

DETERMINING IF A PRODUCT IS COVERED BY STATE LAW¹

STEP ONE: Is it a Vape Product?

- **A vape product is:**
 - any electronic device that relies “on vaporization or aerosolization” for the user to inhale, and
 - the product may contain tobacco or nicotine but does not need to contain either to be a vape product.²
- **The state law on vape product requires:**
 - all sales, whether flavored or unflavored, are limited to products containing 35 mg/ml or less nicotine, except vape products with higher nicotine content may be sold in adult-only retail tobacco stores or smoking bars, and
 - all flavored vaping product sales, including menthol and menthol-like flavors, are prohibited, except when sold in a smoking bar and only for consumption onsite.
- **There is an exemption:**
 - Vape products sold at marijuana dispensaries licensed by the Cannabis Control Commission and intended for marijuana use only are exempt. The sale of any product containing nicotine or tobacco is prohibited at marijuana dispensaries.
- **If the product is not a vape product, go to the next step...**

STEP TWO: Is it non-vape, tobacco product?

- **A non-vape, tobacco product is:**
 - does not fit the definition of a vape product,
 - contains either nicotine or tobacco, and
 - can be smoked, chewed, dissolved, sniffed or consumed by any other means except vaping.
- **The state law on non-vape, tobacco products states:**
 - there is no limit on nicotine level, but
 - all flavored tobacco products sales, menthol and menthol like flavors, are prohibited, whether the product is smoked, chewed, dissolved, sniffed or consumed by any other means, except such flavor products may be sold in smoking bars and only for consumption onsite.
- **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:**
 - does not fit the definition of a vape product or tobacco product, and
 - includes “any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product [or vape product”
- **Some hints for identifying a tobacco product flavor enhancer are:**

¹ The state regulations are at 105 CMR 665.005.

² An inhaler approved by the FDA for cessation is not a vape product.

- Some products will be very clearly marked as a flavoring additive for vape products or tobacco products. These are clearly “enhancers.” One example is Tobacco Vanilla Fragrance Oil.
- 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.
- **The state law on tobacco product flavor enhancers is:**
 - All tobacco product flavor enhancer sales are 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.

