



BOARD OF HEALTH
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RETAILER FREQUENTLY ASKED QUESTIONS **REGARDING THE FLAVORED TOBACCO PRODUCT SALES RESTRICTION**

What products are considered “flavored” under this policy?

Any tobacco product or e-cigarette solution that has a “characterizing flavor” that is not plain tobacco or menthol is considered “flavored” and cannot be sold unless the retailer falls within the Retail Tobacco Store or Smoking Bar exemption.

What is a “characterizing flavor”?

A “characterizing flavor” is a flavor that smells and/or tastes like a flavor that the average person understands to be a flavor that is not plain tobacco or menthol. Menthol flavors are exempted from this policy and includes, for example, mint, spearmint and wintergreen. Tobacco products labeled with a flavor (example: fruit, candy, liquor) are considered “flavored” under this policy and cannot be sold.

Several companies have now taken that labeling off their products and, for example, now sell grape cigars in purple wrappers without using the word “grape”. Those still are considered “flavored” under this policy. A “characterizing flavor” is not when a tobacco product, for example, has a “secret recipe” and that recipe contains flavorings but they are not readily apparent through taste or smell to be a distinctive flavor.

How do I know if my retail store fits one of the two exemptions?

A “smoking bar”, commonly known as a cigar bar or a hookah bar, must be (1) adult only at all times (according to the Minimum Legal Sales Age in your city or town) and (2) possesses a valid smoking bar permit from the Massachusetts Department of Revenue.

A “retail tobacco store”, commonly known as a tobacconist, a smoke shop or a vape shop, must be (1) adult only (according to the Minimum Legal Sales Age in your city or town) and (2) the sale of tobacco products and paraphernalia, or e-cigarettes, similar products and solutions, is the main purpose of the business and the sale of all other products is “merely incidental”.

If you do not know if you qualify for this exemption, please contact the Board of Health.

What is the public health benefit of this policy?

In 2009, after extensive data-gathering, the federal government banned the sale of flavored cigarettes because the flavor component was attracting youth to start smoking. This policy extends that federal public health rationale to include all tobacco products and e-cigarettes/vaping products as well.

Is this policy legal to do?

Yes. In 2012, the Providence (Rhode Island) City Council adopted a city ordinance that did precisely what this policy does. Many tobacco companies and some affiliated organizations sued the City of Providence in federal court to stop this ordinance. The City won the lawsuit at the Federal Court of Appeals and the tobacco companies chose not to appeal to the U.S. Supreme Court. This means that the Providence ordinance is legal. Massachusetts is in the same federal court district as Rhode Island so this ruling applies to us as well. If you are a retailer whose store belongs to a chain, your company's lawyers should be familiar with this lawsuit.

The language used in this regulation closely follows the Providence language, including the two exemptions, in order to avoid any new lawsuit.

I was told that some of my in-store stock violates the policy but my distributor says that is not true and continues to furnish me with those products. What should I do?

You are responsible to abide by the policy and not sell prohibited flavored products. You need to make it clear to your distributor that as a tobacco sales permit holder you must abide by the regulation.