

## **TITLE 216 – DEPARTMENT OF HEALTH**

### **CHAPTER 50 – ENVIRONMENTAL HEALTH**

#### **SUBCHAPTER 15 – HEALTHY ENVIRONMENT**

##### **PART 6 – Licensing of Electronic Nicotine-Delivery System Distributors and Dealers**

### **6.1 Authority**

These Rules and Regulations for Licensing of Electronic Nicotine-Delivery System Distributors and Dealers are promulgated pursuant to the authority set forth in R.I. Gen. Laws §§ 23-1-1, 23-1-55 through 23-1-58, and 11-9-13.4 for the purpose of establishing the requirements for licensure of electronic nicotine-delivery system distributors and dealers.

### **6.2 Citing Authority**

- A. Entities licensed under this Part must comply with the following federal statutes:
1. The Family Smoking Prevention and Tobacco Control Act (U.S. Pub. Laws 111-31); and
  2. U.S. Pub. Laws 114-116 (Child Nicotine Prevention Act of 2015).

### **6.3 Definitions**

- A. Wherever used in this Part the following terms shall be construed as follows:
1. "Act" means R.I. Gen Laws §§ 23-1-55 through 23-1-58.
  2. "Characterizing flavor" means a distinguishable taste or aroma imparted either prior to, or during, consumption of an electronic nicotine-delivery system product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, mint, menthol, wintergreen, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice. The determination of whether an electronic nicotine-delivery system product has a characterizing flavor shall not be based solely on the use of additives, flavorings, or particular ingredients, but shall instead consider all aspects of a final product including, but not limited to, taste, flavor and aroma, product labeling, and advertising statements. A flavor shall be presumed to be a characterizing flavor if a dealer or distributor has made a statement or claim directed to consumers or the public about such flavor, whether expressed or implied, that it has a distinguishable taste or aroma (other than the taste or aroma of tobacco).

3. "Dealer" means any person, whether located within or outside of the State of Rhode Island, who sells or distributes electronic nicotine-delivery system products to a consumer in the State of Rhode Island.
4. "Department" means the Rhode Island Department of Health.
5. "Director" means the Director of the Department or his or her designee.
6. "Distributor" means any person:
  - a. Whether located within or outside of the State of Rhode Island, other than a dealer, who sells or distributes electronic nicotine-delivery system products within or into the State of Rhode Island. Such term shall not include any electronic nicotine-delivery system products manufacturer, export warehouse proprietor, or importer with a valid permit, if such person sells or distributes electronic nicotine-delivery system products in the State of Rhode Island only to licensed distributors, or to an export warehouse proprietor or another manufacturer with a valid permit;
  - b. Selling electronic nicotine-delivery system products directly to consumers in the State of Rhode Island by means of at least twenty-five (25) electronic nicotine-delivery system product vending machines;
  - c. Engaged in the State of Rhode Island in the business of manufacturing electronic nicotine-delivery system products or any person engaged in the business of selling electronic nicotine-delivery system products to dealers, or to other persons, for the purpose of resale only; provided that seventy-five percent (75%) of all electronic nicotine-delivery system products sold by that person in the State of Rhode Island are sold to dealers or other persons for resale and selling electronic nicotine-delivery system products directly to at least forty (40) dealers or other persons for resale; or
  - d. Maintaining one or more regular places of business in the State of Rhode Island for that purpose; provided, that seventy-five percent (75%) of the sold electronic nicotine delivery system products are purchased directly from the manufacturer and selling electronic nicotine-delivery system products directly to at least forty (40) dealers or other persons for resale.
7. "Electronic nicotine-delivery system" is defined by R.I. Gen. Laws § 11-9-13.4.
8. "Flavored electronic nicotine-delivery system" means any electronic nicotine-delivery system that imparts a characterizing flavor.

## **6.4 Licensing Requirements and Use of Licensed Entities**

A person engaging in the business of selling electronic nicotine-delivery system products in the State of Rhode Island, as set forth in this Part and including any distributor or dealer, shall annually secure a license in accordance with the requirements of R.I. Gen. Laws § 23-1-56 and this Part from the Department before engaging in that business, or continuing to engage in it.

## **6.5 Eligibility for Licensing**

Eligibility of licensees shall be in accordance with R.I. Gen. Laws § 23-1-56(f).

## **6.6 Application for Licensure and Fee**

### **A. Application for Licensure.**

Application for licensure shall be made on forms furnished by the Department, which shall be completed, notarized and submitted to the Department.

### **B. Categories of Licensure.**

1. An application for a license to engage in the business of selling electronic nicotine-delivery system products in the State of Rhode Island, as set forth in this Part, shall be submitted for each applicable category of business:
  - a. Distributor (including manufacturer and importer); or
  - b. Dealer (retail and vending machine)
2. Each category of business, dealer location and vending machine for electronic nicotine-delivery systems shall require a separate application.

