

NOTICE OF INTENT

Department of Revenue Office of Alcohol and Tobacco Control

Vapor Products Public Safety Regulations (LAC 55:VII.3120-3134)

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 3:1483, hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of alternative nicotine and vapor products under the provisions of Act No. 424 of the 2019 Louisiana Legislature. The following regulations will give the ATC the ability to properly permit, authorize, and regulate the retail sale and distribution of alternative nicotine and vapor products, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This rule creates §3120 through §3134 to address retail sale and distribution of alternative nicotine and vapor products and related matters since this is not addressed otherwise by existing law or regulation.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 2. Tobacco

Chapter 31. Alternative Nicotine and Vapor Products Public Safety Regulations

§3120. Definitions

A. As used in this Chapter, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

E-Liquid—a substance that does not include cannabis or CBD as defined under the laws of this state and the laws of the United State and which meets all of the following criteria:

- a. may or may not contain nicotine;
- b. is intended to be vaporized and inhaled using a vaporized and inhaled using a vapor product;
- c. is a legal substance under the laws of this state and the laws of the United States;

Manufacturer—anyone engaged in the manufacture, production, or foreign importation of tobacco products, vapor products, and alternative nicotine who sells to wholesalers.

Retail Dealer—includes every dealer other than a wholesale dealer, or manufacturer who sells or offers for sale cigars, cigarettes, other tobacco products, alternative nicotine products, or vapor products, irrespective of quantity or the number of sales. If any person is engaged in the business of making sales both at retail and wholesale, “retailer” shall apply only to the retail portion of the business.

Tamper Evident Package—a package having at least one indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence to consumer that tampering has occurred.

Wholesale Dealer—a dealer whose principal business is that of a wholesaler, who sells cigarettes, cigars, or other tobacco products to retail dealers for purpose of resale, who is a bona fide wholesaler, and 50 percent of whose total tobacco sales are to retail stores other than its own or those of its subsidiaries or parent companies within Louisiana. Wholesaler dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services

50 or more cigarette vending machines in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps as of January 1, 1974. If any person is engaged in the business of making sales at both wholesale and retail, wholesaler shall apply only to the wholesale portion of the business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3122. General Requirements

A. Every person who sells or is about to engage in the business of selling at retail, at wholesale, or by vending machine, or is about to engage in the business of receiving unstamped and/or non-tax paid tobacco products, vapor products, or alternative nicotine products or who is engaged in the business of receiving stamped cigarettes at wholesale or any or all of the articles taxed in accordance with Title 47 of the Louisiana Revised Statutes of 1950, shall first apply to and obtain from the office a permit for each place of business and each vending machine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3124. Acts Prohibited

A.1. No retail dealer shall purchase tobacco products or resale except from a wholesaler dealer operating with a valid unsuspended wholesale dealer permit, except as provided for in this Chapter.

2. No vapor retail dealer shall purchase alternative nicotine products or vapor products for resale except from a manufacturer of those products or a wholesale dealer operating with a valid unsuspended Louisiana wholesale dealer permit, except as provided for in this Chapter.

B. No wholesale dealer shall sell tobacco products, alternative nicotine products, or vapor products for resale except to a retail dealer operating with either a valid registration certificate or a valid unsuspended permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3126. Inspection and Examination

A. The commissioner or her agent may inspect any place of business where alternative nicotine or vapor products are stored, offered for retail sale, or offered for wholesale. She or her agent may examine, at all reasonable hours, the books records, and other documents of all retail dealer permit holders.

B. No person shall refuse to allow, on demand, the commissioner or her agent to make a full inspection of a place of business where alternative nicotine or vapor products are offered for wholesale and/or sale to the public, nor shall any person refuse to allow, on demand, the commissioner or her agent to examine and audit the books and records of any business where alternative nicotine or vapor products are offered for wholesale and/or sale to the public, nor shall any person in any way hinder or prevent such an inspection or audit.

C. Any refusal by a retail permit dealer permit holder to allow the commissioner or her agent to inspect the permitted place of business or to examine and audit the books and records of the permitted business as provided within this section is grounds for the suspension of a permit, in addition to other penalties provided in this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3128. Manufacturer Authorization

A. Manufacturers of vapor products shall not sell vapor products in this state without authorization from the office of alcohol and tobacco control. The request for authorization shall include:

1. the name, telephone number of the applicant;
2. the name, telephone number, and address of the manufacturing facility;
3. the name, telephone number, title, and address of the person responsible for the manufacturing facility;

4. verification that the facility will comply with applicable tobacco products good manufacturing practices pursuant to 21 U.S.C. 387f(e) of the Federal Food, Drug, and Cosmetic Act;

5. verification that the manufacturer will comply with the applicable ingredient listing required by 21 U.S.C. 387d(A)(1) of the Federal Food, Drug, and Cosmetic Act.

B. Authorization forms shall be mailed or delivered to the commissioner in Baton Rouge, Louisiana, unless other additional methods are made available by the commissioner.

