WEBER-MORGAN HEALTH DEPARTMENT

Regulation for

Retail Sales of E-cigarettes, Electronic Nicotine Delivery Systems, Electronic Nicotine Delivery Systems Paraphernalia and E-liquid, and the Manufacturing of E-Liquid

Adopted by the Weber-Morgan Board of Health

October 27, 2014

Under Authority of Section 26A-1-121, Utah Code Annotated, 1953, as amended; and

By _____
Brian Bennion, Director, Weber-Morgan Health Department

By _____
Neil Garner, Chair, Weber-Morgan Board of Health

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1.0 TITLE AND PURPOSE

These standards shall be known as the Retail Sales of E-cigarettes, Electronic Nicotine Delivery Systems (ENDS), ENDS Paraphernalia and E-liquid, and the Manufacturing of E-Liquid Regulation, hereinafter referred to as "this Regulation".

It is the purpose of this Regulation to protect the public health, safety and welfare of Weber and Morgan County residents and employees, by establishing requirements and provisions for the sale of E-cigarettes, Electronic Nicotine Delivery Systems (ENDS), ENDS Paraphernalia and E-liquid; and the safe preparation and handling of the E-Liquid components.

2.0 AUTHORITY AND JURISDICTION OF THE DEPARTMENT

2.1 The Weber-Morgan Board of Health is authorized to make standards and regulations pursuant to Section 26A-1-121(1) of the Utah Code Annotated, 1953 as amended.

2.2 The Weber-Morgan Board of Health is authorized to establish and collect fees pursuant to Section 26A-1-114 and Section 26-38-1 et. seq. of the Utah Code Annotated, 1953 as amended.

2.3 The Weber-Morgan Board of Health is authorized to establish and collect monetary penalties pursuant to Section 26-38-1 et. seq. of the Utah Code Annotated, 1953 as amended.

2.4 All fees shall be set by the Board of Health. The Department may charge additional fees for enforcement and follow-up inspections as set by the Board of Health.

3.0 DEFINITIONS

For the purpose of this Regulation, the following words and phrases, when used herein, except as otherwise required by the context, have the following meanings.

3.1 **"Audit"** means a procedure performed by Department personnel that includes but is not limited to, inspection of facilities retail and preparation areas, review of required records, compliance checks, review of personnel working knowledge and training, and taking samples of E-liquid. The audit procedures are intended to ensure compliance with this regulation and department policies and procedures;

3.2 **"Board of Health"** means the Weber-Morgan Board of Health.

3.3 **"Business"** means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for purposes that include profit-making.

3.4 **"Department"** means the Weber-Morgan Health Department.

3.5 "**E-Cigarette**" means any electronic oral device that provides a vapor of nicotine or other substance and which simulates smoking through its use or through inhalation of the vapor through the device; and includes an oral device that is composed of a heating element, battery, or electronic circuit and marketed, manufactured, distributed or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor, if the function of the product meets the definition of an electronic oral device.

3.6 **"E-Liquid"** means a liquid product that is vaporized and inhaled when using an Electronic Nicotine Delivery Systems. Also referred to as, but not limited to, E-Juice or Smoke Juice.

3.7 **"E-Liquid Components"** means the ingredients used in making E-Liquid including, but not limited to propylene glycol (PG), vegetable glycerin (VG), nicotine, and flavorings.

3.8 "**Electronic Nicotine Delivery System (ENDS)**" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "Electronic Nicotine Delivery System" 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. "Electronic Nicotine Delivery System" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

3.9 **"Electronic Nicotine Delivery System Paraphernalia"** means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Nicotine Delivery System batteries, Electronic Nicotine Delivery System chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Nicotine Delivery System product.

3.10 **"Employee"** means any Person who is employed or retained as an independent contractor by any Employer or Nonprofit Entity in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer or Nonprofit Entity.

3.11 **"Employer"** means any Business or Nonprofit Entity that retains the service of one or more Employees.

3.12 **"Health Officer"** means and includes the Health Officer of the Weber-Morgan Health Department, his/her deputy, or other designated officer.

3.13 **"Good Hygienic Practices"** means the activities to prevent the transmission of disease and contamination of work spaces 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.

3.14 **"Good Manufacturing Practices"** means the practices required in order to conform to guidelines recommended by agencies that control authorization and licensing for manufacture and sale of food, drug products, and active pharmaceutical products. These guidelines provide minimum requirements that a pharmaceutical or a food product manufacturer must meet to assure that the products are of high quality and do not pose any risk to the consumer or public.

