Ways & Means

A Citizen’s Guide to New York Tobacco Controls
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.
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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 diverse 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. Controls are often challenged and subsequently adjusted or repealed. Further, some tobacco controls significantly vary by state or county. Identifying the proper enforcement authority or authorities can pose its own challenge. In sum, tobacco controls are increasingly broad and complex—and authorized and enforced by disparate entities—producing public uncertainty surrounding the rules and jurisdiction over them.

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

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.

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.
Public Health and Tobacco Policy Center


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.¹ This use prohibition applies to all employees, patrons, visitors, etc.² State prohibitions on indoor smoking and vaping apply to indoor private and government places of employment under the control of the employer, including their company vehicles; bars and restaurants; public means of mass transportation 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 and casinos; enclosed public swimming pools, zoos and indoor arenas, and bingo facilities.³ Smoking is prohibited inside all New York correctional facilities.⁴ Smoking and vaping are prohibited on all commercial flights to, from, and within the U.S.⁵

**Schools**

Smoking and vaping are prohibited on “school grounds.”⁶ “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.”⁷ 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.⁸ Smoking and vaping are prohibited inside buildings of public and private colleges, universities, and other educational and vocational institutions.⁹ Many institutions have enacted more extensive use restrictions. Smoking and vaping are prohibited in “any vehicles used to transport children or school personnel.”¹⁰

**Federal Facilities**

Smoking is generally prohibited inside facilities controlled by the federal government,¹¹ including its correctional facilities, which are 100 percent smoke-free.¹² Smoking is prohibited in all Public Housing Authority (PHA) properties (both multi-unit and scattered site), including administrative buildings.¹³ This rule does not apply to Section 8 properties, mixed-finance project properties, nor tribal housing authorities. PHAs must develop and implement smoke-free policies consistent with or more stringent than this rule by July 30, 2018,¹⁴ but may establish designated smoking areas on the property grounds outside of the 25 foot buffer zone.¹⁵
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.\textsuperscript{16}

Signs Required

Tobacco-free areas in New York, with the exception of school grounds,\textsuperscript{17} should be clearly identified with prominently posted signs stating “No Smoking,” or “No Vaping,” or the international “No Smoking” symbol.\textsuperscript{18} Note that a local government may more strictly regulate smoking and tobacco use above and beyond the requirements of state law.\textsuperscript{19}

Limited Exceptions

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

- Hotel or motel rooms;\textsuperscript{20}
- Retail tobacco businesses;\textsuperscript{21}
- 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;\textsuperscript{22}
- Retail electronic cigarette stores (use of electronic cigarettes only);\textsuperscript{23}
- 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;\textsuperscript{24}
- Membership associations run by member volunteers;\textsuperscript{25}
- Facilities used for the primary purpose of promoting and sampling tobacco products;\textsuperscript{26}
- Buses, vans, taxicabs, and limousines when unoccupied by passengers;\textsuperscript{27}
- 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;\textsuperscript{28}
- 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;\textsuperscript{29}
- 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;\textsuperscript{30}
- Native American tribal establishments exempt from New York law.\textsuperscript{31}

Citations

\textsuperscript{1} N.Y. PUB. HEALTH LAW § 1399-o(1)(a) (McKinney).
\textsuperscript{2} Id. § 1399-o.


6. N.Y. PUB. HEALTH LAW § 1399-o(5)(a) (McKinney); N.Y. EDUC. LAW § 409 (McKinney).

7. N.Y. PUB. HEALTH LAW § 1399-n(6) (McKinney); N.Y. EDUC. LAW § 409 (McKinney).

8. *Id.* § 1399-o(3),(4).

9. *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).

10. N.Y. PUB. HEALTH LAW § 1399-n(6)(McKinney); *see also* N.Y. COMP. CODES R. & REGS. tit. 8, § 156.3 (2018) (“Drivers, monitors and attendants shall not smoke at any time while within a school bus.”).


17. N.Y. PUB. HEALTH LAW § 1399-o (McKinney).

18. *Id.*

19. *Id.* § 1399-r(3).

20. *Id.* § 1399-q.

21. *Id.*

22. *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[.]”).

23. *Id.*

24. *Id.*

25. *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.).

26. *Id.*

27. *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[.]”)

28. *Id.* § 1399-o(1)(n).

29. *Id.* § 1399-o(1)(h).

30. *Id.* § 1399-o(1)(m).

31. U.S. CONST. art. I, § 8 (identifying Native American tribes as sovereign nations not inherently subject to state or federal law.).
### Where indoors is smoking, vaping, and/or OTP use prohibited?

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<td>Tobacco possession on agency premises prohibited</td>
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</table>

| **No Smoking and No Vaping Signs Required** | ![Green Checkmark] NY local enforcement officer (typically local BOH) | | N.Y. PUB. HEALTH LAW § 1399-p |
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 7th 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/

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. 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.” Additionally, Niagara Frontier Transportation Authority prohibits smoking and vaping on its property.

Hospitals, 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. Smoking and vaping by patients or their visitors or guests may be permitted at designated smoking areas located 30 or more feet from a residential health care facility, and some types of health care facilities may designate patient smoking rooms for smoking. On-premises, employee smoking and vaping are prohibited.

Schools

Use of any tobacco product or electronic cigarette is prohibited anywhere on public or private pre-school, nursery school, elementary, or secondary school grounds, and smoking and vaping are prohibited within 100 feet of the entrances, exits, or outdoor areas of any private or public grade schools. “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.” Further, 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.

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. 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.

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. Additionally, smoking is prohibited in certain areas of
State Parks as designated by the commissioner, largely identified as places where people congregate, such as beaches, playgrounds, and within 50 feet of entrances and exits to buildings, among other areas. A list of designated smoke-free areas is posted on the Department of Parks, Recreation and Historic Preservation website.

**Federal Property**

All federal correctional facilities prohibit smoking and vaping (indoor and outdoor), except in specific outdoor areas designated by the warden for employees and official visitors. Designated smoking and vaping areas must be separate and distinct from one another.

Inmates are prohibited from possessing a smoking apparatus or tobacco in any form, unless such possession is a part of an authorized inmate religious activity.

Smoking is banned in courtyards and within 25 feet of doorways on most federally controlled properties. On properties under the control of the Executive Branch (President), outdoor smoking is prohibited, at a minimum, in front of air intake ducts, with further restrictions implemented at the discretion of each agency head.

