



NATO

August 1, 2024

RE: Executive Order 12866: Finalization of Rulemaking on Tobacco Age 21

The National Association of Tobacco Outlets (NATO), a national trade association representing more than 66,000 tobacco stores, convenience stores, service stations, grocery stores, liquor stores and corner markets, supports the Food and Drug Administration (FDA) rulemaking to increase the tobacco product sales age to 21 and the verification age to 30. NATO supported increasing the minimum age in 2019 and supports this rule, which should be a priority for the Administration as Congress instructed FDA to issue a rule by June 2020; it is now four years overdue.

NATO members are licensed, regulated retailers who verify customers' age to prevent sales to underage persons. We partner with the We Card Program, a national non-profit organization that provides educational and training services to retailers to ensure compliance with federal, state, and local laws. Our members and their employees are trained to responsibly sell tobacco products only to 21 and older adults.

Last fall, the National Youth Tobacco Survey found a continued decline in high school and middle school students' current tobacco use (defined as *any* use in the previous 30 days):

- Use of *any* tobacco product declined from 11.3% in 2022 to 10.0% in 2023.
- Fewer than 2% smoked cigarettes in 2023.
- E-cigarette use declined from 9.4% in 2022 to 7.7% in 2023.

NATO strongly supports adopting the Final Rule to reflect the federal age 21 law and increase the verification age to age 30 to help continue this downward trend by reducing underage access directly and through social sources. However, the rule must not extend to other subjects. Congress authorized a Final Rule (without full notice and comment rulemaking) *only* to (1) change references to the minimum purchase age to 21 and (2) require retailers to check ID for purchasers under 30. Congress did not authorize FDA to regulate any other subject, e.g., retail employee age. Any other subject would require full notice and comment rulemaking.

NATO strongly supports FDA's rulemaking to reflect a minimum purchase age of 21 and a minimum verification age of 30.