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105 CMR 801.000: SEVERE LUNG DISEASE ASSOCIATED WITH VAPING PRODUCTS

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801.005: Definitions

Board of Health means the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town.

Commission means the Cannabis Control Commission.

Department means the Massachusetts Department of Public Health.

MDAR means the Massachusetts Department of Agricultural Resources.

Vaping product means: 1) any product intended for human consumption by inhalation regardless of nicotine content, whether for one-time use or reusable, that relies on vaporization or aerosolization, including but not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic vaping product delivery pens, hookah pens, and any other similar devices that rely on vaporization or aerosolization; and 2) any component, part, or accessory of a product or device defined in subsection 1), even if sold separately. "Vaping product" does not include any product that has been approved by the federal Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

801.010: Prohibition on Sale of Vaping Products

The sale of all vaping products to consumers in retail establishments, online, and through any other means, including all non-flavored and flavored vaping products, including mint

and menthol, including tetrahydrocannabinol (THC) and any other cannabinoid, is prohibited in the Commonwealth. For the avoidance of doubt:

- (A) A seller located in Massachusetts may not make an in-store sale of vaping products to a consumer located in Massachusetts.
- (B) A seller located in Massachusetts or a seller located in any other State may not make a sale of vaping products by online, phone, or other means for delivery to a consumer located in Massachusetts.
- (C) A seller located in Massachusetts may make a sale of vaping products by online, phone, or other means for delivery to a consumer located in another State.

801.015: Prohibition on Display of Vaping Products

The physical display of usable vaping products in retail establishments, including all non-flavored and flavored vaping products, including mint and menthol, including tetrahydrocannabinol (THC) and any other cannabinoid, is prohibited in the Commonwealth.

- (A) All usable vaping products must be removed from shelves.
- (B) 105 CMR 801.015 does not apply to the online display of vaping products.
- (C) 105 CMR 801.015 does not limit the advertisement of vaping products.

801.020: Concurrent Enforcement by Department and Boards of Health

(A) The Department and any board of health may take any enforcement action permitted by 105 CMR 801.000 or as otherwise authorized by law to effectuate 105 CMR 801.000 as it applies to sales of vaping products to consumers or the physical display of vaping products in retail establishments.

(B) Each violation of this regulation may be punished by a fine not exceeding \$1,000. Fines shall be calculated on a per item and per transaction basis and may be assessed cumulatively.

(C) The Department or any board of health may seek injunctive relief in Superior Court to enforce 105 CMR 801.000.

801.025: Enforcement by Other State Agencies

(A) The Commission shall enforce 105 CMR 801.000 to the extent it applies to its registered or licensed entities.

(B) MDAR shall enforce 105 CMR 801.000 to the extent it applies to its registered or licensed entities.

801.030: Seizure of Vaping Products

Subject to valid order issued by a court of competent jurisdiction, State Police or local law enforcement may seize any vaping products from entities or persons that continue to display or sell vaping products in violation of 105 CMR 801.000.

801.035: Over-the-Counter Nicotine Replacement Therapy

Over-the-counter (OTC) products approved by the federal Food and Drug Administration for the sale of or use as tobacco cessation products and marketed and sold exclusively for the approved purpose may be made available pursuant to a standing order.

801.040: Severability

If any provision of 105 CMR 801.000 is declared invalid or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected thereby but shall continue in full force and effect.

REGULATORY AUTHORITY: MGL c. 17, § 2A; and MGL c. 111, §§ 1-3, 5, & 6.