**Public Housing Authorities**

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

**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, with the exception of school grounds.

**Libraries**

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

1. N.Y. PUB. HEALTH LAW § 1399-o (McKinney), defining “vaping” as “use of an electronic cigarette.”
2. Id. § 1399-o(2)(a).
3. N.Y. COMP. CODES R. & REGS. tit. 21 § 1151.9 (2018) prohibits the use of e-cigarettes and smoking on Niagara Frontier Transportation Authority property.
4. Id. § 1399-o(2)(b).
5. Id. § 1399-o(2)(b).
6. 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).
7. Id. § 1399-o(2)(a).
8. N.Y. EDUC. LAW § 409 (McKinney).
9. N.Y. PUB. HEALTH LAW § 1399-o(3) (McKinney).
10. N.Y. PUB. HEALTH LAW § 1399-n(6) (McKinney); N.Y. EDUC. LAW § 409 (McKinney).
13. N.Y. PUB. HEALTH LAW § 1399-o(4) (McKinney). Applies to after-school programs licensed or registered pursuant to N.Y. SOC. SERVS. LAW § 300. Id. Exempts smoking in a residence, or within the real property boundary lines of residential real property. Id.
16. Id. § 386.1(a)(1).
19. Id.
27. Id. § 1399-o.
28. Id. § 1399-o(6).
29. Id. § 1399-n(8).
30. N.Y. EDUC. LAW § 253(2) (McKinney).
## Where outdoors is smoking, vaping, and/or OTP use prohibited?

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<td>The U.S. Department of Housing and Urban Development stipulates that each PHA will enforce its smoke-free policy through lease enforcement procedures.</td>
<td>81 FR 87430</td>
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<td>Signs</td>
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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/

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

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.¹

Health Warning
The Surgeon General’s health warning must be prominently displayed on all packages of cigarettes.²

No False Labels
The cigarette package must not have false or misleading labels.³ Cigarette packages must accurately identify the origin of the product (such as the country from which they were imported)⁴ and the product characteristics (such as net quantity and size)⁵ and state “sale only allowed in the United States.”⁶ 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.⁷

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.⁸

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.⁹ 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.¹⁰ If cigarettes appear unsafe because they are damaged, defective, or causing unexpected health problems, these concerns may be reported to the FDA.¹¹

No Immoral or Indecent Material
Tobacco products and cigarette papers or tubes cannot display or contain any immoral or indecent pictures, representations, or print.¹²

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.¹³
Larger and Graphic Health Warnings; Industry Disclosures: The Future of Cigarette Packages?

The Family Smoking Prevention and Tobacco Control Act requires that cigarettes packages and advertisements display larger text warnings(1) and graphic (pictorial) health warnings that cover at least the top 50 percent of the package and 20 percent of an advertisement.(2) In August 2020, FDA issued 13 proposed text warnings and accompanying graphics. The agency is under court order to finalize a rule requiring cigarette health warnings by March 15, 2020.(3)

Separately, a 2006 court order requires certain tobacco manufacturers to display statements on their cigarettes’ packages that acknowledge past deceit by these manufactures regarding health risks associated with their cigarettes.(4) These five statements were finalized May 2018 and began appearing November 21st, 2018, as onserts to the cigarette packages of Altria, R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, ITB Grands, Commonwealth Brands, Inc. Commonwealth-Altadis, and Phillip Morris USA. Each package must contain one of the five statements for a total of twelve weeks spread out over two years. For more information, please see United States v. Philip Morris USA, Inc., et al., #6257-21 (April 26, 2018).


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.14 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.15 New York retail cigarette packages may not be unstamped,16 display the tax stamp of a different state, or display a counterfeit tax stamp.17 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.18
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 (the most typically sold) cigarettes.19

Labels for U.S. Manufactured Cigarettes

In addition to the requirements listed above, you should find 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. 20 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.”21 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.22 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.23

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.”24 Also, the package must be labeled with the English name of the country of origin of cigarettes.25
Citations


2 Id. § 387(n); Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333, 1338-1339 (2018). Packages of cigarettes must clearly and conspicuously bear one of the following approved health 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.


4 See e.g., Packaging Requirements, 27 C.F.R. § 45.45 (2018).


11 N.Y. TAX LAW § 470 (McKinney); Cigarette and tobacco products tax, supra note 14.


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


19 27 C.F.R. § 44.185 (2018).

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

<table>
<thead>
<tr>
<th>COMPLIANCE ISSUE</th>
<th>ENFORCEMENT ENTITY</th>
<th>TOBACCO CONTROL</th>
</tr>
</thead>
</table>
| Minimum Package Size | FDA | Family Smoking Prevention and Tobacco Control Act (TCA)  
21 U.S.C. §§ 387a-1, 387f  
21 C.F.R. §§ 1140.14(d), 1140.16(b)  
N.Y. PUBLIC HEALTH LAW  
§ 1399-gg(2)  
Master Settlement Agreement  
§ III(k) |
| Health Warning | FTC | Federal Cigarette Labeling and Advertising Act (FCLAA)  
TCA  
21 U.S.C. § 387(n) |
| Labels conforming with product description requirements (i.e., net quantity of contents) | FDA | Fair Packaging and Labeling Act  
| Labels that are not misbranded (i.e., not false or misleading) | FDA | TCA  
21 U.S.C. § 387c |
| Labels that identify origin of imported product | CBP | Tariff Act of 1930  
19 U.S.C. § 1304 |
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<th><strong>Labels</strong> that are not misbranded (i.e., indicate product quantity and size)</th>
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<th>TCA</th>
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<td>FDA</td>
<td>21 U.S.C. § 387c</td>
</tr>
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<td></td>
<td>TTB</td>
<td>27 C.F.R. § 45.45</td>
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<tr>
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<th>15 U.S.C. § 45a</th>
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<tr>
<td>“Made in U.S.A.” only if accurate</td>
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<tr>
<td>(i.e., indicate the FDA has approved the cigarettes; cigarettes are less harmful)</td>
<td>FDA</td>
<td>21 U.S.C. § 331(tt)</td>
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<table>
<thead>
<tr>
<th><strong>Safety Compliance</strong></th>
<th>New York State Office of Fire Prevention and Control</th>
<th>N.Y. EXEC. LAW § 156-c</th>
</tr>
</thead>
<tbody>
<tr>
<td>“FSC” printed near UPC code</td>
<td>N.Y. Fire Safety Standards for Cigarettes</td>
<td>N.Y. COMP. CODES R. &amp; REGS. tit. 19, §§ 429.1, 429.8</td>
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<table>
<thead>
<tr>
<th>Undamaged, non-defective, non-contaminated cigarettes</th>
<th>FDA</th>
<th>FDA Safety Reporting Portal</th>
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<tbody>
<tr>
<td></td>
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<td><a href="https://www.safetyreporting.hhs.gov">https://www.safetyreporting.hhs.gov</a></td>
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</table>

