

Fact Sheet 3

Tobacco Product Marketing Restrictions

Proposed Regulation of Tobacco Products by the U.S. Food and Drug Administration

S. 625/H.R. 1108

The FDA legislation would require a number of restrictions on cigarette and smokeless tobacco product advertising and other marketing, and also grant the FDA authority to impose additional restrictions on the advertising and promotion and other marketing of tobacco products in order to promote overall public health. All such restrictions would be subject to the constraints of the First Amendment, which protects certain commercial speech. The FDA finding as to whether such regulation would be appropriate for the protection of the public health would be determined with respect to the population as a whole, including users and non-users of tobacco.

The legislation would prohibit the use of such terms as “light,” “mild” and “low-tar” on tobacco product packages and advertisements because of existing evidence that such terms mislead consumers into believing that cigarettes marketed with such terms cause fewer health problems than other cigarettes. The legislation also would prohibit the sale of any cigarettes with a characterizing flavor other than tobacco or menthol.

The legislation also orders the implementation, within one year of enactment, of the 1996 FDA tobacco rule, which was blocked by a Supreme Court decision in 2000 based on the Court’s finding that Congress had not yet given the FDA authority to issue such regulations. The FDA rule would:

- Ban all outdoor cigarette and smokeless tobacco advertising within 1,000 feet of schools and playgrounds
- Ban all remaining cigarette and smokeless tobacco brand sponsorships of sports and entertainment events
- Ban free giveaways of any non-tobacco items with the purchase of cigarettes and smokeless tobacco or in exchange for coupons or proof of purchase
- Ban any non-tobacco product items with cigarette or smokeless tobacco brand names or markings
- Ban self-service displays and require face-to-face exchanges in the purchase of cigarettes and smokeless tobacco, other than online or by mail order
- Ban free samples of cigarettes and smokeless tobacco
- Prohibit the sale of loose cigarettes and cigarettes in packages containing fewer than 20 cigarettes
- Limit outdoor and not-adult-only point-of-sale cigarette and smokeless tobacco advertising to black-text-on-white-background only (i.e., no colors or images)
- Limit cigarette and smokeless tobacco advertising in publications with significant teen readership to black-text-on-white-background only (again, no colors or images)





- Limit cigarette and smokeless tobacco audio-video advertising not in adult-only facilities to static black-text-on-white-background visuals and spoken words (i.e., no colors, images, music or sound effects)
- Restrict cigarette and smokeless tobacco vending machines and self-service displays to adult-only facilities
- Require retailers to verify age by reference to a photographic ID for all over-the-counter sales and to provide for federal enforcement and penalties against retailers who sell to minors

The legislation also would limit the current federal preemption against state prohibition or regulation of cigarette advertising and promotion under the Federal Cigarette Labeling and Advertising Act. For the first time since 1969, states would have the authority to prohibit or restrict the location, color, size, number and placement (but not the content) of cigarette advertisements. Federal law does not currently preempt states from prohibiting or regulating the advertising or promotion of tobacco products other than cigarettes; the FDA legislation leaves intact the power of states to do so to the extent permitted by the First Amendment.