3.15 "**Manufacturing**" means the process that includes, but is not limited to, mixing, re-packaging, and/or re-sizing E-Liquid.

3.16 **"Manufacturing Facility"** means any business within Weber or Morgan counties that manufactures, repackages, or resizes E-Liquid for sale or for resale.

3.17 **"Nicotine"** means an alkaloid derived of tobacco and other plants, or produced synthetically which has addictive and other physiological effects when ingested or inhaled.

3.18 "**Nominal Cost**" means the cost of any item imposed for the transfer from one person to another for less that the total of 25% of the fair market value of the item exclusive of taxes or government fees; plus all taxes and government fees previously paid and all taxes and government fees still due on the item at the time of transfer.

3.19 **"Nonprofit Entity"** means any entity that meets the requirements of Title 16, Section 6a-102 of Utah State Code, as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this regulation.

3.20 "**Nonsale Distribution**" means to give, furnish, or cause or allow to be given or furnished within the jurisdictional limits of the Weber-Morgan Health Department, an E-cigarette, Electronic Smoking Device, Electronic Smoking Device Paraphernalia or E-liquid at no cost or at Nominal Cost to a Person who is not a Retailer.

3.21 "**Permit**" means the document issued by the Weber-Morgan Health Department that authorizes a Person to operate a business that offers the retail sale of E-cigarettes, Electronic Nicotine Delivery Systems (ENDS), ENDS Paraphernalia and E-liquid, and/or, the manufacturing of E-Liquid.

3.22 **"Person"** means any natural person, Business, cooperative association, Employer, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

3.23 **"Preparation Area"** means the physical location in which E-Liquid Components are mixed, repackaged, or resized for sale to the consumer.

3.24 **"Public Place"** means any place within the Weber-Morgan Health District, public or private, that is open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, and buses, and means any place used by a membership association or club at which non-member guests are present or permitted, including, for example and without limitation, fraternity and sorority houses.

3.25 **"Retailer"** means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, E-cigarette, ENDS, or ENDS Paraphernalia. "Retailing" means the doing of any of these things. This definition is without regard to the quantity of the E-cigarette, ENDS or ENDS Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

3.26 **"Safety Precautions"** mean the activities that prevent or limit the risk of harm or injury to an Employee 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, fire extinguisher, etc.

3.27 **"Sampling"** means demonstrating to the potential purchaser of an E-cigarette or ENDS, how to use the device, or the customer sampling an E-Liquid sold for use in an E-cigarette or ENDS.

3.28 **"Self-Service Display"** means the open display or storage of E-cigarettes, ENDS or ENDS Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of a Retailer or Employee of a Retailer and a direct person-to-person transfer between a Retailer or Employee of a Retailer and any other Person. A vending machine is a form of Self-Service Display.

3.29 **"Smoking"** means engaging in an act that generates smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

3.30 **"United States Pharmacopeia (USP) Standards"** means the 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.

3.31 **"Vaping"** means engaging in the act of creating an E-Liquid vapor by using an Electronic Nicotine Delivery System.

4.0 SCOPE

This regulation applies to E-cigarette, ENDS, ENDS Paraphernalia and E-Liquid sampled, sold or offered for sale, and/or manufactured, in incorporated and unincorporated areas of Weber and Morgan Counties. It shall be unlawful for any person not to comply with any policy, procedure, regulation or ordinance promulgated

by the Board of Health, Health Officer and/or the Department unless expressly waived by this Regulation.

5.0 POWERS AND DUTIES

5.1 General Powers and Duties. The Department shall be responsible for the enforcement and administration of this Regulation and any other powers vested in it by law and shall:

5.1.1 Require the submission of information reports, plans and specifications as necessary to implement the provisions and requirements of this Regulation;

5.1.2 Issue permits, and charge fees as necessary to implement this Regulation;

5.1.3 Perform audits of any facility and issue orders and/or notices, hold hearings, levy administrative penalties and negotiate monetary penalties as necessary to effect the purposes of this Regulation;

5.1.3.1 Audits will be conducted on a random basis, not to exceed four within a twelve month period unless there is reasonable suspicion to believe the Retailer has sold, or is selling, E-cigarettes, ENDS or ENDS Paraphernalia to a person under the legal age, or violated other applicable laws.