<table>
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<tr>
<th><strong>No Indecent or Immoral Material</strong></th>
<th>TTB</th>
<th>26 U.S.C. § 5723</th>
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<td></td>
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<td>27 C.F.R. § 45.41</td>
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<tr>
<th><strong>No Lottery Features</strong></th>
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## Tax Compliance

<table>
<thead>
<tr>
<th>Tax Stamps</th>
<th>NYSDTF</th>
<th>N.Y. TAX LAW § 471</th>
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<tr>
<td>New York tax stamp</td>
<td>NY AGO</td>
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<tr>
<td>Tax Stamp</td>
<td>NYSDTF</td>
<td>N.Y. TAX LAW § 470</td>
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<td>National Stolen Property Act</td>
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<td>No counterfeit stamps</td>
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<td>18 U.S.C. § 2315</td>
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<tr>
<td>Tax Stamps</td>
<td>ATF</td>
<td>Contraband Cigarettes and Smokeless Tobacco Act</td>
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<tr>
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<td>U.S. AGO</td>
<td>18 U.S.C. §§ 2342-43</td>
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<tr>
<td></td>
<td>N.Y. AGO</td>
<td></td>
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<tr>
<td>Labels indicating “Cigarettes” with Quantity and Class Designation</td>
<td>TTB</td>
<td>26 U.S.C. § 5723</td>
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<td></td>
<td></td>
<td>27 C.F.R. § 41.74</td>
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<td></td>
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<td>27 C.F.R. § 45.45</td>
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<td>U.S. Manufacturer Identified, where relevant</td>
<td>TTB</td>
<td>26 U.S.C. § 5704</td>
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<td></td>
<td></td>
<td>27 C.F.R. § 40.212</td>
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<tr>
<td>Export Labels on U.S. Manufactured Cigarette Packages</td>
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<td>26 U.S.C. § 5704</td>
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<td></td>
<td>TTB</td>
<td>27 C.F.R. § 44.185</td>
</tr>
<tr>
<td>Imported Manufactured Cigarette Packages</td>
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<td>TCA</td>
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<tr>
<td>----------------------------------------</td>
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<td>Properly labeled</td>
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<td>21 U.S.C. § 387c</td>
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<tr>
<td></td>
<td></td>
<td>Fair Packaging and Labeling Act</td>
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<tr>
<td>Imported Manufactured Cigarette Packages</td>
<td>CBP</td>
<td>Tariff Act of 1930</td>
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<tr>
<td>Origin labels</td>
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<td>19 U.S.C. § 1304</td>
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<td>Manufacturer name or factory permit on</td>
<td>TTB</td>
<td>27 C.F.R. § 45.31</td>
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<tr>
<td>packages sent to a federal agency</td>
<td></td>
<td>27 C.F.R. § 45.42</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>26 U.S.C. § 5704</td>
</tr>
</tbody>
</table>
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
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.
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

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
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@dhses.ny.gov
Online: http://www.dhses.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 wrappings, dissolvable tobacco products, and 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 Size

Roll-Your-Own

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

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.²

Health Warning

Health warnings are required on packaging of all tobacco products, including smokeless tobacco,³ and most cigars, loose tobacco (hookah, roll-your-own, pipe), nicotine-containing e-cigarettes, and dissolvable tobacco products.⁴

In general, health warnings on packages must be located on the two principal display panels and comprise at least 30 percent of each panel; be printed in black text on a white background or white text on a black background and surrounded by a rectangular border that is the same color as the text.⁵ Warning displays must comply with additional size, placement, and message rotation requirements.⁶

Cigars, Little Cigars, Cigarillos

Packaging for cigars, including little cigars and cigarillos, must display a prominent health warning.⁷ It is unlawful to manufacture, package, sell, offer to sell, distribute or import for sale

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.(¹) However, the FDA does not currently require graphic warnings for smokeless tobacco products.

or distribution within the United States, any cigar unless the package bears one of the following six warnings, rotated according to the schedule specified by the FDA:

- **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.

Retailers of cigars that are sold individually and not in a product package must display all six warnings on or within three inches of each cash register. 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.

**Smokeless Tobacco**

Smokeless tobacco advertisements must prominently display one of four Surgeon General’s health warnings on a rotating basis:

- **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.

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

Packaging and advertisements for FDA-regulated tobacco products (other than cigars), including roll-your-own, pipe tobacco, and e-cigarettes and nicotine solutions, must prominently display a warning label that reads:

- **WARNING:** This product contains nicotine. Nicotine is an addictive chemical.

**Child-Resistant Packages**

**Liquid Nicotine**

Both federal and New York state law require that liquid nicotine be sold in a child-resistant package. The federal law extends this requirement to “open system” liquid nicotine containers. The federal law further applies to containers for “any form of chemical nicotine, . . . whether the chemical is naturally or synthetically derived.”

**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, misleading, false, or if the label misstates product characteristics (such as net quantity), or fails to state “Sale only in the U.S.A.”
Likewise, package statements with respect to “made in U.S.A.” must be accurate and not misleading.\textsuperscript{18} 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.\textsuperscript{19}

**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.\textsuperscript{20}

**Safety Compliance**

A tobacco product should not appear unsafe due to damage or defect, nor cause unexpected health problems.\textsuperscript{21}

**No Immoral Images**

Tobacco product packaging cannot display or contain any immoral or indecent pictures, representations, or print.\textsuperscript{22}

**Tax Compliance Indicators**

New York applies a tobacco excise tax to sales of most OTP,\textsuperscript{23} New York does not require OTP packages to exhibit proof of tax compliance.\textsuperscript{24}

**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.”\textsuperscript{25}

**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.”\textsuperscript{26} 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.\textsuperscript{27} Alternatively, packages may be designated “Tax Class C” for chewing tobacco or “Tax Class M” for snuff.\textsuperscript{28}

**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.\textsuperscript{29}
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.\(^{30}\)

Manufacturer ID on U.S. Manufactured OTP

Packages of certain OTP\(^{31}\) 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.\(^{32}\) Tobacco products not subject to tax, such as those delivered to a federal agency,\(^{33}\) 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.\(^{34}\)

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.\(^ {35}\)

