



**Utah County Board of Health
Findings of Fact in support of Amending the Regulation for Tobacco Retailer Permitting
Eric Edwards, Health Officer**

Pursuant of Utah Code Annotated 26A-1-121(1), The Utah County Board of Health (“Board”) held an open and public on November 22, 2021, and January 24, 2022, to receive public comments concerning adoption of an amendment to the Utah County Health Department Regulation for Tobacco Retailer Permitting (“Regulation”).

The proposed amendment to the Regulation will protect the public health, safety, and welfare of Utah County residents and employees, by establishing requirements and provisions for tobacco sales and permitting. The proposed regulation will:

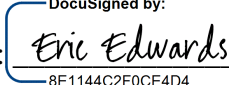
- Require tobacco retailers to keep the “itemized transaction log” required under Utah Code § 26-62-206(1)(b) in an electronic format. Currently, Utah law does not require these transaction logs be kept in an electronic format. The proposed amendment is more stringent than current Utah law, and therefore must satisfy Utah Code § 26A-1-121(1)(c).

Findings

The Board hereby finds, based on the attached evidence, that current Utah law is not adequate to protect public health and environment of the state inasmuch as under current law, tobacco retailers are able to maintain “itemized transaction logs” in other formats which significantly waste Department resources which could otherwise be allocated to protecting public health and the environment of the State. The proposed change requires best business practices which promote public health. The Department did not receive any comments in writing during the public comment period pertaining to the proposed amendment.

Certification:

I, Eric Edwards, Health Officer, attended the public hearings for the Board pertaining to the adoption of this proposed amendment to the Regulation and have approved these findings.

Signed: 
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Date: 1/28/2022



Utah County Health Department – Evidence in support of Amending the Regulation for Tobacco Retailer Permitting

Eric Edwards, Health Officer

Findings of Fact:

- In December of 2019, UCHD conducted an audit of a store who applied for and received a general tobacco permit but was suspected of not meeting the shelf/floor space and sale requirements to be a general tobacco retailer and was operating more as a retail tobacco specialty business.
- In order to determine if gross tobacco sales were under the 35% limit for that permit type, UCHD requested itemized transaction log and receipts for September 1, 2019 - November 30, 2019. The store provided an excel spreadsheet with each month's totals by non-tobacco and tobacco categories. We asked for an itemized list of receipts so we would be able to ensure products determined as tobacco versus non-tobacco products were accurately categorized. The proprietor had a difficult time providing this information and ended up providing hand-written documents of daily transactions.
- This resulted in concerns of the accuracy of the receipt information, and inefficient use of tobacco team staff time to analyze the data.
 - Due to the incomplete records, the inspector, program manager, and attorney ended up visiting the retailer three different days to request better information and go over results. The time for the inspector to process, data enter, and analyze the financial records that were provided hand-written took many more hours than if the records had been provided in an organized electronic format.
 - 3 staff 3 visits = 9 hours time
 - 1 staff analyzing the data = 50 hours
 - The retail store employee admitted to having dyslexia, losing the records and finding them, and messing up transaction entries sometimes and having to scribble them out. Human error could lead to inaccurate reporting with hand-written record keeping.
 - UCHD staff are using the records in order to determine if the store is selling tobacco products under the allowed amount of 35% of their gross sales. Having hand-written and personally kept records would allow for easy tampering of data to meet the 35% or less sales requirement and to maintain a general tobacco permit, which allows you to be located within 1,000 feet of community locations such as schools, parks, libraries, etc, and within 600 feet of residential areas.

- Inaccuracies were found between the aggregate data originally provided in the excel spreadsheet and what was calculated from the hand-written itemized transaction log.
 - According to handwritten report, September tobacco sales accounted for 36% of the month's total, compared to 32% from the first set of data we received.
 - There were 11 consecutive days in which sales for e-liquid was zero, which is suspicious, given the name of the store.
 - The total sum of sales for the day did not match between the two reports on 5 separate dates.
 - Different categories had different total amounts between the second and third reports
 - In September, the total sum of water pipe sales came to \$1,010.29, but it was originally reported to be \$556.75.
 - In October, the total sum of water pipe sales came to \$25.73, but it was originally reported to be \$688.99.
 - In November, the total sum of water pipe sales came to \$27.86, but it was originally reported to be \$568.95
 - In September, the total sum of cigarettes sale came to \$275.50, but it was originally reported to be \$255.
 - In October, there were no cigarette sold per the handwritten records, but it was originally reported to be \$189.42
 - There were many inconsistencies between the totals per item and what was reported by Pure Vapes.
 - The records for September had a different method of tracking as well as different handwriting from October and November.
 - Some of the September categories did not add up to what was originally reported.
 - October and November handwritten reports were not categorized the same way September was, making it difficult to compare with the second report Pure Vapes provided.
 - The total sales amount for all 3 months were not consistent between the second and third set of data provided.
 - There were unidentified items in October and November. Due to lack of information, they were categorized as tobacco.
 - There were lines in the handwritten records such as "condoms/coils" that had one amount only. Because of lack of differentiation, the reported amount was classified under tobacco products.
- Utah Code 26-62-206 now requires tobacco retailers to provide an itemized receipt to customers for each sale of tobacco products, e-cigarette products, and nicotine products, and to maintain an itemized transaction log for each sale of these products to include the name, amount charged, and date and time of sale and to maintain the log for one year after the date of the transaction. The log also must be made available to the enforcing agency at their request.