C. Authorization forms will be processed at the office of alcohol and tobacco control at no cost to applicant.

D. Authorization forms will be valid for a period of one year.

E. Manufacturer authorizations shall be considered a privilege and is not transferrable, assignable, or heritable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3130. Safety Requirements

A. All manufacturers and wholesalers shall comply with the following:

1. any alternative nicotine or vapor product must use a child proof cap that has a child resistant effectiveness set forth in the federal poison prevention packaging standards, 16 CFR 1700.1(b)(1);

2. any alternative nicotine or vapor product must use tamper evident packaging. The tamper evident packaging feature must be designed to and remain intact when handled in a reasonable manner.

B. Any manufacturer or wholesaler who violates the safety requirement provisions of this chapter shall be subject to having their permit suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3132. Age Verification

A. For all online sales manufacturers and wholesalers must perform an age verification process through an independent, third party age verification service that compares information from public records to the personal information entered by the purchaser during the ordering process that establishes the person is of legal age or older.

B. Persons accepting purchase orders for delivery sales may request that prospective consumers provide their email addresses.

C. No retailer may sell or deliver alternative nicotine or vapor products of any kind in a retail establishment to any person through any unattended or self-service checkout counter or mechanical device unless he customer submits to a clerk a valid driver's license, selective service card, or other lawful identification that on its face establishes the age of the person as 18 years or older and there is no reason to doubt the authenticity and correctness of the identification prior to approaching the self-checkout counter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3134. Prohibition Sales to Minors

A. No person holding a retail dealer permit and no servant, agent, or employee of the permittee shall sell any alternative nicotine or vapor products to any person under the age of eighteen years of age.

B. To ensure that no alternative nicotine or vapor products are sold to a person under the age of eighteen years of age, a retail dealer permit holder and their servants, agents, and employees may require all persons attempting to purchase alternative nicotine or vapor products at retail to produce for inspection either:

1. a valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license;

2. a valid, current, driver's license of another state which contains a photograph of the person and birth date of the person submitting the driver's license;

3. a valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card;

4. a valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa;

5. a valid, current, military or federal identification issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card;

6. a valid, current, special identification card of another state which contains a photograph of the person and birth date of the person submitting the identification card;

7. any digitized identification approved by the commissioner may be accepted by a retail dealer. Retail dealers may choose to accept digitized identification or they may still require a physical identification when checking identification. Retail dealers whom the Agency has required to utilize scanners shall still be required to request and scan a physical identification and may not accept digitized identification. Digitized identification may be accepted by establishments provided that all employees have been properly trained prior to acceptance in accordance with the requirements of LAC 55:VII.401.D.

C. Each form of identification listed above must on its face establish the age of the person as eighteen years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and picture of the person. A duplicate driver's license shall be considered lawful identification for the purposes of this Paragraph, and a person shall not be required to submit additional information containing the name, date of birth, and picture of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purpose of this Paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has a negligible impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973.B. In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to R. Danielle Barringer, Office of Alcohol and Tobacco Control, 7979 Independence Blvd, Suite 101, Baton Rouge, LA 70806. She is responsible for responding to inquiries regarding this proposed Rule.

Juana Marine-Lombard
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Vapor Products

Public Safety Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules may result in marginal costs for the LA Dept. of Revenue, Office of Alcohol & Tobacco Control (ATC), as they allow ATC to inspect and examine retailers selling alternative nicotine and vapor products. Furthermore, the proposed rules require ATC to process authorization forms for manufacturers of nicotine and vapor products. ATC may realize marginal cost increases associated with inspecting retailers and processing manufacturer authorization forms that will be offset in whole or in part by revenues collected from permitting firms selling vapor products as tobacco retailers (see Part II).

The proposed rules will not result in any costs or savings for local governmental units.

The proposed rules provide for the regulation of alternative nicotine and vapor products under the provisions of Act 424 of 2019. The rules allow for the state of Louisiana to properly permit, authorize, and regulate the retail sale, manufacturing, and distribution of alternative nicotine and vapor products. Furthermore, the proposed rules outline the requirements of retailers and manufacturers of alternative nicotine and vapor products in Louisiana, including prohibited acts and safety requirements.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will increase revenues for ATC by an indeterminable, though potentially significant amount beginning in FY 20 and in subsequent fiscal years. ATC anticipates retailers selling vapor products to be permitted as retail dealers, which carries an annual permit fee of \$25. The revenue increase is indeterminable because the number of retailers selling vapor products who do not currently hold a retail dealer permit is unknown. However, to the extent that there is a large number of unpermitted retailers (i.e. retailers selling vapor products not already permitted to sell stamped tobacco products) selling vapor products in Louisiana, the potential revenue increase may be significant.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules generally outline the requirements of retailers selling vapor products, but include annual permitting requirements for retailers with associated fees of \$25. Furthermore, the proposed rules outline prohibited acts and safety requirements, require open inspections of premises by ATC, require age verification of persons purchasing vapor products, and prohibit sales to minors.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.