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.”\(^ {36}\) 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.\(^ {37}\) 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.\(^ {38}\) 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

1 N.Y. PUB. HEALTH LAW § 1399-gg(2) (McKinney).
2 Id.
4 21 CFR §1143.5(a)(1).
5 21 CFR §§ 1141.1(b), 1143.3(b), 1143.5(n) (2018); CSTHEA, 15 U.S.C. § 4402(b)(2).
7 21 CFR § 1143.5(a)(1).
8 15 CFR § 1143.5(a)(3).
9 Id.
11 21 C.F.R. § 1143.3; 21 C.F.R. §1140.3 (covers any product “made or derived from tobacco that is intended for human consumption” except components or parts not made or derived from tobacco).
14 Id § 1472(a)(d)(3).
23 N.Y. TAX LAW § 470, 471-b (McKinney) (including cigars, little cigars, and tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff).
24 Id. (requiring a dealer/distributor/wholesaler to furnish proof of tax compliance to the Commissioner of Taxation and Finance upon request).
28 Id.
When looking at a package of OTP, what should you see?

<table>
<thead>
<tr>
<th>COMPLIANCE ISSUE</th>
<th>ENFORCEMENT ENTITY</th>
<th>TOBACCO CONTROL</th>
</tr>
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<tbody>
<tr>
<td>Minimum Package Size</td>
<td>NY local enforcement officer (typically</td>
<td>N.Y. PUB. HEALTH LAW § 1399-gg</td>
</tr>
<tr>
<td>Roll-Your-Own</td>
<td>local Board of Health)</td>
<td></td>
</tr>
<tr>
<td>Wrapping Papers</td>
<td></td>
<td></td>
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<tr>
<td>Wrapping Leaves</td>
<td></td>
<td></td>
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<tr>
<td>Tubes</td>
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<td></td>
</tr>
<tr>
<td><strong>Health Warning</strong></td>
<td>FTC</td>
<td>21 C.F.R. § 1143.5(a)(1) (cigars, little cigars, cigarillos)</td>
</tr>
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<td></td>
<td>U.S. AGO</td>
<td>§ 1143.3(a)(1) (RYO, pipe, e-cigarettes, other covered products)</td>
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<tr>
<td></td>
<td></td>
<td>Comprehensive Smokeless Tobacco Health Education Act (CSTHEA)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15 U.S.C. § 4402 (smokeless)</td>
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<tr>
<td>Child-Resistant Packages</td>
<td>FDA</td>
<td>Child Nicotine Poisoning Prevention Act</td>
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<td>N.Y. GEN. BUS. LAW § 399-gg</td>
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<td>No False Labels</td>
<td>CBP</td>
<td>North American Free Trade Agreement Implementation Act</td>
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<td>Origin of Product</td>
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<td>19 U.S.C. § 1304</td>
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<td>TTB</td>
<td>Tax Reform Act of 1976 (TRA)</td>
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<td>Quantity of Product</td>
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<td>26 U.S.C. § 5723</td>
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<td></td>
<td></td>
<td>27 C.F.R. § 41.72 (smokeless)</td>
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<td></td>
<td></td>
<td>27 C.F.R. § 41.72a (pipe tobacco)</td>
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<td></td>
<td></td>
<td>27 C.F.R. § 41.72b (roll-your-own tobacco)</td>
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<td></td>
<td></td>
<td>27 C.F.R. § 41.73 (cigars)</td>
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<td>No False Labels</td>
<td>FDA</td>
<td>Family Smoking Prevention and Tobacco Control Act (TCA) 21 U.S.C. §§ 387c, 387t</td>
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<tr>
<td>--------------------------------------------------------------------------------</td>
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<tr>
<td>“Sale only in the U.S.A.”</td>
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<tr>
<td>“Made in the U.S.A.”</td>
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<tr>
<td>No False Labels</td>
<td>FDA</td>
<td>TCA 21 U.S.C. § 331(tt)</td>
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<td>FDA approval</td>
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<td>No Lottery Features</td>
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<td>TRA 26 U.S.C. § 5723 27 C.F.R. § 45.41</td>
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<td>Safety Compliance</td>
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<td>FDA Safety Reporting Portal <a href="https://www.safetyreporting.hhs.gov">https://www.safetyreporting.hhs.gov</a></td>
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<td>No Immoral Images</td>
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<td>TRA 26 U.S.C. § 5723 27 C.F.R. § 45.41</td>
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<td>Tobacco Product Taxes</td>
<td>NYSDTF</td>
<td>N.Y. TAX LAW §§ 470, 471-b</td>
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<td>Properly Labeled</td>
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<tr>
<td>Identify Manufacturer</td>
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<td>Product Designations</td>
<td>FDA</td>
<td>TCA 21 U.S.C. § 387t</td>
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<td>Sale Only in U.S.A.</td>
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<td>VCCLEA 15 U.S.C. § 45a</td>
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<tr>
<td>Product Designations</td>
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<td>TRA</td>
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<td>Cigars</td>
<td>TTB</td>
<td>26 U.S.C. § 5723&lt;br&gt;27 C.F.R. § 45.44</td>
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<td>26 U.S.C. § 5723&lt;br&gt;27 C.F.R. § 45.43</td>
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<td>Roll-Your-Own</td>
<td>TTB</td>
<td>26 U.S.C. § 5723&lt;br&gt;27 C.F.R. § 45.45b</td>
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<tr>
<td>Pipe Tobacco</td>
<td>TTB</td>
<td>26 U.S.C. § 5723&lt;br&gt;27 C.F.R. § 45.45a</td>
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<td>Manufacturer ID on U.S. Manufactured OTP</td>
<td>TTB</td>
<td>Tariff Suspension and Trade Act of 2000 (TSTA), TRA&lt;br&gt;26 U.S.C. §§ 5704, 5723&lt;br&gt;27 C.F.R. §§ 40.212, 45.42</td>
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<td>Export Mark on OTP Exports</td>
<td>FTC, TTB</td>
<td>TSTA, TRA&lt;br&gt;26 U.S.C. §§ 5704, 5723&lt;br&gt;27 C.F.R. § 44.185</td>
</tr>
</tbody>
</table>
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](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](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 12th Street, SW
Washington D.C., 20554

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

**Online:** [http://fcc.gov/complaints](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

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**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

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**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
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](http://www.fda.gov/TobaccoProducts)

E-mail: AskCTP@fda.hhs.gov
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](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/](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?

