

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 11. UNFLAVORED TOBACCO LIST

JANUARY 30, 2026

FINDING OF EMERGENCY

On August 25, 2025, the Department of Justice (Department) adopted emergency regulations, Title 11, Division 1, Chapter 11, Sections 942 through 957, regarding the establishment, maintenance, and enforcement of a list of unflavored tobacco products pursuant to Assembly Bill 3218, which required the Attorney General to establish and maintain an unflavored tobacco products list on or before December 31, 2025. The emergency regulations expire on February 24, 2026.

Pursuant to the requirements of Government Code section 11346.1, subdivision (a)(1), the Department is providing notice of proposed emergency readoption of Title 11, Division 1, Chapter 11, Sections 942 through 957. The Department finds that an emergency continues to exist, and that the readoption of Title 11, Division 1, Chapter 11, Sections 942 through 957 is necessary to avoid serious harm to the public peace, health and safety, and welfare.

SUBMISSION OF COMMENTS

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the Department provide a notice of proposed emergency action (Finding of Emergency) and Proposed Text to every person who has filed a request for notice of regulatory action with the Department. After submission of the proposed emergency regulation to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6.

The Proposed Text of the emergency regulation and the Finding of Emergency are posted on the Department's website at <https://oag.ca.gov/regulations>.

The Department plans to file the emergency rulemaking package with the OAL at least five working days from the date provided at the top of this notice. If you would like to comment on the Finding of Emergency or the Proposed Text, those comments must be made in writing only, must contain a notation that identifies the emergency regulation to which they relate, and must be received by both the Department and the OAL within five calendar days of the Department's filing with the OAL. The Department may respond to comments at its discretion.

Send comments simultaneously to:

Department of Justice

Taylor Ann Whittemore
1515 Clay Street, P.O. Box 70550
Oakland, CA 94612
UTLregulations@doj.ca.gov

and

Office of Administrative Law

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Sacramento, CA 95814
Fax: (916) 445-9515
staff@oal.ca.gov

STATEMENT REGARDING COMPLIANCE WITH GOVERNMENT CODE SECTION 11346.1(e)

The Department has made substantial progress and proceeded with diligence toward compliance with Government Code section 11346.1, subdivision (e). The Department completed the proposed text of the regulations and initiated the process to adopt those regulations by regular rulemaking. The Notice of Proposed Rulemaking for the permanent regulations was published on November 7, 2025. The Department has completed the 45-day comment period and is currently reviewing the public comments received and identifying any necessary modifications to the regulatory text. A readoption of the emergency regulations is necessary because the Department will not be able to complete the permanent rulemaking process before the emergency regulations expire on February 24, 2026.

STATEMENT REGARDING EMERGENCY CIRCUMSTANCES SINCE THE ADOPTION OF EMERGENCY REGULATIONS

The Department finds it necessary to readopt these emergency regulations because the circumstances demonstrating the existence of an emergency are unchanged since the initial adoption of the emergency regulations.

The proposed regulations are, by legislative mandate, deemed emergency regulations necessary for the immediate preservation of the public health, safety, and welfare under the governing statute. (Health & Saf. Code, § 104559.1, subd. (q).)

To avoid serious harm to the public health, safety, and welfare, readoption of the emergency regulations is critical. Assembly Bill 3218, which went into effect on January 1, 2025, required the Attorney General to establish and maintain the UTL on or before December 31, 2025, identifying products that are permissibly unflavored under California's flavored tobacco restrictions.

As required by Health and Safety Code, section 104559.1, subd. (a), the Attorney General continues to maintain the published UTL, and the UTL is now the cornerstone of California's flavored tobacco enforcement. The re-adoption of the emergency rulemaking provides the

necessary, ongoing framework for UTL maintenance by detailing the application process for placement on the UTL, the renewal process to remain on the UTL, required product information, and critical response timelines for manufacturers and importers, thereby ensuring the list remains current and accurate.

INFORMATION 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).)

Through Assembly Bill 3218, the Legislature required the Attorney General to establish the UTL on or before December 31, 2025, and to continue to maintain the UTL thereafter. (Health & Saf. Code, § 104559.1, subd. (a).) The Legislature authorized the Department to promulgate emergency regulations to implement Assembly Bill 3218. (Health & Saf. Code, § 104559.1, subd. (q).) The Department’s emergency regulations became effective August 25, 2025, and will expire on February 24, 2026. (See OAL Matter No. 2025-0814-01.)

Effect of the Proposed Rulemaking:

This rulemaking implements Assembly Bill 3218 (Health & Saf. Code, § 104559.1). It 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 aids 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 also provides 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 the proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that the 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.

