



Massachusetts Department of Public Health

FINAL REGULATION 105 CMR 665.000: MINIMUM STANDARDS FOR RETAIL SALE OF TOBACCO AND ELECTRONIC NICOTINE DELIVERY SYSTEMS

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105 CMR 665.000, Minimum Standards for Retail Sale of Tobacco Products and Electronic Nicotine Delivery Systems

- On November 27, 2019, Governor Baker signed into law An Act Modernizing Tobacco Control (“Act”), which provides DPH with additional regulatory authority to regulate minors’ access to tobacco products and all ages’ access to electronic nicotine delivery systems (ENDS). Some sections of the act took effect immediately and some go into effect on June 1, 2020.
- The department promulgated regulations on an emergency basis to set forth standards for the retail sale of electronic nicotine delivery systems (ENDS) regulations in order to implement those sections that became effective immediately. Final approval of the emergency regulation was done by Public Health Council on February 12, 2020.

Summary of Proposed Amendment:

- Revisions are now being proposed to address the sections of the Act that will go into effect on June 1, 2020.
- Restricts the sale of all flavored tobacco products to smoking bars
- Requires retailers to obtain nicotine disclosure documentation from manufacturers prior to selling the product.
- Requires all tobacco retailers except smoking bars obtain documentation indicating each tobacco product for sale in the establishment is unflavored.
- Prohibits tobacco product advertisements viewable from the exterior of any retail establishment located within 500 feet of a public or private school.

Public Comment and Recommendations

- A virtual public hearing was held on April 24, 2020.
- Twenty-nine individuals or organizations provided comments during the public comment period.
- As a result of the comments received, DPH recommends further amendments to the regulation.

Post Comment Changes - 105 CMR 665:

105 CMR 665.005: Definitions – Smoking Bar

Based on public comments, the definition of “Smoking Bar” has been updated to clarify flavored tobacco consumption can occur on the smoking bar premises **only**.

105 CMR 665.010(C): Sale of Tobacco Products and Electronic Nicotine Delivery Systems – Nicotine Content Documentation

Public comments received that current language could be ambiguous and interpreted to apply to all tobacco products. The Department has clarified this provision to be specific to ENDS only.

105 CMR 665.010(E): Sale of Tobacco Products and Electronic Nicotine Delivery Systems – Flavor Documentation

Public comment received that provision requiring retailers keep documentation from manufacturers certifying the products are not flavored be updated to require such documentation to be submitted in a form or manner specified by the Department, consistent with the nicotine content documentation provision. The Department has included this change for consistency with 105 CMR 665.010(C).

Post Comment Changes - 105 CMR 665:

105 CMR 665.017: Advertising

Public comments requested removal of this provision were received from representatives of retailers, manufacturers, and distributors as well municipalities and local public health. Although some reasons differed, they all included reference to case law. Based upon comments referencing existing case law relative to advertising, DPH is proposing to remove this provision at this time. The Department will continue to consider if a role for advertising restrictions is necessary based upon any impact the law has on youth access to and use of tobacco products, flavored and unflavored. DPH notes there are other provisions of the law and this regulation that may help to limit youth exposure, such as the prohibition of advertising any product ineligible for sale by an establishment.

105 CMR 665.045(A), 665.055(B)(2), 665.055(E): Application of Fines and Violations as it applies to the term Person

Based on public comments, the Department is proposing to clarify the language in the sections pertaining to the assessment of fines and other violations to ensure that, in retail establishments, the party that is liable for the violations is the retailer and or the retailer's business agent and not an employee of the retail establishment.

Where and What Products Can Be Sold in Massachusetts per 105 CMR 665

Product	Non-age restricted retail establishments (e.g., convenience stores/gas stations, liquor stores)	Adult-Only Tobacco Retail Store (21+)	Smoking Bars (21+)
UNFLAVORED cigarettes, cigars, and other tobacco products	√	√	√
FLAVORED cigarettes, cigars, and other tobacco products			√
UNFLAVORED e-cigarettes with nicotine content 35 mg/mL or less	√	√	√
UNFLAVORED e-cigarettes with nicotine content over 35 mg/ML		√	√
FLAVORED e-cigarettes			√*
Tobacco product flavor enhancers			√*

√* For on-site consumption only

Next Steps

- We request approval of the proposed amendments to this regulation.
- Outreach and education with retailers and general population to raise awareness and prepare for upcoming changes.
- More information on the law and regulation can be found here:
www.mass.gov/newtobaccolaw

Cessation Support

- **Massachusetts Smokers' Helpline at 1-800-QUIT-NOW** (1-800-784-8669) *provides counseling and NRT*
- **This is Quitting** powered by **truth®** is a free and confidential texting program for young people who vape. Young people can text "VapeFreeMass" to 88709.
- **My Life, My Quit™** has youth coach specialists trained to help young people by phone or text. Young people can call or text "Start My Quit" to 855-891-9989 for free and confidential help or visit mylifemyquit.com to sign up online.

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