Sales to Persons Under Age 21 Prohibited

In New York, you should see tobacco products and tobacco product paraphernalia sold only to persons ages 21 or older. 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, and gutka. You should see the retailer verify, through government-issued photo identification, the age of a tobacco product purchaser who appears younger than 27 years.

No Free Samples

In general, you should not see a retailer distribute free tobacco products, e-cigarettes, smoking paraphernalia, nor herbal cigarettes. In New York, you likewise should not see in-store distribution of coupons redeemable for these free products. Further, at the point of sale, you should see only age-verified persons given a non-tobacco product gift or item upon the purchase of cigarettes, smokeless tobacco, or cigars.

Age-Restricted Self-Service Displays and Vending Machines

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.

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 that primarily serve and employ adults 21 or older. A permissible vending machine will be in plain view and under the direct supervision of an employee of the hosting business, and display an affixed registration certificate from the NY Department of Taxation and Finance.

Collection of Excise Taxes

You should generally see federal and state taxes on tobacco products collected from the purchaser at the point of sale. The federal government imposes an excise tax on cigars, cigarettes, papers, tubes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco, 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)
- Snuff ($2.00 per ounce)
- Vapor products (20 percent of sales receipt) (effective December 1, 2019)
- All other tobacco products (75 percent of wholesale price)
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.18

Tobacco Product Restrictions

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.19 You should not see flavored cigarettes or flavored cigarette “component parts” (i.e., tobacco, filter, paper) offered for sale, except for menthol- or tobacco-flavored products.20 Likewise, the state may restrict the sale of flavored e-cigarettes and e-liquids, beginning October 2019, subject to court approval.21

Properly Packaged Tobacco Products

You should see sales of cigarettes and smokeless tobacco only when in their sealed original packaging.22 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.23 Packages of cigarette wrapping papers, wrapping leaves, or tubes must contain 20 sheets, leaves, or tubes.24 Package labeling requirements for specific products vary and are described in this Citizens’ Guide in the chapters discussing “Cigarette Packaging” and “OTP Packaging.”

Prominent Signs

At 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.25

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.26

You should also see certificates of State registration posted at each retail location. 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.27 Effective December 1, 2019, retailers of e-cigarette 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.28 A retailer offering for sale tobacco products and e-cigarettes must obtain certificates of registration as both a tobacco product dealer and a vapor product dealer.
E-cigarette retailers must display a safety warning at the point of sale that reads, “Vaping can expose you to toxic chemicals and kill you.”

**Enforcement**

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**

1. N.Y. PUB. HEALTH LAW § 1399-cc (McKinney 2019) (requiring minimum sales age of 21 years for tobacco products and paraphernalia, effective November 13, 2019).
2. N.Y. PUB. HEALTH LAW § 1399-II*2 (McKinney) (restricting the sale of bidis to tobacco businesses).
3. N.Y. PUB. HEALTH LAW § 1399-mm (McKinney) (restricting the sale of gutka to tobacco businesses).
4. Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. §§ 387a-1, 387f(d)(2018) [hereinafter TCA] (requiring age verification through photo identification reflecting purchaser’s birth date for tobacco product sales); 21 C.F.R. § 1140.14(a)(2)(2018) (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-II, 1399-mm (McKinney 2018) (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).
5. TCA, 21 U.S.C. § 387a-1(a)(2)(G) (prohibiting the free distribution of cigarettes or other covered tobacco products and restricting the free distribution of smokeless tobacco to qualified adult-only facilities); 21 C.F.R. § 1140.16(d) (2018) (prohibiting the free distribution of cigarettes or other covered tobacco products and restricting the distribution of free smokeless tobacco to qualified adult-only facilities); N.Y. PUB. HEALTH LAW § 1399-bb (McKinney 2018) (restricting the free distribution of tobacco products or herbal cigarettes [1399-bb1(a)] or (electronic cigarettes) [1399-bb4]).
6. N.Y. PUB. HEALTH LAW § 1399-bb(1)(b) (McKinney 2019) (restricting the free distribution of tobacco products and herbal cigarettes); 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).
11. N.Y. TAX LAW § 480-a (McKinney).
12. Consolidated Appropriations Act, 26 U.S.C. § 5701 (2018) (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) (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) (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) (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).


14 N.Y. TAX LAW §§ 471(1) (McKinney) (cigarettes), 471-b(1)(c) (McKinney) (little cigars).

15 N.Y. TAX LAW § 471-b (McKinney).

16 N.Y. TAX LAW § 1181 (McKinney 2019) (effective December 1, 2019).

17 N.Y. TAX LAW § 471-b (McKinney).


19 N.Y. PUB. HEALTH LAW § 1399-aa (McKinney 2019) (“Tobacco business” is a one in which tobacco products and accessories are the primary business enterprise and other products are merely incidental.).


21 N.Y. PUB. HEALTH LAW § 1399-aa (McKinney 2019) (prohibiting the sale of open packages of cigarettes or smokeless tobacco); N.Y. PUB. HEALTH LAW § 1399-gg (McKinney 2019) (requiring minimum package size of 20 cigarettes).