5.1.4 When necessary take samples and make analysis to ensure that the provisions of this Regulation are met; and

5.1.5 Adopt policies and procedures necessary to ensure that the provisions of this Regulation are met and that the purposes of this Regulation are accomplished.

5.2 Suspension, Revocation, or Denial of Permits. The Department may suspend, revoke, deny or require the surrender of the Permit as a result of violations of this regulation.

5.3 The Department shall respond according to policies, procedures and this regulation, to public complaints regarding this regulation.

6.0 PROHIBITIONS

6.1 The sale of, Sampling of, or Non-Sale Distribution of E-cigarette, ENDS, ENDS Paraphernalia shall occur only in a direct, face-to-face exchange between the Retailer and the purchaser. Self-service displays and vending machines for E-cigarette, ENDS or ENDS Paraphernalia are prohibited.

6.2 The sale of E-cigarettes, ENDS, or END Paraphernalia to minors is prohibited. The sale or sampling of E-cigarette, ENDS, ENDS Paraphernalia without requiring positive identification is prohibited. No Retailer shall sell, or

cause to be sold, given or furnished and E-cigarette, ENDS or ENDS Paraphernalia to a natural Person who appears to be under the age of twenty seven (27) years without first examining identification to confirm that the recipient is at least 19 years of age.

6.3 No person shall engage in Retailing, if the person's age is below the minimum age allowed by state law for selling or possessing any tobacco product.

6.4 Nonsale Distribution is prohibited. No person, motivated by an economic or business purpose, shall engage in the Nonsale Distribution of any E-cigarette, ENDS or ENDS Paraphernalia to a minor.

7.0 E-CIGARETTE, ENDS OR ENDS PARAPHERNALIA RETAIL PERMIT REQUIREMENTS

7.1 No person shall act as a Retailer without having first obtained, for each location at which E-cigarette, ENDS or ENDS Paraphernalia retailing is to occur or otherwise, an E-cigarette, ENDS retail permit as provided in this Chapter, as well as a business license and, if applicable, a Utah State Tax Commission Tobacco Retail License.

7.1.1 No permit will be issued to authorize ENDS or ENDS Paraphernalia retailing at any place other than the fixed location approved on the application; retailing by persons on foot, at events or from vehicles is prohibited.

7.2 ENDS Retail Permit Application

7.2.1 Any person desiring a retail permit to engage in E-cigarette, ENDS or ENDS Paraphernalia retailing as provided by this Chapter shall make a written application to, and upon forms furnished by, the Department, which shall be signed by applicant or his duly authorized agent. Any person signing the application as an agent shall furnish a written authorization executed by the applicant designating the person signing the permit as the applicant's duly authorized agent for such purpose. Such authorization will remain in full force and effect until revoked by a written document signed by the applicant and filed with the Department.

A. Such application shall be verified and include the following:

1. The name, mailing address and telephone number of the applicant

2. The business name, address and telephone number of each fixed location for which an ENDS license is being sought.

3. Photo identification of the person seeking the permit.

4. If applicable, proof of Utah State Tax Commission Tobacco Retail License

5. Such other information pertaining to public health and safety as may be required by the Department, consistent with the purpose of this Chapter, this Code and applicable law.

B. The Department shall issue the Retail Permit to the applicant unless such application is incomplete or inaccurate, the application seeks authorization for Retailing by a person or location for which a suspension is in effect under this regulation or the application seeks authorization for retailing that is unlawful under this Regulation, or applicable law(s).

C. E-cigarettes, ENDS or ENDS Paraphernalia offered for sale or exchange in violation of this Regulation, are subject to an order to hold and not distribute, such as a hold order, detention order, or embargo.

7.3 Retail Permit Issuance

A. The Department shall conduct an investigation of the place of business where E-cigarettes, ENDS or ENDS Paraphernalia retailing is to occur, and if it is found that all provisions of this Regulation and all applicable laws have been and will be complied with, the Department shall issue the permit; otherwise, the application for permit shall be denied.

B. The Retail Permit shall clearly state the following on its face:

1. The legal owner(s) of the permitted premises;

2. Doing Business As (dba), if any;

3. The business and mailing address of the owner of the permitted premises;

4. The date the license was issued;

5. The permit number.

C. The Permit shall not be transferable or assignable from one person or proprietor to another or from one location to another location. If the information required in the permit application changes, a new permit is required before the business may continue to act as a retailer. For example, if a proprietor to whom a permit has been issued changes business location, that proprietor must apply for a new permit prior to acting as a retailer at the new location. Or if the business is sold, the new owner must apply for a permit for that location before acting as a retailer.