### **C. Fee.**

The application fee (not refundable and non-returnable) as set forth in the rules and regulations pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title) shall accompany the application for registration. Applications received without the required application fee shall be returned to the applicant.

### **D. Self-certifications.** An application for licensure to engage in the business of selling electronic nicotine-delivery system products in the State of Rhode Island, as set forth in this Part, shall include a self-certification as set forth in § 6.10(B) of this Part.

## **6.7 Issuance of License**

- A. A license to engage in the business of selling electronic nicotine-delivery system products in the State of Rhode Island, as set forth in this Part, may be issued to an applicant who meets the relevant requirements for licensure as required by the Act and this Part.
- B. A dealer's license shall be issued to a specific licensee for a specific location and shall not be transferable. Each issued license shall be prominently displayed on the premises, if any, covered by the license.
- C. If the applicant for a license does not have a place of business in the State of Rhode Island, the license shall be issued for such applicant's principal place of business, wherever located.

## **6.8 Required Notification to the Department**

A licensee must notify the Department, in writing, within thirty (30) days in the event that it changes its principal place of business.

## **6.9 Expiration, Renewal, and Failure to Renew**

- A. Expiration.

The license of every person licensed pursuant to provisions of the Act and this Part shall expire on the thirty-first (31st) day of January of the following year

- B. Renewal.

1. Every licensed person who desires to renew his or her license shall file with the Department, on or before the thirty-first (31st) day of January in each year, an executed renewal application together with a renewal fee as set forth in the rules and regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title) and a self-certification as set forth in § 6.10(B) of this Part. New business licenses are issued throughout the year.
2. Upon receipt of a renewal application and payment of the renewal fee, the accuracy of the application shall be verified and the Department may grant a renewal license effective on the first (1st) day of February and expiring on the thirty-first (31st) day of January of the following year.

- C. Failure to Renew.

Failure to renew a license on or before the thirty-first (31st) day of January in each year, as required by this Part, shall result in the business becoming an unlicensed business, and subject to the penalties described in § 6.11 of this Part.

## **6.10 Prohibition on the Sale of Flavored Electronic Nicotine-Delivery System Products**

- A. The sale, or offer for sale of, or the possession with intent to sell or to offer for sale, flavored electronic nicotine-delivery system products to consumers within the State of Rhode Island is hereby prohibited. Compassion centers and licensed cultivators registered with the Rhode Island Department of Business Regulations--Office of Cannabis Regulation under R.I. Gen. Laws Chapter 21-28.6 are exempt from this provision.
- B. Dealers must self-certify, at the time of initial application and every renewal application under this Part, that none of the electronic nicotine-delivery system products they sell, or offer for sale, or possess with intent to sell or offer for sale to consumers in Rhode Island are flavored electronic nicotine-delivery system products.
- C. A public statement or claim or disseminated by a dealer or distributor of an electronic nicotine-delivery system product, or by any person authorized or permitted by the dealer or distributor to make or disseminate public statements concerning such electronic nicotine-delivery system product, that such electronic nicotine-delivery system product imparts a characterizing flavor shall constitute presumptive evidence that the electronic nicotine-delivery system product is a flavored electronic nicotine-delivery system product.

## **6.11 Violations - Enforcement and Penalties**

- A. Violation of any provision of this Part is subject to all civil and criminal penalties as provided by law.
  - 1. Each flavored electronic nicotine-delivery system product, or any component part thereof, that is sold or offered for sale, or possessed with intent to sell or offer for sale to consumers within the State of Rhode Island (as set forth in § 6.10 of this Part) shall constitute a separate violation.
  - 2. Any violation by a clerk, cashier, or other employee or staff shall be imputed to the person's employer for assessment of violations and penalties.
- B. Pursuant to R.I. Gen. Laws § 23-1-57, any distributor or dealer who sells or offers for sale, or possesses with intent to sell or offer for sale electronic nicotine-delivery system products without a license as provided in R.I. Gen. Laws § 23-1-56, shall be fined in accordance with the provisions of, and the penalties contained in, R.I. Gen. Laws § 23-1-58. Compassion centers and licensed cultivators registered with the Rhode Island Department of Business Regulation--Office of Cannabis Regulation under R.I. Gen. Laws Chapter 21-28.6 are exempt from this provision.

## **6.12 Severability**

If any provisions of this Part, or the application thereof, to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part, or the application thereof, to other persons, entities, and circumstances.

**216-RICR-50-15-6**

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DISTRIBUTORS AND DEALERS (216-RICR-50-15-6)**

Type of Filing: Refile Capabilities

**Department of State**

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Regulation Effective Date

Original Signing Date

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Department of State Initials

Department of State Date