

NACS and Steptoe & Johnson Present: “FDA Tobacco Regulations Are Effective Next Week: Are You Ready?”

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STEPTOE & JOHNSON LLP



- Clinton Administration Efforts to Regulate Cigarettes in the mid-1990s
- Democrats Retake Control of Congress in 2006 – Efforts in the Last Congress
- Enactment of the Family Smoking Prevention and Tobacco Control Act of 2009 (the “Tobacco Control Act”)
- NACS’ Role

- Directed the Food and Drug Administration ("FDA") to reissue the 1996 final rule
- Applies only to cigarettes and smokeless tobacco
- Banned manufacture and sale of flavored cigarettes
- Directed new rulemaking on advertising
- Adopted "black and white" rule
- Provided FDA with enormous rulemaking authority in the future
- Prohibits "descriptor" labeling June 22
- Adopted a new enforcement regime (from warning letters to no sale orders)

- Issued March 19, effective June 22
- Applies to cigarettes and smokeless tobacco only
- Prohibits sales to individuals under 18 years old
- Requires age verification for individuals less than 27 years old
- Requires face-to-face transactions for all purchases (no self-service displays or vending machines)
- No free samples or sales of less than a pack
- Prohibits free "gifts" or "items" in connection with purchases
- Institutes numerous new requirements on manufacturers

- Age verification: what about my brother?
- Pass through: packages with "descriptors"
- Matches: giveaway permitted
- Customer loyalty programs: "gifts"?
- Branded, non-tobacco merchandise: still for sale?
- Enforcement: who is responsible for violations?

- **DON'T BE A CANARY IN A COAL MINE!**
- FDA will be enforcing the law (see flavored cigarettes); will it seek to make examples?
- Make sure to do what absolutely, positively needs to be done
- Communicate with your customers -- the new rules are not your fault
- Go out of your way to make sure that you and your employees comply with the law from day one
- Tell NACS what is happening in your stores