D. Possession of a valid Permit under this Regulation does not entitle the holder to engage in an activity which is otherwise prohibited by law.

8.0 E-LIQUID MANUFACTURING FACILITIES PERMIT REQUIREMENTS

8.1 E-Liquid Manufacturing Facilities within Weber or Morgan County must obtain an ENDS Permit with a manufacturing endorsement from the Department. No person shall operate a manufacturing facility without a valid permit issued by the Department. A person desiring to operate shall submit to the Department a written application for a permit on a form provided by the Department. To qualify for a manufacturing endorsement on the ENDS permit, an applicant shall:

8.1.1 Be an owner of the proposed facility or an officer of the association or corporation;

8.1.2 Comply with the requirements of this Regulation;

8.1.3 Agree to allow Department access to the facility and to provide required information;

8.1.4 Pay the permit application fee at the time the application is submitted;

8.1.5 Present a copy of a current business license relating to the facility; and

8.1.6 Other information required by the Department.

8.2 The application shall include:

8.2.1 The name, mailing address, telephone number, and signature of the person applying for the Permit and the name, mailing address, and permanent location of the facility;

8.2.2 Information specifying whether the facility is owned by an association, corporation, individual, partnership, or other legal entity;

8.2.3 The name, title, address, and telephone number of the person directly responsible for the facility;

8.2.4 A statement signed by the applicant that attests to the accuracy of the information provided in the application, and affirms that the applicant will comply with this Regulation, and allow the Department access to the facility; and

8.2.5 Other information required by the Department.

8.2.6 No permit shall be issued unless the Department finds that the facilities, tools, and equipment of the applicant comply with the requirements of this Regulation.

9.0 GENERAL PROVISIONS – PERMIT TERMS AND RENEWALS

9.1 No person shall in any way represent any place as a permitted facility unless the facility is operated under a valid Permit issued by the Department.

9.2 The Department is authorized to issue, suspend, revoke, deny or require the surrender of a Permit.

9.3 A Permit may not be transferred from one person to another person, from one facility to another facility or from one type of operation to another.

9.4 The Permit shall be posted in a conspicuous place within public view on the premises.

9.5 The Department may renew a Permit for an existing facility or may issue a Permit to a new owner of an existing facility after a properly completed renewal form is submitted, reviewed, and approved, the fees are paid, and a review shows that the facility is in compliance with this Regulation.

9.5.1 The Department shall not approve any application for issuance or renewal of a Permit for an existing facility that is under suspension until the date that the suspension has expired.

9.5.2 The Department shall not issue a Permit to a new owner of any facility where a Permit has been revoked prior to twelve months from the date of revocation.

9.5.3 If the property referenced in sections 9.5.1 or 9.5.2 is sold or leased to a new Person that is requesting a Permit, that Person may request a waiver to sections 9.5.1 or 9.5.2 from the Board of Health.

9.5.3.1 The waiver may be issued upon demonstrating that no association exists between the Person requesting the Permit and the owner/operator currently suspended or revoked, and all monetary penalties have been paid.

9.6 No Permit shall be issued unless the Department finds that the facilities, tools, and equipment of the applicant comply with the requirements of this Regulation and that competent personnel, are employed and available, and the operation thereof will be properly conducted in accordance with this Regulation.

9.7 Permit Duration and Renewal.

9.7.1 The Permit for shall be issued annually and shall expire on December 31st of each year. The Permit is renewable within sixty (60) days prior to the date of expiration.

9.7.2 It is the responsibility of the owner/operator to pursue the Permit renewal through appropriate channels.

9.7.3 The Permit fee shall be paid annually to the Department by the billing due date set by the Department.

9.7.4 Permits that have expired for more than 90 days are not renewable.

9.7.5 Prior to the date on which the Permit fee is due the Department shall attempt to notify each regulated facility of the amount of the fee. Fees unpaid after the billing due date will be assessed a late fee which shall be added to the original fee amount.

9.8 Permit Revocation and Suspension.

9.8.1 Permits may be suspended by the Department for violations of this Regulation.

9.8.2 Permits may be revoked by the Department for severe and/or repeated violations of this Regulation.

9.8.3 Permits are and remain the property of the Department, only their use and the license they represent is tendered.

9.8.4 A Permit may be suspended or revoked by the Department because of returned checks and may not be reinstated until repayment is confirmed. All returned checks will be charged a returned check handling fee.

