



The Commonwealth of Massachusetts
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To: Tobacco Retailers

From: Commissioner Robert Goldstein, Massachusetts Department of Public Health

Date: June 6, 2024

RE: Implementation of 105 CMR 665.000 and Restriction on the Sale of Flavored Tobacco Products

CC: Local Boards of Health

The Massachusetts Department of Public Health (the “Department”) understands that there is confusion from both tobacco retailers and local boards of health about whether tobacco products labeled as non-menthol tobacco products but marketed to menthol consumers constitute a flavored tobacco product within the meaning of [Massachusetts General Law, Chapter 270, Section 28](#) and the Department’s regulation [105 CMR 665.000](#).

To be considered a flavored tobacco product under Massachusetts Law a product must:

1. be a tobacco product; and
2. produce a characterizing flavor.

In considering whether a tobacco product is a flavored tobacco product, a person may consider multiple factors, including but not limited to,

- whether a constituent in the tobacco product produces a distinguishable taste or aroma;
- testimony or consumer reviews about the taste or aroma of a tobacco product;
- product packaging or labeling;
- public statements, claims, or indicia made by a manufacturer or an authorized agent of the manufacture
- scientific articles; and
- sworn testimony from persons familiar with tobacco industry or regulation.

The Massachusetts Department of Public Health (“Department”) has determined that the following tobacco products are “flavored tobacco products” within the meaning of [Massachusetts General Law, Chapter 270, Section 28](#) and the Department’s regulation [105 CMR 665.000](#):

1. Newport Non-Menthol Green;
2. Newport EXP Non-Menthol;
3. Camel Crush Non-Menthol Oasis;
4. Camel Crisp Non-Menthol Green Box; and
5. Maverick Non-Menthol.

Accordingly, any establishment that is not a licensed smoking bar as defined in [Massachusetts General Law, Chapter 270, Section 22](#) and 105 CMR 665.000 is prohibited from offering for sale or selling these products to persons in Massachusetts.

The Department bases its determination that Newport Non-Menthol Green, Newport EXP Non-Menthol, Camel Crush Non-Menthol Oasis, and Camel Crisp Non-Menthol Green Box are a flavored tobacco product on the following:

1. The above reference cigarettes contain tobacco.
2. The above referenced cigarettes contain n-Ethyl-p-Menthane-3-Carboxamide, a synthetic cooling agent commonly referred to as WS-3, or vanillin and ethyl vanillin that produce a taste that distinguishable from the taste of tobacco.
3. Consumer reviews of the above referenced cigarettes indicate that the products have a taste of menthol, mint, fruit, or vanilla when consumed. The taste of menthol, mint, fruit, or vanilla are tastes that are statutorily defined as a characterizing flavor.
4. The labeling and packaging of the above referenced cigarettes strongly resembles the labeling and packaging of menthol cigarettes.
5. Advertisements and promotional materials of the above referenced cigarettes use terms associated with flavor or taste.

The Department bases its determination that Maverick Non-Menthol is a flavored tobacco product on the following:

1. Maverick Non-Menthol contains tobacco.
2. Maverick Non-Menthol contains menthol in the tobacco filler. The taste of menthol is statutorily defined as a characterizing flavor.
3. The labeling and packaging of Maverick Non-Menthol strongly resembles the labeling and packaging of its traditional menthol cigarettes.

Based on the Department’s determination that the above referenced tobacco products are flavored tobacco products within the meaning of the law, the sale of these flavored tobacco products in retail establishments that are not licensed smoking bars is in violation of Massachusetts law M.G.L. c. 270, § 28(b) and 105 CMR 665.010(D). Therefore, retail establishments that are not licensed smoking bars should remove these products from their premises no later than 30 days after this release (July 6, 2024).