

HEALTH REGULATION # 18
ELECTRONIC SMOKING DEVICE REGULATION



Adopted by the Tooele County Board of Health
September 30, 2014

Under Authority of Sections 26-23-6 and
26A-1-123 of Utah Code

Certified Official Copy
Tooele County Health Department

By: _____

Director

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**TOOELE COUNTY HEALTH DEPARTMENT
REGULATION FOR ELECTRONIC SMOKING DEVICES**

1.0 PURPOSE

The purpose of this regulation is to protect the public health, safety, and welfare of residents and employees by establishing practices and provisions for the sale of electronic cigarette product and electronic cigarette substance; and the safe preparation and handling of E-Liquid components in Tooele County.

2.0 SCOPE

This regulation applies to ESDs, and E-Liquid sampled, sold and/or manufactured in incorporated and unincorporated areas of Tooele County. Requirements for ESDs are consistent with and support all applicable state and federal laws.

3.0 AUTHORITY AND APPLICABLE LAWS

- 3.1 This regulation is adopted under the authority of the Tooele County Board of Health in accordance with Section 26A-1-121 of the Utah Code Annotated.
- 3.2 Title 26 Section 38: Utah Indoor Clean Air Act of the Utah Code Annotated, is hereby adopted, and incorporated by reference subject to the additions, modifications and exceptions set forth in this regulation.
- 3.3 Title 26 Section 62-103: The regulation of a tobacco retailer is an exercise of the police powers of the state, and through delegation, to other governmental entities
- 3.4 Title 76 Section 10-105: Buying or possessing a tobacco product or an electronic cigarette product by any person under 21 years of age the Utah Code Annotated, is hereby adopted, and incorporated by reference.

4.0 DEFINITIONS

- 4.1 DEPARTMENT: The Tooele County Health Department.
- 4.2 ELECTRONIC CIGARETTE PRODUCT (ESD): An electronic and/or battery-operated device, the use of which may resemble smoking that can be used to

deliver an inhaled dose of nicotine or other substances. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. Including an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.

- 4.3 ELECTRONIC CIGARETTE SUBSTANCE: Any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.
- 4.4 E-LIQUID COMPONENTS: The ingredients used in making E-Liquid including, but not limited to propylene glycol (PG), vegetable glycerin (VG), nicotine, and flavorings.
- 4.5 GOOD HYGIENIC PRACTICES: General activities that include, but are not limited to, washing hands, covering open wounds or abrasions, not working when experiencing signs or symptoms of an illness, keeping work areas clean and free from food and drink, etc.
- 4.6 MANUFACTURING: Process that includes, but is not limited to, mixing, re- packaging and/or re-sizing E-Liquid.
- 4.7 MANUFACTURING FACILITY: Any business within Tooele County that manufactures, repackages, or resizes E-Liquid for sale or for resale.
- 4.8 NICOTINE: A poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or other plants.
- 4.9 PREPARATION AREA: Physical location in which E-Liquid Components are mixed, repackaged, or resized for sale to the consumer.
- 4.10 SAFETY PRECAUTIONS: General activities that include, but are not limited to, wearing gloves, wearing eye protection, using equipment that is in good repair, cleaning up spills, access to a first aid kit, etc.
- 4.11 SAMPLING: Demonstrating to the potential purchaser of an ESD how to use the device, or the customer sampling an E-Liquid sold for use in an ESD.
 - 4.12.1 UNITED STATES PHARMACOPEIA (USP) STANDARDS: Written standards for medicines, food ingredients, dietary supplement products and ingredients. These standards are used by regulatory agencies and manufacturers to help ensure products are of the appropriate identity, as well as strength, quality, purity, and consistency.

