

R384. Health, Disease Control and Prevention, Health Promotion.

R384-324. Tobacco Product, Electronic Cigarette Product, and Nicotine Product Retailer Permit Process.

R384-324-1. Authority and Purpose.

- (1) This rule is authorized by Section 26-1-5 and Subsections 26-1-30(4) and 26-62-202(6).
- (2) This rule establishes the process by which local health departments issue, suspend and revoke a tobacco retail permit.

R384-324-2. Definitions.

As used in this rule:

- (1) "Community location" means the same as the term is defined in Section 17-50-333 and in Section 10-8-41.6.
- (2) "Department" means the Utah Department of Health, created in Section 26-1-4.
- (3) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.
- (5) "Local health department" means the same as the term is defined in Section 26A-1-102.
- (6) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- (7) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under Title 26, Chapter 62.
- (8) "Plan review" means the process by which the local health department will verify the accuracy of the information provided by retail tobacco specialty businesses through the permit application process.
- (9) "Proprietor" means the owner of a retail establishment, or any other place of business that sells, markets, or distributes tobacco products, electronic cigarette products, or nicotine products.
- (10) "Public retail floor space" means the total floor square feet of the business where a customer can see, retrieve, or purchase any item that is offered for sale by the general tobacco retailer, including the areas behind the purchase counter, and including appurtenant areas used for storage.
- (11) "Retail tobacco specialty business" means a commercial establishment in which:
 - (a) sales of tobacco products, electronic cigarette products, and nicotine products accounts for more than 35% of the total quarterly gross receipts for the establishment;
 - (b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
 - (c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
 - (d) the commercial establishment:
 - (i) holds itself out as a retail tobacco specialty business; and
 - (ii) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;
 - (e) any flavored electronic cigarette product is sold; or
 - (f) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.
- (12) "Self-service display" means the same as that term defined in Section 76-10-105.1.
- (13) "Shelf space" means the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items that are offered for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.
- (14) "Tax commission license" means a license issued by the State Tax Commission under:
 - (a) Section 59-14-201 to sell a cigarette at retail;
 - (b) Section 59-14-301 to sell a tobacco product at retail; or
 - (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product at retail.
- (15) "Tobacco product" means:
 - (a) a tobacco product as defined in Section 76-10-101; or
 - (b) tobacco paraphernalia as defined in Section 76-10-101.
- (16) "Tobacco retailer" means a proprietor that is required to obtain a tax commission license and a local health department permit for the sale of tobacco.
- (17) "Tobacco retail permit" means the permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing or distribution of tobacco products, electronic cigarette products, or nicotine products.

R384-324-3. Permit Process.

- (1) A tobacco retailer shall hold a valid tobacco retail permit issued by the local health department with jurisdiction over the physical location where the tobacco retailer operates.
- (2) To receive a tobacco retail permit, an applicant shall:
 - (a) submit an application provided by the local health department with jurisdiction over the physical location where the tobacco retailer operates or will operate; and
 - (b) pay any applicable fees.
- (3) To submit an application for a tobacco retail permit, an applicant shall complete each required sections of the application and submit the application either online or by a hard copy to the local health department. The applicant shall provide the following:
 - (a) information for each individual listed as a proprietor and owner, including percentage of ownership, or if the proprietor is a corporation, corporate ownership information;
 - (b) a local individual to contact concerning the application and business must be included under business information on the application;
 - (c) information concerning the business, including business name, street address, mailing address, and telephone number;
 - (d) a copy of a valid Utah State Tax Commission license; and
 - (e) certification that the proposed retail tobacco location meets the requirements as defined in the application for a:
 - (i) general tobacco retailer; or
 - (ii) retail tobacco specialty business.
- (4) Applications for a retail tobacco specialty business shall:
 - (a) include a \$250.00 plan review fee; and

(b) include a map that demonstrates the business location meets the proximity requirements for a retail tobacco specialty business, by measuring in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts, to prove that the business is not located within:

- (i) 1,000 feet of a community location;
- (ii) 600 feet of another retail tobacco specialty business; and,
- (iii) 600 feet of property used or zoned for agricultural or residential use.

(5)(a) Notwithstanding Subsection (4)(b), a retail tobacco specialty business that meets the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7) is exempt from the proximity requirements.

(b) A retail tobacco specialty business that does not meet the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7) that desires to sell tobacco products, electronic cigarette products, and nicotine products must complete the application described in this section and demonstrate that the location:

- (i) meets the proximity requirements for a retail tobacco specialty business in Subsection (4)(b); or
- (ii) has a business model and business layout that meets the requirements for a general tobacco retailer.

(6) The local health department will have 30 days to issue the permit beginning on the date the local health department receives the application and payment.

(a) The local health department will provide online or hard copy receipt of payment and application submission to the proprietor at the time the local health department receives the application and payment.

(b) The receipt provided by the local health department to the proprietor will serve as a temporary operating permit, which will be valid for 30 days.

(7) The permits are non-transferrable.

(8) Permit length:

- (a) A general tobacco retailer permit is valid for two years.
- (b) A retail tobacco specialty business permit is valid for one year.

(9) The proprietor of a tobacco retailer is responsible to notify the local health department if there is a change in their business operation requiring a change in their business license between tobacco retail specialty business and general tobacco retailer. If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:

- (a) may not renew the permit; and
- (b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.

(10) A tobacco retailer may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.

(a) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:

(i) an application, as outlined in Subsection R384-324-3(3), for either a general tobacco retailer or a retail tobacco specialty business and the additional requirements outlined in Subsection R384-324-3(4) for retail tobacco specialty businesses;

(ii) the fee for the reinstatement of a permit; and

(iii) a signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26-62-201(1)(b).

(b) Until an expired permit is reinstated, a tobacco retailer with an expired permit may not:

- (i) place a tobacco product, electronic cigarette product, or a nicotine product in public view;
- (ii) display any advertisement related to tobacco products, electronic cigarette products, or nicotine products that promotes the sale, distribution, or use of those products; or
- (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco, tobacco products, electronic cigarette products, or nicotine products.

R384-324-4. Permit Violations.

(1) A proprietor is in violation of the permit issued under this rule if the proprietor violates:

- (a) any provision of Title 26, Chapter 62;
- (b) any provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
- (c) any provision of Title 76, Chapter 10, Part 1;
- (d) any provision of Title 76, Chapter 10, Part 16;
- (e) any regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

(f) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine product.

R384-324-5. Enforcement.

In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-62-302 and Section 26-62-402, the Department and local health departments shall comply with the enforcement provisions found in Title 26, Chapter 62, Part 3 and Part 4.

KEY: tobacco, permits, tobacco retailers

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Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(4); 26-62-202(6)