

There is Nothing Minor About Deeming Compliance

It is imperative that both brick and mortar and online retailers make sure that they are compliant with the FDA's restrictions as they relate to minors. We understand that the overwhelming majority of you already have been complying since some form of age restriction and verification was in place in 48 out of the 50 states before August 8, 2016. Nonetheless, new regulations often raise new issues some of which we attempt to address in this Guidance.

Compliance Pointers

- *Know the exact age to purchase vapor products in your state AND city.*
- *You shouldn't make any sale without verifying the buyer's age...EVERY TIME.*
- *Minors are not banned; sales to minors are banned.*
- *Minors MAY accompany their parents in your store, so long as you do not use vending machines.*
- *If you hold yourself out as an adult-only facility, then you should never permit minors in your store.*

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AGE TO VAPE?

WHAT IS THE LEGAL AGE FOR PURCHASING VAPOR PRODUCTS?

The short answer: Generally, 18 years of age.

The better answer: You **must** follow the law of the

state and/or city that you are in. In most states, the age to buy vapor products is the same as the age to buy tobacco products – 18 years of age.

However, in some states the minimum age for buying vapor products is 19. These states include:

- Alabama,
- Arkansas,
- New Jersey, and
- Utah.

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And in some states, like California & Hawaii, the minimum age is now 21. Also, some municipalities such as Boston, Chicago, Kansas City and New York City have raised the age to 21.



Bottom line: you must be compliant with the age limitations of the city and state in which you are conducting business.

So, if your city council has raised the age above 18, you must comply with the higher age limitation.

IF THEY BUY, YOU MUST COMPLY

WHOM SHOULD I ASK FOR ID?

The short answer: You are required by federal law to ID everyone that is 26 and under before making a sale and you must refuse to sell to anyone that is under the legal age.

The better answer:

Deciding who looks younger than 27 can be difficult, so the better answer, in our estimation, is **request ID from every customer every time they ask to purchase products or samples.** Even if you know the individual to be of legal age you should verify their age before purchase every time.

For example, even if someone buys from your store on Monday, you should ask for their ID again on Tuesday if they are making another purchase.

***Compliance Pointer:
You cannot make legal sale without verifying that the buyer is of legal age...each and every time that you sell to that buyer. There is no exception for your Uncle Joe or anyone else that you may know. Very simply, if they buy, you must comply.***

This isn't just conservative thinking. There are some real benefits. Here are some:

1. It takes the pressure off of your employees for making a wrong decision.
2. It makes asking for ID routine so that it doesn't get overlooked.
3. Asking every time highlights for your customers the seriousness of dealing with the Deeming Regulation and may start a conversation about how big of a negative impact the Deeming will have on the customer's ability to access vapor products.
4. You may just make a few of your customers happy that you carded them!

We think that asking everyone for ID will best protect your business.

WHAT IF THE CUSTOMER DOES NOT HAVE AN ID OR IF THE ID IS EXPIRED?

The short answer: Don't sell.

The better answer: You cannot make a legal sale without first verifying that the customer is of legal age to buy the product. You cannot verify someone's legal age if they either:

1. don't present you with a photo ID or driver's license,
2. present you with a photo ID or driver's license that has expired, or
3. present you with a photo ID or driver's license that does not have a birth date.

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In other words, if you are not presented with a valid photo identification you cannot make a legal sale to your customer and you could be found in violation of the law if you complete that transaction.

“WHAT ABOUT MY KIDS?”

MAY I ALLOW PARENTS TO BRING THEIR KIDS IN MY SHOP?

The short answer: Generally, yes, you can allow kids to accompany their parents when they shop.

The better answer: The Deeming Regulation only prohibits you from *selling* vapor products to anyone under 18 years of age and does not ban persons under 18 years of age from being in your store.

That said, before you set your company policy, you need to first answer this question: *Do I use vending machines in my store?* We realize that few shops use vending machines, but **if you have a vapor vending machine or similar electronic or mechanical device on premises, then under no circumstances** can you allow anyone younger than 18 years to be present in your store.

It does not matter whether that person is an infant in a stroller, a toddler, or anyone else under 18. If you have a vending machine in your store, it is **your responsibility** to make sure that no one under 18 enters or remains in the store.

However, if your store does *not* have vending machines, you are responsible only for ensuring that everyone 26 and under is carded and that you don't sell to anyone younger than 18 years of age.



Many shops hold themselves out as being “adult-only” even if they don't have a vending machine. If you hold yourself out as being an adult-only shop (i.e., “no one under 18 permitted”), then you should honor that statement and prevent anyone from entering or remaining in the store who is not at least 18 years of age, even if that person is a child accompanied by an adult.

ONLINE RETAILING

DO I HAVE TO CARD FOR ONLINE SALES?

The short answer is: Yes.

The better answer: Online sales are subject to the same age verification requirements as retail sales. Therefore, if you sell your products online, you will need to use a third-party authentication service provider to verify a purchaser's age by means of photographic identification containing the bearer's date of birth. The third-party authentication service provider will then compare that individual's information to established national databases for age verification.



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