5.0 REGULATION

5.1 1 E-LIQUID FOR SALE IN TOOELE COUNTY

- 5.1.1 PACKAGING - The retailer shall ensure that the packaging of a non-manufacturer sealed electronic cigarette substance intended for sale to a consumer is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention. The retailer shall sell non-manufacturer sealed electronic cigarette substances and manufacturer sealed electronic cigarette products in the product's original packaging. The retailer shall be prohibited from repackaging or dispensing any non-manufacturer sealed electronic cigarette substance or any manufacturer sealed electronic cigarette product for retail sale. The retailer shall be prohibited from refilling a manufacturer sealed electronic cigarette product that is not intended to be opened by a retailer or a consumer.
- 5.1.2 LABELING- The retailer shall ensure that a nicotine containing non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette product offered for sale to the consumer features on the product package label the required safety warning stating "WARNING: This product contains nicotine. Nicotine is an addictive chemical." The required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows: (a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels; (b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text; (c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package; (d) be capitalized and punctuated as indicated in Subsection (1); (e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation. (3) The retailer shall ensure that a non-manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets." (4) The safety warning statements required in Subsection (3), the required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows: (a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels; (b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text; (c) be printed in conspicuous and legible Helvetica bold or

Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, consistent with the other printed material on the package; (d) be capitalized and punctuated as indicated in Subsection (3); and (e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation. (5) A retailer will not be in violation of this section for packaging that: (a) contains a health warning; (b) is supplied to the retailer by the electronic cigarette product manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and (c) is not altered by the retailer in a way that is material to the requirements of this section. (6) A non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette product package that would otherwise be required to bear the safety warning in Subsection (1) or (3) but is too small or otherwise unable to accommodate a safety warning label with sufficient space to bear such information is exempt from compliance with the requirement provided that: (a) the information and specifications required in Subsection (1) and (3) appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or (b) appear on a tag otherwise firmly and permanently affixed to the non-manufacturer sealed electronic- cigarette substance package or the manufacturer sealed electronic cigarette product package. (7) In the case of Subsection (6)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels. (8) The retailer shall ensure that an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed.

5.1.3 NICOTINE CONTENT- (1) The retailer shall be prohibited from selling a non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette product to the consumer if the product is not compliant with the following: (a) the nicotine concentration for a non-manufacturer sealed electronic cigarette substance is limited to 360 mg nicotine per container, or does not exceed a 24mg/mL concentration of nicotine; and (b) the nicotine concentration for a manufacturer sealed electronic cigarette product is limited: (i) to 5% nicotine by weight per container, or does not exceed a 59mg/mL concentration of nicotine, effective July 1, 2021; 3% nicotine by weight per container, or does not exceed a 36mg/mL concentration of nicotine.

5.1.4 Section 5.1 shall not apply to E-Liquid sold in pre-filled ESD products or sealed manufacturer sealed electronic cigarette products (as defined in 26-57-102(7)), prefilled electronic cigarettes, disposable replacement cartridges or pods for use in ESDs.

5.2 ESD AND E-LIQUID ADVERTISING

5.2.1 Retailer websites, social media pages, or in-store advertisements shall not make any health or therapeutic claims such as ESDs and/or use of E- Liquid

are a healthy alternative to smoking. A person may not advertise an electronic cigarette product as a tobacco cessation device

5.2.2 Retailer websites, social media pages, or in-store advertisements shall not make any claims that ESDs and/or use of E-Liquid are a smoking cessation product.

5.3 YOUTH ACCESS IN TOOELE COUNTY

5.3.1 The selling of E-Liquid to any person under 21 years of age is prohibited.

5.3.2 The possession of E-Liquid by any person under 21 years of age is prohibited.

5.3.3 ESDs and E-Liquid shall not be directly accessible to persons under 21 years of age.

5.4 E-LIQUID MANUFACTURING FACILITIES IN TOOELE COUNTY

5.4.1 E-Liquid Manufacturing Facilities within Tooele County must obtain an ESDs and E-Liquid Operating Permit from the Department.

