

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**BUREAU OF HEALTH AND WELLNESS, PUBLIC HEALTH**  
**ADMINISTRATION**  
**PROTECTION OF YOUTH FROM NICOTINE PRODUCT ADDICTION**

Filed with the secretary of state on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the department of health and human services by sections 2221, 2226, and 2233 of the public health code, 1978 PA 368, MCL 333.2221, 333.2226, and 333.2233, and Executive Reorganization Order No. 2015-1, MCL 400.227)

R 333.1101, R 333.1102, R 333.1103, R 333.1104, R 333.1105, R 333.1106, and R 333.1107 are added to the Michigan Administrative Code, as follows:

R 333.1101 Definitions.

Rule 1. (1) As used in these rules:

(a) “Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product, vapor product, or any byproduct produced thereof. This includes, but is not limited to, tastes or aromas relating to food or drink of any sort; menthol; mint; wintergreen; fruit; chocolate; vanilla; honey; candy; cocoa; dessert; alcoholic beverages; herbs; or spices.

(b) “Flavored nicotine vapor product” means any vapor product that contains nicotine and imparts a characterizing flavor.

(c) “Person” means an individual, corporation, partnership, association, or other group or combination of individuals.

(d) “Seller” means any person that operates a business engaging in the sale of tobacco or vapor products or any person who obtains tobacco or vapor products with the intent to sell, offer for sale, give, or otherwise distribute the product or products in this state.

(2) The terms defined in the youth tobacco act, 1915 PA 31, MCL 722.641 to 722.645, have the same meaning when used in these rules.

R 333.1102 Selling prohibitions; exceptions.

Rule 2. (1) A seller shall not do either of the following:

(a) Sell, offer for sale, give, or otherwise distribute flavored nicotine vapor products to persons in this state.

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(b) Use imagery explicitly or implicitly representing a characterizing flavor to sell, offer for sale, give, or otherwise distribute flavored nicotine vapor products to persons in this state.

(2) These rules do not prohibit an individual who may otherwise lawfully possess flavored nicotine vapor products from merely possessing any amount of those products.

(3) These rules do not prohibit Michigan-based retailers, wholesalers, manufacturers, and other distributors of flavored nicotine vapor products from transporting those products within this state or to locations outside of this state. Likewise, an individual may return flavored nicotine vapor products to the person who sold those products to them.

#### R 333.1103 Fraudulent or misleading terms or statements.

Rule 3. (1) A seller shall not use, either directly or indirectly, fraudulent or misleading terms or statements to sell, offer for sale, give, or otherwise distribute vapor products.

(2) As used in this rule, “fraudulent or misleading terms or statements” include those that are likely to induce false or unevicenced beliefs regarding the properties of the flavored nicotine vapor products in a substantial portion of the audience. Fraudulent or misleading terms include, but are not limited to, “clean;” “safe;” “harmless;” and “healthy.”

(3) This rule does not apply to products for which advertising is exclusively regulated by the Food and Drug Administration.

#### R 333.1104 Advertising restrictions; federal law.

Rule 4. The restrictions on advertising set forth at 21 CFR 1140.32 apply with equal force to flavored nicotine vapor products. Violations of 21 CFR 1140.32 are violations of these rules.

#### R 333.1105 Advertisements for flavored nicotine vapor products; prohibitions.

Rule 5. (1) Advertisements for flavored nicotine vapor products shall not be placed:

(a) Within 25 feet of the point of sale. Where this cannot be achieved, advertisements must be placed at the greatest possible distance from the point of sale.

(b) Within 25 feet of candy, foodstuff, or soft drinks. Where this cannot be achieved, advertisements must be placed at the greatest possible distance from candy, foodstuff, and soft drinks.

(c) In such a manner that the advertisement can be readily seen by a person standing outside of the building at a distance of 25 feet.

#### R 333.1106 Penalties for violation.

Rule 6. (1) A person who violates any provision of these rules is guilty of a misdemeanor, punishable as follows:

(a) For a first offense, a fine of \$100.

(b) For a second offense, a fine of \$200.

(c) For a third or subsequent offense, a fine of not more than \$200, or imprisonment for not more than 6 months, or both, as provided by section 2261 of the public health code, 1978 PA 368, MCL 333.2261.

R 333.1107 Invalid rules, subrules; validity of remaining rules.

Rule 7. If any rule or subrule, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining portion of these rules.