9.8.5 A Permit may be suspended or revoked by the Department for failure to allow access to authorized Department representatives for audits or inspections.

9.9 Failure to pay the Permit fee and any additional charges after the due date may result in suspension and/or revocation of the Permit and the right to operate.

9.10 The permit applicant shall hold the Department harmless in making application for a Permit or for its renewal; such action shall constitute a declaration by the applicant that the Department shall be held harmless from liability incurred due to action or inaction of the owner or their employees.

9.11 The permit fees shall be determined according to a fee schedule adopted by the Board of Health. Fees are subject to change and may be amended as deemed necessary by the Board of Health to accomplish the purposes of this Regulation.

9.12 The Department, by the Health Officer, has the authority to perform audits, inspections, reviews or other similar actions as necessary to promulgate this regulation. No person shall refuse to allow, or hinder the activity of the authorized representatives of the department while conducting audits or inspections of permitted facilities.

9.13 During any period of permit suspension or revocation, the Retailer must remove from public view and remove sale all E-cigarette, ENDS and ENDS Paraphernalia products and related advertising.

9.14 Any person engaging in the business of distributing, selling, or offering to sell E-cigarette, ENDS, or ENDS Paraphernalia without holding a valid permit will be ineligible for a retail permit for a period of 30 days from the date of violation and may be subject to additional penalties from the department.

9.15 Violations of any tobacco-related laws shall constitute violations of the ENDS permit issued pursuant to this regulation. In addition, a violation of Utah Penal Code or any violation of the Municipal Code may subject the permit holder to suspension or revocation of their license.

10.0 MANUFACTURING REQUIREMENTS – SANITATION AND SAFETY

10.1 General Provisions. A permit holder with a manufacturing endorsement shall comply with the following requirements.

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

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

10.1.3 All E-Liquid preparation equipment shall be maintained clean and in good repair.

10.1.4 Individuals preparing E-Liquid shall use Good Hygienic Practices, follow Good Manufacturing Practices, and take proper Safety Precautions. Preparation area access restricted to employees only.

10.1.5 Work surfaces shall be cleaned and sanitized before, between preparation of batches with different nicotine concentrations, and upon completion of any manufacturing procedures.

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

10.1.7 No animals shall be permitted in the Preparation Area.

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

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

10.1.10 Material Data Safety Sheets shall be kept on premises for all E-Liquid components.

10.1.11 Chemicals not involved in the preparation of E-Liquid shall not be stored in preparation or ingredient storage areas.

10.2 Operating Procedures

10.2.1 Standard Operating Procedures (SOPs) for manufacturing E-Liquids shall be written and must incorporate Good Hygienic Practices, Good Manufacturing Practices, and Safety Precautions. SOPs shall be made available to the Department upon request.

10.2.2 Standard Operating Procedures shall include, but are not limited to;

a. A system for recalling any batch of product from sale or supply.

b. A procedure for receiving and investigating complaints.

c. A procedure for investigating causes of quality defects and the corrective action taken to prevent recurrence.

10.2.3 Employees shall be trained on all SOPs and training logs shall be maintained. Logs shall be made available to the Department upon request.

10.3 Quality and Safety of E-Liquid Components

10.3.1 E-Liquid Components including, but not limited to, propylene glycol (PG), vegetable glycerin (VG), nicotine, and flavoring must be at a minimum US Pharmacopeia (USP) grade certified, food grade, FDA approved, or equivalent.

10.3.1.1 Documentation must be available for all E-Liquid Components showing certification, approval, grade, or equivalency and shall be submitted at the time of application and annually with the permit renewal. Documentation must also be made available to the Department upon request.

10.3.2 All nicotine used in manufacturing must be USP certified and meet the following nicotine quality standards:

10.3.2.1 Nicotine purity greater than or equal to 99.0%. Total combine of all other possible contaminants less than or equal to 1.0%;

10.3.2.2 Cumulative heavy metals content cannot exceed 10 ppm;

10.3.2.3 Cumulative Arsenic content cannot exceed 1ppm;

10.3.2.4 All diluents after source pure must be USP certified thru chain of custody;

10.3.2.5 Manufacturers will maintain records that enable the manufacturer or the department to trace any individual product distributed, to the test results for nicotine content. These records shall include source nicotine content.

