SCCPMA E-News – 2 Deadlines And 5 New Members – A Must Read Membership News

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DOR Tobacco Buydown Draft - The deadline to comment is Thursday, February 6, 2020.

This is your reminder, the deadline to comment and/or request a hearing for the DOR Tobacco Buydown Draft Policy is this **Thursday, February 6, 2020.**

The Department of Revenue's draft ruling on tobacco buydowns being subject to the sales tax that was released. Click the link below.

DOR Tobacco Buydown Draft Policy

E-Cig Flavored Cartridge Ban takes Effect This Thursday

On Tuesday, January 7, the FDA's Final Guidance titled "Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket

Authorization" was published in the Federal Register. The Final Guidance bans the sale of most flavored cartridge-based e-cigarettes other than tobacco and menthol flavoring, meaning that stores must remove these items from their shelves ***by this Thursday, February 6***.

The final guidance document does not single out convenience stores, but rather focuses on specific kinds of electronic nicotine products (i.e., certain flavored cartridge-based electronic nicotine products). In a statement from FDA, it said that "this Final Guidance prioritizes enforcement with respect to any flavored, cartridge-based ENDS products (other than a tobacco and menthol-flavored ENDS product) without regard to the location or method of sale." After the FDA's Draft Guidance was released in March, PMAA and other like-minded associations opposed the FDA provision allowing sales of flavored e-cigarettes in stores that are considered adult-only, such as vape shops, while prohibiting them from being sold in convenience stores.

Below is a summary of the additional provisions in the Final Guidance document courtesy of the National Association of Tobacco Outlets:

- The FDA will prioritize enforcement against those companies that manufacture, distribute or sell flavored cartridge-based electronic nicotine delivery products (except tobacco-flavored, menthol-flavored and non-flavored cartridge-based electronic nicotine delivery products) that have not received a premarket authorization order from the FDA.
- Flavored cartridge-based electronic nicotine delivery products (except tobacco-flavored, menthol flavored, and non-flavored cartridge-based products) would need to be removed from the market, including from retail stores by February 6. The FDA states in the Final Guidance document that these products are not being completely banned from the market but could come back on the market if manufacturers file premarket authorization applications by May 12, 2020, and the FDA subsequently approves the application.
- The FDA also intends to prioritize enforcement against those cartridge-based products for tobacco-flavored, menthol-flavored, or non-flavored electronic nicotine products and any non-cartridge flavored electronic nicotine products if they lack a premarket authorization order from the FDA and the manufacturer has not taken or is not taking adequate measures to prevent minors' access to these products.
- The FDA also intends to prioritize enforcement against any electronic nicotine products targeted to, or whose marketing is likely to promote use by, underage persons. Examples include electronic nicotine products with labeling or advertising that resembles kid-friendly foods and drinks (e.g., juice boxes, candy or kid-friendly cereal), or with youth-appealing cartoon or animated character advertising or marketed on popular children's YouTube

channels and television shows.

- The FDA also intends to prioritize enforcement of any electronic nicotine product (either cartridge-based or non-cartridge based product) that is offered for sale after May 12, 2020, and for which the manufacturer has not submitted a premarket authorization application (or after a negative action by FDA on a timely submitted application).
- The FDA will not at this time take enforcement action against "open system" electronic nicotine products nor small manufacturers such as vape shops that mix e-liquids on-site and primarily sell non-cartridge-based electronic nicotine products, unless they market to youth, fail to take adequate measures to prevent youth access, or do not file a premarket authorization.
- The FDA has decided not to prioritize enforcement against flavored cigars and flavored hookah tobacco products before May 12, 2020, because underage use of these tobacco products is significantly lower than cartridge-based electronic nicotine products. However, the FDA reiterates in the Final Guidance document that flavored cigars and flavored hookah tobacco are required to submit premarket authorization applications to the agency for those products by May 12, 2020. The FDA acknowledges that there are a number of "grandfathered" flavored cigars that are lawfully marketed and would remain available to consumers regardless of FDA's enforcement of premarket authorization requirements.

Click here to view the full FDA Final Guidance document.

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