31 N.Y. TAX LAW § 480 (McKinney).

32 N.Y. TAX LAW § 1183 (McKinney 2019) (effective December 1, 2019).


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

<table>
<thead>
<tr>
<th>COMPLIANCE ISSUE</th>
<th>ENFORCEMENT ENTITY</th>
<th>TOBACCO CONTROL</th>
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</thead>
<tbody>
<tr>
<td>Self-Service Displays/Vending Machines Limited to Age-Restricted Venues</td>
<td>FDA (under age 18)</td>
<td>FDA Rules 21 C.F.R. §§ 1140.14(a)(3); 1140.16(c) N.Y. PUB. HEALTH LAW §§ 1399-cc, 1399-dd</td>
</tr>
<tr>
<td>Tobacco Product Restrictions</td>
<td>TTB</td>
<td>N.Y. TAX LAW §§ 471, 471-b, 1181</td>
</tr>
<tr>
<td>-------------------------------</td>
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</tr>
<tr>
<td>Sale of Gutka and Bidis Restricted</td>
<td>NY local enforcement officer (typically local BOH)</td>
<td>N. Y. PUB. HEALTH LAW §§ 1399-mm (gutka), 1399-ll*2 (bidis)</td>
</tr>
<tr>
<td>Tobacco Product Restrictions</td>
<td>FDA</td>
<td>TCA 21 U.S.C. § 387g(a)(1)(A)</td>
</tr>
<tr>
<td>Flavored Cigarettes and Flavored “Component Parts” Prohibited</td>
<td>NY AGO</td>
<td></td>
</tr>
<tr>
<td>Properly Packaged Tobacco Products</td>
<td>FDA</td>
<td>TCA 21 U.S.C. §§ 387a-1, 387f(d)</td>
</tr>
<tr>
<td>Cigarettes and Smokeless Tobacco Sold in Sealed, Original Packaging</td>
<td>NY local enforcement officer (typically local BOH)</td>
<td>FDA Rules 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b)</td>
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<tr>
<td>Properly Packaged Tobacco Products</td>
<td>FDA</td>
<td>N.Y. PUB. HEALTH LAW § 1399-gg (cigarettes)</td>
</tr>
<tr>
<td>Minimum Package Size</td>
<td>NY AGO</td>
<td></td>
</tr>
<tr>
<td>Prominent Signs</td>
<td>NY local enforcement officer (typically local BOH)</td>
<td>N.Y. PUB. HEALTH LAW § 1399-cc</td>
</tr>
<tr>
<td>Prominent Signs</td>
<td>NY local enforcement officer (typically local BOH)</td>
<td>N.Y. PUB. HEALTH LAW §§ 1399-mm (gutka), 1399-II*2 (bidis)</td>
</tr>
<tr>
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</tr>
<tr>
<td>Sale of Gutka and Bidis Prohibited to Persons Under 21 Years of Age</td>
<td><img src="image1.png" alt="Image" /></td>
<td><img src="image2.png" alt="Image" /></td>
</tr>
<tr>
<td>Certificates of Registration for Tobacco Product and E-Cigarette Sales</td>
<td><img src="image3.png" alt="Image" /></td>
<td><img src="image4.png" alt="Image" /></td>
</tr>
<tr>
<td>Warning signage required for selling e-cigarettes</td>
<td><img src="image5.png" alt="Image" /></td>
<td><img src="image6.png" alt="Image" /></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Prominent Signs</th>
<th>N.Y. TAX LAW §§ 480, 1183</th>
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<tr>
<td>Sale of Gutka and Bidis Prohibited to Persons Under 21 Years of Age</td>
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<thead>
<tr>
<th>Enforcement</th>
<th>SAMHSA</th>
<th>FDA</th>
<th>Synar Amendment to the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) 42 U.S.C. § 300x-26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enact and enforce state laws prohibiting youth access</td>
<td><img src="image8.png" alt="Image" /></td>
<td><img src="image9.png" alt="Image" /></td>
<td><img src="image10.png" alt="Image" /></td>
</tr>
</tbody>
</table>
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
           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. Restrictions on tobacco product marketing are derived from 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. 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. You should find health warnings on advertisements, including print, online, and outdoor advertising, for cigarettes, smokeless tobacco, and most cigars. Effective August 20, 2018, advertisements for e-cigarettes, hookah and pipe tobacco, dissolvable tobacco, and all cigars must display health warnings. 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 and must further comply with font, size, placement, and message rotation specifications. For advertisements appearing in U.S. non-English language publications, health warnings should appear in the predominant language of that publication.

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, covering at least 20% of an advertisement. However, these provisions are not yet in effect, as the FDA must reissue regulations implementing the graphic warning requirement. The agency issued proposed health warnings and graphics on August 15, 2019 and is under court order to finalize the required warnings by March 15, 2020.


Required Health Warnings

Cigarettes
Cigarette advertising must prominently display one of four Surgeon General health warnings:¹¹

- 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.¹² The warning statement must be enclosed in a rectangle and the font must meet size requirements.¹³

Smokeless Tobacco
Smokeless tobacco advertising must prominently display one of four health warnings:¹⁴

- 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.¹⁵

Cigars, Little Cigars, Cigarillos
Advertising for cigars, including little cigars and cigarillos, must prominently display one of the six health warnings:¹⁶

- 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.¹⁷

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,¹⁸ other than cigars, must prominently display a warning label that reads:

- WARNING: This product contains nicotine. Nicotine is an addictive chemical.¹⁹
Outdoor Advertising

It is common and permissible to see tobacco product advertising outside and on the property of a tobacco retailer, including advertisements attached to fences, the exterior walls of the store, or posted to the inside window facing outward. You may also see outdoor temporary tobacco advertising at special events restricted to adults. Outdoor advertising for most brands are limited to these venues and must not exceed 14 square feet, nor form a mosaic or otherwise circumvent the size requirement.

Billboards, Large Signs

Outdoor advertising of most tobacco products and brands is largely prohibited. Outdoor advertising includes signs in arenas, shopping malls, stadiums, and video game arcades, on billboards and, as detailed above, advertisements larger than 14 square feet.

Transit Locations Advertising

Tobacco product advertising for most brands is also restricted at transit locations. 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.

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). 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.

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. 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.

Internet, Mobile Phones

All online tobacco product advertising, including websites for manufacturers, e-commerce, social networking, and search engines must display health warnings. 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.32

Video Games
Tobacco use may be depicted in video games, however, advertisements for tobacco products must display a health warning.33 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.34 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.35 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.36 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.37 Hence, descriptors such as “light,” “low tar,” or “mild” are prohibited.38 Further prohibited is tobacco product advertising with other misrepresentations, including claims regarding tobacco additives, filters, paper, or other ingredients.39 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.”40

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.41 Advertisements that disproportionately speak to youth may be a violation of this prohibition on youth targeting.42

Magazine Advertising
You should not see a tobacco product advertisement in a magazine with a high youth audience.43 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.44

Cartoons in Advertising
You should not see a cartoon in the advertising, promotion, packaging, or labeling of a tobacco product.45 “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.46

Free Samples

Generally, you should not see distribution of free tobacco products, or coupons for free tobacco products, including cigars, e-cigarettes (and their components and parts) or herbal cigarettes.47 However, retailers may distribute these products or coupons for those products within a bar or bar area of a restaurant that has a full liquor license, private club, tobacco business, or tobacco product convention, provided that the distribution is confined to a designated area accessible only to persons 21 years or older.48

Further, smokeless tobacco samples (up to a single 0.53 ounce package per day) may be distributed to an adult within a qualified “adult-only facility.” These are typically set up at special events, and must be temporary; opaque; 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; or permit alcohol within.49

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,50 or with the name of any nationally recognized celebrity, sports team, or entertainment group.51 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, 1995.52

Brand Name Merchandise

Non-tobacco merchandise may not bear a cigarette or smokeless tobacco product brand name or recognizable indicia of that brand.53 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.54 (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 merchandise55 and may therefore appear branded.56

