

**Michigan Office of Administrative Hearings and Rules  
Administrative Rules Division (ARD)**

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**REQUEST FOR RULEMAKING (RFR)**

**1. Department:**

Health and Human Services

**2. Bureau:**

Population Health and Community Services

**3. Promulgation type:**

Full Process

**4. Title of proposed rule set:**

Protection of Youth from Nicotine Product Addiction

**5. Rule numbers or rule set range of numbers:**

R 333.1101 to R 333.1199

**6. Estimated time frame:**

12 months

**Name of person filling out RFR:**

Mary Brennan

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**7. Describe the general purpose of these rules, including any problems the changes are intended to address.**

These rules are to be promulgated by the Department of Health and Human Services to address a recent and staggering increase in youth usage of vapor products. On August 30, 2019, relying in part upon the declaration of youth usage of e-cigarettes as an epidemic by the U.S. Surgeon General, the MDHHS issued a finding of emergency related to youth usage of vapor products. Because this is a public health threat directly affecting youth in Michigan, the Department seeks to address this crisis by promulgating permanent rules to safeguard the public health pursuant to its authority under MCL 333.2226(d).

These rules will prohibit the selling, offering for sale, giving, transporting, or otherwise distributing of flavored nicotine vapor products. The rules will also prohibit possessing these products with the intent to sell. The rules will also prohibit the use of fraudulent or misleading terms or statements to sell or distribute vapor products. Lastly, the rules will limit access to products that are more appealing to youth through specific advertisement restrictions of vapor products. The Department anticipates that it may act via these rules to restrict the sale and advertisement of other nicotine products.

By prohibiting the retail sale of flavored products, less product is available on the market, and the products that are available are substantially less appealing to youth. This is anticipated to decrease youth use of vapor products. Reducing exposure to advertising related to vapor products can help to reduce youth initiation and continued use of vapor products. By restricting the advertising of these products, Michigan will curb youth exposure to vapor product advertisements specifically designed to pull them into nicotine addiction at an early age.

The rules will also protect adults by, among other things, ensuring that to the extent that the products used by adults are on the market they are proportionately advertised and legally sold. The rules will also exclude from restriction smoking cessation products approved by the Food and Drug Administration. Finally, the rules will protect adults by restricting use of misleading or fraudulent terms in advertising for vapor products. The Department will continue to work with its public health partners to address nicotine use and provide resources for individuals and their healthcare providers to enable them to quit using nicotine products.

**8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).**

Department Director.

**A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).**

By authority conferred on the Department of Health and Human Services by the Public Health Code, PA 368 of 1978; sections 2221, 2226, 2233, Executive Reorganization Order No. 2015-1; MCL 333.2221, MCL 333.2226, MCL 333.2233, and MCL 400.227.

**B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.**

The rules are not mandated by any applicable constitutional or statutory provision.

**9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The proposed rules do not conflict with, duplicate, or exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

**10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?**

MDHHS has promulgated emergency rules pursuant to Section 48 of the APA. As a result of those emergency rules, an interpretive statement was prepared and disseminated to stakeholders and other businesses impacted by the emergency rules.

**11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?**

The rules were not listed on the department's annual regulatory plan for the current year.

**12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?**

Full Process

**13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The proposed rules do not conflict with, duplicate, or exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

**14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.**

No, the rules do not incorporate any recommendations received from the public. This is a new rule set.

**15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.**

This is a new rule set.

**16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?**

This is a new rule set.

**17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.**

No