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TO: Tobacco Retailers

FROM: Massachusetts Tobacco Cessation and Prevention Program

DATE: January 4, 2021

RE: Notice of guidance for the documentation that a tobacco product or electronic nicotine delivery system does not contain a characterizing flavor

Prior to the sale of any tobacco product or electronic nicotine delivery system (ENDS)¹, a retailer must first obtain a letter from the manufacturer certifying the products a retailer sells comply with 105 CMR 655.010. The letter is intended to verify the manufacturer’s products do not contain a characterizing flavor. The following is required for the letter:

- The letter must be from the product manufacturer, and must list all of the manufacturer’s brands, sub-brands, and brand sizes you offer for sale at your store.
- The letter must certify that each brand, sub-brand, and brand size contained in the letter:
 - is not a flavored tobacco product as defined by 105 CMR 655.005; and
 - does not have a characterizing flavor as defined by 105 CMR 655.005.

Please note that a retailer may not offer for sale any brand, sub-brand, or brand size not so listed in the manufacturer’s letter.

- The letter must be signed by one of the manufacturer’s corporate officers or one of its managing owners.
- The person who signs the letter must state:
 - the “letter is true and accurate;”
 - he/she “is authorized on behalf of the manufacturer to sign the letter;” and

¹ Please note that electronic nicotine delivery system as defined by M.G.L. c 270, § 29, includes devices that can be used to deliver nicotine or another substance. Letters are required for ENDS products regardless of nicotine content, except a letter is not required for ENDS products regulated by the Massachusetts Cannabis Control Commission.

- “the manufacturer will immediately provide an updated letter to correct any inaccuracy.”
- An updated letter is required for any new brands, sub-brands, and brand sizes that a retailer intends to offer for sale.
- A retailer must keep the letter at the retail location for inspection upon request by an agent or representative of a municipal board of health or the Massachusetts Department of Health. Manufacturer’s letters are not required in smoking bars.

This Notice is guidance to assist retailers in compliance with 105 CMR 655.010 (E). This Notice does not provide a complete description of a retailer’s responsibilities under 105 CMR 655 or other laws applicable to the sale of tobacco products.