5.4.2 Sanitation and Safety

5.4.2.1 E-Liquid preparation surfaces must be smooth, non-absorbent and easily cleanable.

5.4.2.2 Floors, walls and ceilings in Preparation Area must be smooth, non-absorbent, and easily cleanable.

5.4.2.3 All E-Liquid preparation equipment shall be easily cleanable and in good repair.

5.4.2.4 Individuals preparing E-Liquid shall use Good Hygienic Practices and take proper Safety Precautions.

5.4.2.5 Drinking, eating, vaping or smoking is not permitted in the Preparation Area.

5.4.2.6 No persons under the age of 21 or animals shall be permitted in the Preparation Area.

5.4.2.7 E-Liquid Components shall be stored to prevent contamination and/or spillage.

5.4.2.8 Nicotine shall be stored in a manner to prevent contamination of Preparation Areas, equipment, supplies and other E-Liquid Components.

5.4.3 Operating Procedures

- 5.4.3.1 Standard Operating Procedures (SOPs) for manufacturing E- Liquids shall be written and must incorporate Good Hygienic Practices and Safety Precautions. SOPs shall be made available to the Department upon request. Employees shall be trained on all SOPs and training logs shall be maintained. Logs shall be made available to the Department upon request.
- 5.4.3.2 Employees shall be trained on all SOPs and training logs shall be maintained. Logs shall be made available to the Department upon request

5.4.4 Quality and Safety of E-Liquid Components

- 5.4.4.1 The retailer shall provide the non-manufacturer sealed electronic cigarette substance transaction statements or manufacturer sealed electronic cigarette product transaction statements to the Department or the local health department within 14 calendar days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that: (a) the labeling requirements are compliant with Section R384-415-3; (b) the nicotine content of a non-manufacturer sealed electronic cigarette substance is compliant with Subsection R384- 415-5(1)(a) and the nicotine content of a manufacturer sealed electronic cigarette product is compliant with Subsection R384-415- 5(1)(b); (c) the packaging requirements are compliant with Section R384-415-6; and (d) the product quality requirements are compliant with Section R384-415-7. (2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within 14 calendar days of a request. (3) The retailer shall have access to the documents described in Subsections R384-415-8(1) and R384-415-8(2) for a period of two years after the retailer purchases the non-manufacturer sealed electronic cigarette substance or the manufacturer sealed electronic cigarette product.

5.5 SAMPLING FACILITIES INTOOELE COUNTY

- 5.5.1 All facilities will prohibit from distributing free samples of Tobacco Products. Prohibit sampling for all businesses and manufacturers – in accordance with federal regulations prohibiting sampling that includes e-cigarettes.

6.0 PENALTY

6.1 Criminal Penalties

- 6.1.1 In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-57.103, the local health departments shall comply with the enforcement requirement in Title 26, Chapter 62 Part 3. Which states: PENALTIES- On a first violation at a retail location, impose a penalty of

\$1,000;

On a second violation at the same retail location that occurs within one year of previous violation, impose a penalty of \$1,500;

If a violation is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101 for the sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual under 21 years old, the enforcing agency shall:

- (a) on the first violation:
 - (i) impose a fine of \$5,000; and
 - (ii) immediately suspend the permit for 30 consecutive days

6.2 Civil and Administrative Penalties

6.2.1 Violations of this regulation shall be subject to the Department's Adjudicative Hearing Procedures and may result in suspension or revocation of the ESDs and E-Liquid Operating Permit

7.0 SEVERABILITY

In the event any court of competent jurisdiction should declare any particular clause or sentence of this regulation invalid or unconstitutional, the remaining portions shall remain in full force and effect. Toward that end, the provisions of these regulations are declared to be severable.

8.0 FEES

Annual operating permit fees will be established by the Board of Health.

IN WITNESS WHEREOF, the Tooele County Board of Health has passed, approved and adopted this regulation this 22nd day of March, 2022.

ATTEST:

TOOELE COUNTY BOARD OF HEALTH

JEFF R. COOMBS,
Health Officer

TOM TRIPP,
Chairperson