

DETERMINING IF A PRODUCT IS COVERED BY THE NEW STATE LAW

STEP ONE: Is it a Vape Product?

- Requirements:
 - The product must “rely on vaporization or aerosolization.” (105 CMR 665.005)
 - The product can contain tobacco but does not need to contain either tobacco or nicotine.¹
- If **yes to both**, the product is covered by the state law.
 - Nicotine Content: All vape products, whether flavored or unflavored must contain 35 mg/ml or less except in adult-only retail tobacco stores and smoking bars.
 - Flavor Sales Restriction: Flavored vaping products are prohibited, except in smoking bars for onsite consumption only.
- **Notes:**
 - Exemption: Vape products sold at legally licensed marijuana dispensaries/shops, intended for marijuana use only maybe exempt. However, if they contain either nicotine or tobacco then they may be covered by state law.
- If **the product is not a vape product**, go to the next step...

STEP TWO: If it is not a vape product, is it a tobacco product?

- Requirements:
 - The product must contain either nicotine or tobacco.
 - The product can be smoked, chewed, dissolved, sniffed or consumed by any other means except vaping.
- If **yes to both** all flavored versions of the product are prohibited except in smoking bars for onsite consumption only.
- If the product is not a **tobacco product**, go to the next step...

STEP THREE: If it is neither a vape product nor a tobacco product, is it an “enhancer”?

- A Tobacco Product Flavor Enhancer is “any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.” 105 CMR 665.005
- This is a new and a very innovative area of coverage for the flavor sales restriction policy
- Determining if a product is an “enhancer”:
 - Some products will be very clearly marked as a flavoring additive for vape products or tobacco products. These are clearly “enhancers.”
 - Many products will not be marked. Some may even be marked “not for consumption with tobacco.” These products are more difficult to determine if they are “enhancers.” The determination should be made in consultation with the relevant board(s) of health, unless prior authority to make this determination has been granted to the tobacco agent. Feel free to seek assistance when you encounter a product that is unclear. Please have ready for review the product and what type of retailer is carrying it.

¹ “or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product” 105 CMR 665.005

This document is for guidance purposes only.

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- If the product qualifies as a Tobacco Product Flavor Enhancer, it is prohibited except in smoking bars for onsite consumption only.
- **Notes:**
 - Flavored rolling papers, including hemp wraps can be considered Tobacco Product Flavor Enhancer. They also meet the definition of marijuana accessories, which are legal pursuant to Chapter 94G (Adult-Use Marijuana law).
 - Please see the Guidance Document for these products.
- **If the product is both a tobacco product flavor enhancer and a legal marijuana accessory, go to the next step.**

STEP FOUR: Look to the local regulation

- Does the local regulation specifically include these products?
- If so, then there should be less resistance from manufacturers of these products.

