

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 11. UNFLAVORED TOBACCO LIST

NOTICE OF PROPOSED RULEMAKING

Notice published November 7, 2025

The Department of Justice (Department) proposes to adopt Title 11, Division 1, Chapter 11, Sections 942 through 957 of the California Code of Regulations concerning the Unflavored Tobacco List.

PUBLIC HEARING

The Department will hold one public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed regulations, as follows:

Date: December 23, 2025
Time: 10:00 a.m. - 2:00 p.m.
Location: 1300 I Street
Room 730, 7th Fl.
Sacramento, CA 95814-2919
Remote Participation: <https://doj-ca.zoomgov.com/j/1618468955>
Phone Participation: (669) 254-5252, access code 161 846 8955

The hearing location is wheelchair accessible. Please bring your I.D. for security check-in. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on December 23, 2025, at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Tobacco Unit
Attn: Taylor Ann Whittemore
1515 Clay Street
P.O. Box 70550
Oakland, CA 94612
(510) 879-3310
UTLregulations@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 104559.1, Health and Safety Code. Reference: Sections 104559.1 and 104559.5, Health and Safety Code; Sections 22971 and 26001, Business and Professions Code; Section 30019, Revenue and Tax Code; 21 U.S.C. Sections 387a, 387e, 387j.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

A. Senate Bill 793

Senate Bill 793 banned flavored tobacco products (subject to certain exceptions) and tobacco product flavor enhancers in California. (Health & Saf. Code, § 104559.5.) A flavored tobacco product is a “tobacco product that contains a constituent that imparts a characterizing flavor.” (*Id.*, subd. (a)(6).) A “characterizing flavor” is “a taste or odor . . . other than the taste or odor of tobacco.” (*Id.*, subd. (a)(1).) Similarly, a tobacco product flavor enhancer is “a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.” (*Id.*, subd. (a)(18).)

B. Assembly Bill 3218

Assembly Bill 3218 amended the flavor ban put in place by Senate Bill 793 and expanded on it. (Bus. & Prof. Code, §§ 22978.3, 22980, 22990; Health & Saf. Code, §§ 104559.1, 104559.5; Rev. & Tax. Code, § 30101.7.) It established the Unflavored Tobacco List (UTL), a list of covered tobacco products that are permissibly unflavored under the law. (Health & Saf. Code, § 104559.1, subd. (a).) Products not appearing on the list will be subject to seizure, and the Attorney General, the California Department of Public Health, and state and local law enforcement agencies are authorized to seek civil penalties against retailers of products not appearing on the list. (Health & Saf. Code, §§ 104559.1, subd. (g), 104559.5, subd. (b)(1); Bus. & Prof. Code, § 22974.2, subd. (a).) The Attorney General may also seek civil penalties against distributors, wholesalers, and delivery sellers for violations. (Health & Saf. Code, § 104559.1, subd. (o)(3).) Furthermore, the bill revised the definition of characterizing flavor to specifically incorporate cooling sensations distinguishable by an ordinary consumer. (Health & Saf. Code, § 104559.5, subd. (a)(1).)

The Legislature required the Attorney General to establish the UTL on or before December 31, 2025, and authorized the Department to promulgate emergency regulations to implement Assembly Bill 3218. (Health & Saf. Code, § 104559.1, subd. (q).) The Department completed emergency rulemaking to establish the procedure for manufacturers and importers to apply for the placement of their products on the UTL. (See OAL Matter No. 2025-0814-01.)

Effect of the Proposed Rulemaking:

This proposed rulemaking describes how manufacturers and importers of unflavored tobacco products may apply for the placement of their products on the UTL, what information those manufacturers and importers must provide, and the timing for applications and responses. The rulemaking also establishes fees for initial and renewed placement on the list. Finally, it describes how civil penalties against distributors, wholesalers, and delivery sellers of products not appearing on the UTL may be assessed and appealed.

Anticipated Benefits of the Proposed Regulations:

By implementing the UTL, this rulemaking will aid with enforcement and seizure of illegal flavored tobacco products by providing clarity on what products are permissibly unflavored. This will benefit the health and welfare of California residents by reducing the amount of youth-appealing flavored tobacco products available on the market. It will also provide clarity to manufacturers, importers, distributors, wholesalers, and retailers regarding what products are “unflavored” under state law and may be sold (provided such products comply with other applicable laws), allowing these entities to market or purchase products with more certainty.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern flavored tobacco products.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION**The Department’s Initial Determinations:**

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The fees collected will be used to offset the costs incurred by the Attorney General for processing UTL applications, and operating and maintaining the UTL.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business:

The Department is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action.

The regulations require manufacturers and importers to apply for placement of their unflavored tobacco products to the UTL, and to renew that placement annually. With the exception of variants, manufacturers and importers must send the Department a product sample with their application, and if the product has an associated carton or roll, a sample of the carton or roll.

The application fee is \$300 for products submitted on the product form (under Section 945 of the proposed regulations) and \$150 for products submitted on the variant form (under Section 946 of the proposed regulations). Placement on the UTL must be renewed each year. The per-product renewal fee is \$150.

Taking into account the time needed to fill out a product, variant, or renewal application, and applicable shipping costs to provide a product sample, the average estimated cost to apply for UTL placement per application type is:

- Product: \$300 registration fee + \$10 sample at \$30 shipping cost + \$25 application preparation time = \$365
- Product with associated carton or roll: \$300 registration fee + \$10 product sample at \$30 shipping cost + \$100 carton/roll at \$60 shipping cost + \$25 application preparation time = \$525
- Variant: \$150 registration fee + \$12.50 application preparation time = \$162.50
- Renewal: \$150 registration fee + \$8.33 application preparation time = \$158.33

Under the regulations, the Attorney General will exclude a product from the UTL under subdivision (e) of Health and Safety Code section 104559.1 when the manufacturer or importer is required to obtain, but has not received, a formal authorization, approval, or order from the FDA under 21 U.S.C. section 387e(j) or 387j. The impact from exclusion of these products is, in part, attributable to federal law: the excluded products are adulterated and/or misbranded and therefore already illegal under federal law. (See 21 U.S.C. § 331(a) [prohibiting the introduction into interstate commerce of any tobacco product that is adulterated or misbranded].)

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that that the proposed action will

not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations and enabling statute do not prohibit in-state manufacturers and distributors from possessing flavored tobacco products for the purpose of distribution outside of California.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, and (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents. By identifying all covered tobacco products that are permissibly unflavored under California's flavored tobacco restrictions, the proposal will equip sellers and enforcement agencies to more effectively identify illegally flavored products. These prohibited products appeal to minors and nonsmokers, initiate nonusers, and impede cessation.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement: None.

Small business determination: The Department has determined that this proposed action affects small businesses because some tobacco product Manufacturers and Importers that submit their products to the Unflavored Tobacco List will be small businesses.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346.5, subdivision (a)(13), requires that the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Department has determined that the proposed regulation is the most effective and least burdensome way for the Department to determine those tobacco products that lack a characterizing flavor and are eligible for placement on the Unflavored Tobacco List.

Alternatives to the proposed regulation that the Department itself considered are described in the Initial Statement of Reasons.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Tobacco Unit
Attn: Taylor Ann Whittemore
1515 Clay Street
P.O. Box 70550
Oakland, CA 94612
(510) 879-3310
UTLregulations@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
Tobacco Unit
Attn: Byron Miller
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 210-7353
UTLregulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/tobacco/flavorban/regulations>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any

modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at <https://oag.ca.gov/tobacco/flavorban/regulations>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/tobacco/flavorban/regulations>.