Brand Name Sponsorship

Companies may not sponsor an event using the brand name or identity of a cigarette or smokeless tobacco product.57 The prohibition includes brand name sponsorship of an athletic, musical, artistic, social, cultural, or entertainment event.58 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.\(^5\)(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.\(^6\)

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.\(^7\)

Citations

1. See, generally Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. §§ 387a-1, 387f (2018) [hereinafter TCA]; 21 C.F.R. § 1140.30(a)(1) (2018) (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).
4. FCLAA, 15 U.S.C. § 1333(b) (2018) (requiring, also, matchbooks “customarily given away with the purpose of tobacco products” comply with advertising health warning requirements).
7. 21 C.F.R. § 1143.3(b) (2018) (cigarette tobacco, roll-your-own tobacco, and covered tobacco product advertising); 21 C.F.R. § 1143.5(b) (2018) (cigar advertising).
8. 21 C.F.R. § 1141.10(b)(5) (2018) (requiring health warning to occupy 20% of each cigarette advertisement); 21 C.F.R. § 1143.3 (2018) (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) (2018) (requiring health warning to occupy 20% of each smokeless tobacco advertisement); but see R.J. Reynolds Tobacco Co. v. FDA, 696 F.3d 1205 (2012) (holding regulation requiring cigarette graphic health warnings invalid).
12. Id.
13. Id.; FCLAA, 15 U.S.C. § 1333(4)(b) (2014) (“The text of such label statements shall be in a typeface pro rata 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.”).
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 (2018).


MSA, supra note 20 at § III(d)(6) (allowing tobacco advertising at Adult-Only Facilities) and MSA at §II(c) (defining “Adult-Only Facility” to include locations that are only temporarily restricted to adults).

MSA, supra note 20 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(iii) (exempting from definition of “outdoor advertising” ads on the outside of a tobacco product manufacturing facility).

MSA, supra note 20 at § III(d).

MSA, supra note 20 at § II(ii).

MSA, supra note 20 at § III(d).

MSA, supra note 20 at § II(xx).


Id. § III(e); SMOKELESS TOBACCO MASTER SETTLEMENT AGREEMENT § III(e) (1998) [hereinafter STMSA], available at http://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/1stmssa.pdf (last visited Sept. 17, 2019).

MSA, supra note 20 at § III(e).


TCA, 21 U.S.C. §§ 387a-1, 387f(d); 21 C.F.R. § 1140.30(a)(2) (2018); see also FDA, Understanding FDA Requirements: We Card’s Summary for Retailers, http://wecard.org/FDA-REQ/WeCardUnderstandingFDAReq.pdf (applying notice requirement to advertising through internet web sites, movie product placement, music videos, and television, if 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).


Id. §§ 321(rr), 333, 372.

Id. § 387k (prohibiting marketing of “modified risk tobacco products” without prior authorization).

Id. § 387k(b)(2)(ii).

Id § 387k; MSA, supra note 20, at § III(r).

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., 2013 WL 2458547 (Vt.Super.) (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 Sept. 17, 2019) (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").

41 MSA, supra note 20 at § III(a).


43 MSA, supra note 20 at § III(a).

44 See generally, supra note 42 (finding that RJ Reynolds had advertised tobacco products in youth centered publications).

45 MSA, supra note 20 at §§ II(l), II(j), III(b).

46 MSA, supra note 20 at § II(l).

47 TCA, 21 U.S.C. § 387a-1 (2018); 21 C.F.R. § 1140.16(d)(1) (2018); N.Y. PUB. HEALTH LAW § 1399-bb (McKinney 2019) (restricting the free distribution of tobacco products or herbal cigarettes [1399-bb1(a)] or electronic cigarettes [1399-bb4]); MSA, supra note 20 at § III(g) (allowing in adult only facilities); STMSA, supra note 29 § III(g) (allowing in adult only facilities).


50 TCA, 21 C.F.R. § 1140.16(a); MSA, supra note 20 at § III(j); STMSA, supra note 29 at § III(j).

51 MSA, supra note 20 at § III(j), STMSA, supra note 29 at § III(j).


53 TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2018); 21 C.F.R. § 1140.34(a) (2018); MSA, supra note 20 at § III(f); STMSA, supra note 29 at § III(f).

54 TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2018); 21 C.F.R. § 1140.34(a) (2018); MSA, supra note 20 at § III(f); STMSA, supra note 29 at § III(f).

55 TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2018); 21 C.F.R. § 1140.34(a) (2018); MSA, supra note 20 at §§ III(f), III(c)(3)(C); STMSA, supra note 29 at § III(f), III(c)(3)(C).

56 See also MSA, supra note 20, at §§ III(f)(3) (noting additional exceptions, superseded by the TCA).

57 TCA, 21 U.S.C. § 387a-1 (2018); MSA, supra note 20 at § III(c); STMSA, supra note 29 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]).


59 TCA, 21 U.S.C. § 387a-1(a)(2) (2018); 21 C.F.R. § 1140.34 (2018); MSA, supra note 20 at § III(c), STMSA, supra note 29 at § III(c).

60 MSA, supra note 20 at § III(c), STMSA, supra note 29 at § III(c).

61 TCA, 21 U.S.C. §§ 387a-1, 387f(d) (2018); 21 C.F.R. § 1140.34(c) (2018); MSA, supra note 20 at § III(c), STMSA, supra note 29 at § III(c).
## When, where, and how should you see tobacco product marketing?