SPECIFIC FACTS DEMONSTRATING NEED FOR IMMEDIATE ACTION

Immediate action is necessary for the preservation of the public health, safety, and welfare under the governing statute. (Health & Saf. Code, § 104559.1, subd. (q).)

After finding that “many tobacco product manufacturers do not disclose whether their products are flavored [and] it is difficult for government agencies, distributors, wholesalers, retailers, and consumers to identify whether tobacco products are flavored without actually using the products,” Stats. 2024, Ch. 849 (Assem. Bill No. 3218), § 1, subd. (d), the Legislature decided to establish a single public list of saleable unflavored tobacco products and tasked the Attorney General with making and maintaining that list. (*Id.*, § 1, subd. (e); Health & Saf. Code, § 104559.1, subd. (a)(1).) This law, Assembly Bill 3218, Stats. 2024, Ch. 849 (Assem. Bill No. 3218), codified at Health & Safety Code sections 104559.1, 104559.5, and scattered sections of the Business & Professions Code, requires the development and publication of the list “on or before December 31, 2025.”

Assembly Bill 3218 further directs the Attorney General to promulgate emergency regulations “the Attorney General deems necessary to implement the purposes of [Health & Safety Code section 104559.1],” not simply the initial publication of a list on December 31, 2025. (Health & Saf. Code, § 104559.1, subd. (q).). “The regulations adopted to implement [Health & Safety Code section 104550.1] are emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public health, safety, and welfare.” (*Ibid.*)

Immediate action is required to avoid serious harm to the public peace, health and safety, and welfare because Assembly Bill 3218, which went into effect on January 1, 2025, required the Attorney General to establish the UTL on or before December 31, 2025, and to continue to maintain and enforce that list. The re-adoption of the emergency rulemaking provides the necessary, ongoing framework for continued maintenance of the UTL by detailing the application process for placement on the list, renewal process to remain on the list, required product information, and critical response timelines for manufacturers and importers, thereby ensuring the list remains current and accurate. Similarly, re-adoption of the emergency regulations provides the necessary framework for enforcement: the UTL itself identifies those products that are legal for sale in California, and the regulations also provide an administrative process for issuing and appealing penalties against wholesalers, distributors, and delivery sellers that sell products not appearing on the list.

The Department seeks to readopt the emergency regulations adopted on August 25, 2025, without amendment, and hereby incorporates the prior rulemaking record (OAL Matter No. 2025-0814-01), which includes the purpose and necessity of each provision of the regulations.

RELIED ON DOCUMENTS

List each technical, theoretical, and empirical study, report, or similar document, if any, upon which the Department relied.

Food & Drug Administration, “Market and Distribute a Tobacco Product,” <<https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product>> (as of July 9, 2025).

U.S. Food and Drug Administration, “Tobacco Product Marketing Orders,” <<https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders>> (as of July 9, 2025).

U.S. Food and Drug Administration, “Requirements for Products Made with Non-Tobacco Nicotine Take Effect April 14,” <[https://www.fda.gov/tobacco-products/ctp-newsroom/requirements-products-made-non-tobacco-nicotine-take-effect-april-14#:~:text=Further%2C%20manufacturers%20of%20NTN%20products,%2C%20May%2013%2C%202022\).>](https://www.fda.gov/tobacco-products/ctp-newsroom/requirements-products-made-non-tobacco-nicotine-take-effect-april-14#:~:text=Further%2C%20manufacturers%20of%20NTN%20products,%2C%20May%2013%2C%202022).>)> (as of July 9, 2025).

U.S. Food and Drug Administration, “Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products,” <<https://www.fda.gov/tobacco-products/products-ingredients->

[components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products#:~:text=In%20response%20to%20the%20increase,any%20source%2C%20including%20synthetic%20nicotine.>](#) (as of July 9, 2025).

U.S. Food and Drug Administration, “Tobacco Product Marketing Orders,” <
[https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders#:~:text=A%20pre%2Dexisting%20tobacco%20product%20is%20any%20tobacco%20product%20\(including,on%20E2%80%9D%20or%20before%20that%20date.>](https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders#:~:text=A%20pre%2Dexisting%20tobacco%20product%20is%20any%20tobacco%20product%20(including,on%20E2%80%9D%20or%20before%20that%20date.>) (as of July 9, 2025).

U.S. Food and Drug Administration, “Pre-Existing Tobacco Products,” <
<https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/pre-existing-tobacco-products>> (as of July 9, 2025).

AUTHORITY AND REFERENCE CITATIONS

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.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following 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 the submissions 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.