11.0 SAMPLING FACILITES IN WEBER OR MORGAN COUNTY

11.1 Businesses who generate 75% of their gross income from ESDs and E-Liquid are allowed to take a sampling exemption in accordance with the Utah Indoor Clean Air Act, 26-38-2.6, Utah Code Annotated.

11.2 In accordance with the Utah Indoor Clean Air Act, 26-38-2.6, Utah Code Annotated, Tobacco Specialty Retailers who allow electronic cigarette product sampling in their store cannot permit a person under the age of 19 to enter the establishment.

12.0 E-LIQUID FOR SALE IN WEBER OR MORGAN COUNTY

12.1 All containers that contain E-liquid must have child-resistant caps, be leak-proof at the time of sale and be tamper-evident.

12.2 All containers that contain E-liquid shall be labeled. The labels shall be smear resistant and clearly display the following information;

(1) Nicotine content in mg/mL or percent by volume;

(2) Manufacturer name, Location (city and state) Date of Manufacture and Batch Number;

(3) Ingredients;

(4) Safety warning stating "Keep away from children."

12.3 The Maximum allowable nicotine content shall be no greater than 36 mg/mL or 3.6% by volume.

12.3.1 Nicotine level shall not exceed a 10% variation in mg/mL from the content level indicated on the label.

12.3.2 E-Liquid labeled 0 mg/mL or 0% by volume shall have no nicotine present.

12.3.3 E-Liquid may be subject to random testing at the owner's expense, by the Department.

12.3.4 Failure to meet testing standard for nicotine may result in further sample testing at the owner's expense, recall and disposal of product, or both.

12.4 Retailers must have information readily available for the consumer explaining the difference between mg/mL and percent by volume of nicotine.

12.5 Section 12 shall not apply to E-Liquid sold in pre-filled, disposable replacement cartridges manufactured outside of the jurisdiction of the Weber-Morgan Health Department.

13.0 ADJUDICATIVE PROCEEDINGS

In accordance with the Weber-Morgan Health Department Adjudicative Proceedings, a Departmental Conference or Hearing may be requested in writing within ten (10) days of any action in which a party is aggrieved.

14.0 PENALTY

14.1 Any person who is found guilty of violating any of the provisions of this Regulation, either by failing to do those acts required herein or by doing a prohibited act, shall be guilty of a class B misdemeanor pursuant to Section 26a-1-123, Utah Code Annotated, 1953, as amended. If a person is found guilty of a subsequent similar violation within two years, he shall be guilty of a class A misdemeanor pursuant to Section 26a-1-123, Utah Code annotated, 1953, as amended.

14.2 Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any electronic cigarette to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense a class B misdemeanor on the second offense and a class A misdemeanor on subsequent offenses. Pursuant to section 76-10-104 Utah Code annotated.

14.3 Each day that a violation is committed or permitted to continue shall constitute a separate violation.

14.4 The County Attorney may initiate legal action, civil or criminal, requested by the Department to abate any condition that exists in violation of this Regulation.

14.5 In addition to other penalties imposed by a court of competent jurisdiction, any person(s) found guilty of violating any of this Regulation shall be liable for all expenses incurred by the Department in prosecuting and/or abating the violation.

14.6 Violations of this regulation shall be subject to the Department's Adjudicative Hearing Procedures and may result in permit suspension or revocation, and/or monetary penalties.

14.6.1 The Department may impose the following administrative penalties:

(a) upon the first violation, a penalty of not more than $300
(b) upon the second violation at the same retail location within 12 months of the first violation, a penalty of not more than $750
(c) upon the third violation at the same retail location and within 12 months of the first violation, a penalty of not more than $1000 and a 30 day suspension of the permit
(d) upon the fourth violation at the same retail location and within 12 months of the first violation, a penalty of not more than $1,000 and a one year suspension of the permit.

14.7 Enforcement of any criminal penalties does not preclude imposition of administrative or civil penalties and vise-versa.

15.0 SEVERABILITY

If any provision, clause, sentence, or paragraph of this Regulation or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the other provisions or applications of this Regulation. The valid part of any clause, sentence, or paragraph of this Regulation shall be given independence from the invalid provisions or application and to this end the provisions of this Regulation are hereby declared to be severable.

16.0 EFFECTIVE DATE

This Regulation shall become effective the day of its adoption by the Board of Health.

Adopted by the Weber-Morgan Board of Health on October 27, 2014