### Controls on Marketing Tobacco Products

<table>
<thead>
<tr>
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<th>TOBACCO CONTROL</th>
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<tbody>
<tr>
<td>Required Health Warnings Cigarettes</td>
<td><strong>FTC</strong></td>
<td>Comprehensive Smoking Education Act Pub. L. 98-474</td>
</tr>
<tr>
<td></td>
<td><strong>U.S. AGO</strong></td>
<td>Family Smoking Prevention and Tobacco Control Act (TCA) 21 U.S.C. § 387n</td>
</tr>
<tr>
<td>Required Health Warnings Smokeless Tobacco</td>
<td><strong>FTC</strong></td>
<td>Comprehensive Smokeless Tobacco Health Education Act (CSTHEA) 15 U.S.C. § 4402</td>
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<td></td>
<td><strong>U.S. AGO</strong></td>
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<td>Required Health Warnings Cigars</td>
<td><strong>FTC</strong></td>
<td>FTC Legal Settlements</td>
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<td>Required Health Warnings Roll-Your Own and Pipe Tobacco, E-Cigarettes and Other FDA Regulated Tobacco Products</td>
<td><strong>FTC</strong></td>
<td>21 CFR § 1143.3(b)(1)</td>
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<td>Outdoor Advertising</td>
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<td>Master Settlement Agreement (MSA) §§ II(ii), II(xx), III(c), III(d)</td>
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<td>Smokeless Tobacco Master Settlement Agreement (STMSA) §§ II(dd), II(rr), III(c), III(d)</td>
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<td>Transit Locations Advertising</td>
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<td>CSTHEA 15 U.S.C. §§ 4402, 4404, 4405</td>
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<td>Product Placement</td>
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<th>Implied Health Claims</th>
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<th>TCA 21 U.S.C. §§ 331tt, 321(rr),387k</th>
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<td>Joint Marketing, Modified Risk Misrepresentations</td>
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<td><strong>Tobacco products, Herbal cigarettes</strong></td>
<td><strong>TCA</strong></td>
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<td><strong>§ 1399-bb</strong></td>
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### Tobacco Product Brand Names

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<td><strong>Tobacco Product Brand Names</strong></td>
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<td><strong>§§ III(f), III(c)(3)(C)</strong></td>
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<td><strong>§§ III(f), III(c)(3)(C)</strong></td>
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<tr>
<td><strong>Brand Name Sponsorship</strong></td>
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<td><strong>MSA</strong></td>
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<td><strong>§ II(j), III(c)</strong></td>
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<td><strong>§§ II(h), III(c)</strong></td>
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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 12th Street, SW  
Washington D.C., 20554

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

**Online:** [http://fcc.gov/complaints](http://fcc.gov/complaints)

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**U.S. Department of Justice (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:** 1-202-353-1555

**E-mail:** AskDOJ@usdoj.gov

**Online:** [http://www.justice.gov/](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
        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 ever 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 undermining purchaser age verification and controls that keep the price of tobacco products high, such as application of excise and sales taxes. To combat tobacco sales to youth and tax evasion, governments restrict businesses from shipping and delivering most tobacco products and require remote retailers to comply with the same laws that apply to brick and mortar tobacco retailers. These controls do not address consumer behavior, such as attempting to order tobacco products for delivery.

**Shipment and Delivery of Cigarettes, Roll-Your-Own Tobacco, Smokeless Tobacco**

Generally, you should not see cigarettes, roll-your-own tobacco, or smokeless tobacco delivered through the U.S. Postal Service (USPS) or a commercial carrier.

New York prohibits common carriers (businesses hired to transport merchandise, e.g. UPS, FedEx, DHL) from delivering cigarettes directly to a residence or individual consumer in the state.¹ [Shipments to residences and persons in New York are permitted by individuals in small quantities (up to 800 cigarettes, or four cartons, at any one time).²] The major common carriers have voluntary policies further prohibiting delivery of other tobacco products directly to consumers.³

Federal law restricts USPS shipment and delivery of cigarettes, smokeless tobacco, or roll-your-own tobacco.⁴ USPS may transport large volumes of these products only between licensed tobacco businesses.⁵ For shipments by individual consumers, USPS may only accept packages of less than 10 ounces, and only after verifying that both the age of the shipper and receiver comply with the minimum legal sales age in the delivery jurisdiction.⁶ Customers are restricted to sending a maximum of 10 such mailings in a 30-day period.⁷

Permitted USPS shipments (those less than 10 ounces) must display a bill of lading on the outside of the shipping package, on the same surface as the delivery address. 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.”⁸

Federal restrictions on USPS deliveries of tobacco products, and voluntary policies of common carriers, are applicable to shipments to and from sovereign Native American tribes.
Citations

1 N.Y. PUB. HEALTH LAW § 1399-II (McKinney) (prohibiting delivery of cigarettes by common carriers [which does not include USPS] to unauthorized recipients, e.g., persons who are not licensed cigarette wholesalers and retailers or government officials). See also New York State Department of Tax and Finance list of currently licensed and registered cigarette agents, wholesale dealers, and retail dealers, available at http://www8.tax.ny.gov/CGTX/cgtxHome or by telephone at (518) 485-7652.


Should you ever see tobacco products delivered through the mail?

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<tr>
<th>COMPLIANCE ISSUE</th>
<th>ENFORCEMENT ENTITY</th>
<th>TOBACCO CONTROL</th>
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<tr>
<td>Shipment and Delivery of Cigarettes, Roll-Your-Own Tobacco, Smokeless Tobacco</td>
<td>Postal Inspector</td>
<td>The Prevent All Cigarette Trafficking Act (Pact Act) 18 U.S.C. § 1716e</td>
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<td>United States Postal Service</td>
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<tr>
<td>Private Common Carriers</td>
<td>NY AGO</td>
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<td></td>
<td>NY Tobacco Tax Administrator</td>
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<tr>
<td>Shipment and Delivery of Cigarettes, Roll-Your-Own Tobacco, Smokeless Tobacco</td>
<td>NY local enforcement officer (typically local Board of Health (BOH))</td>
<td>N.Y. P.U.B. HEALTH LAW § 1399-II</td>
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<tr>
<td>NY Tobacco Shipping Restrictions</td>
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</tbody>
</table>
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

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).

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/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
Health Education

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

In elementary schools this instruction must be given by the regular classroom teacher or by a teacher certified in health education.² 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.³ Students must either be tested or complete a project or report to demonstrate their knowledge.⁴

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.⁵

National Health Education Standards¹

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

1 N.Y. EDUC. LAW § 804 (McKinney); N.Y. PUB. HEALTH LAW § 1399 -ii (2)(b) (McKinney 2019) (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) (McKinney 2019) (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 (2018) (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 (ordering expansion of school-based tobacco prevention curriculum to include e-cigarette use); N.Y. EDUC. LAW § 3204.2 (McKinney) (applying to independent educators by requiring instruction given to a minor to be substantially equivalent to the instruction given at the local public school).

2 N.Y. EDUC. LAW § 804 (McKinney); N.Y. COMP. CODES R. & REGS. tit. 8, § 135.3 (2018).

3 Id.

4 Id.

5 N.Y. EDUC. LAW § 3038 (McKinney).
What curricula should you see in New York schools\(^i\) regarding tobacco use?

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<td>N.Y. COMP. CODES R. &amp; REGS. tit. 8, § 135.3</td>
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<td>N.Y. MEN. HYG. LAW § 19.07</td>
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\(^i\) 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/regprivschl/regprivschl.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/

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
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
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.