries of tobacco control laws
- impact development of national and federal tobacco control laws and regulations, including through collaboration with partners and *amicus curiae* briefs

### Find Us Online

#### [www.tobaccopolicycenter.org](http://www.tobaccopolicycenter.org)

The Policy Center's website provides information about local policy interventions to improve population health. We highlight factors driving tobacco use and policy solutions addressing these factors; authority and rationale for implementing local tobacco controls, and relevant federal, state, and local policies in effect in New York State. We provide contextualized summaries of recent court cases affecting tobacco product and sales regulation, newsletter summaries of relevant current issues, and more. The website provides convenient access to the Policy Center's technical reports, toolkits, model policies, fact sheets, presentations, and story maps.

#### [twitter.com/TobaccoPolicy](https://twitter.com/TobaccoPolicy)

#### [facebook.com/TobaccoPolicy](https://facebook.com/TobaccoPolicy)

Follow us on Twitter and Facebook for policy updates and current events.

### Requests for Legal Technical Assistance

The Public Health and Tobacco Policy Center provides legal background and policy guidance for research, development, and implementation of tobacco control strategies and policies. We do not represent clients or provide legal advice. The Policy Center is a resource for the New York tobacco control community. Individuals from state-funded coalitions and local governments may contact us with tobacco-related legal or policy issues at [tobacco@tobaccopolicycenter.org](mailto:tobacco@tobaccopolicycenter.org).



Public Health Advocacy Institute *at* Northeastern University School of Law  
360 Huntington Avenue, 117CU • Boston, MA 02115  
[tobaccopolicycenter.org](http://tobaccopolicycenter.org) • 617.373.8494