

**Virtual Utah Department of Health Public Hearing Regarding Change in Proposed Rule  
Amendment R384-415 – Electronic Cigarette Substance Standards  
Wednesday July 7, 2021 – 2:30 PM to 4:00 PM  
MINUTES**

Due to COVID-19 and surge remote teleworking requirements from the Utah State Legislature, this public hearing was held virtually via Zoom and by phone.

- 1. Welcome – Braden Ainsworth, Program Manager and Hearing Officer**
  - The virtual public hearing began at 2:31pm on Wednesday July 7, 2021.
  
- 2. Overview to Change in Proposed Rule Amendment to R384-415 – Electronic Cigarette Substance Standards**
  - Christy Cushing, Policy Analyst for the Tobacco Prevention and Control Program, provided an overview of the proposed rule amendment.
  
- 3. Public Comments – 24 comments received during the virtual public hearing:**
  - Art Brown - Self
    - Spoke in support of the proposed rule amendment, especially the proposed nicotine content of 3% for manufacturer sealed electronic cigarette products effective 9/1/2021 and expressed concerns with 5% nicotine content limit.
  - Michael Siler - Utah Alliance for Vaping-Free Kids
    - Spoke in support of the proposed rule amendment, especially the proposed nicotine content of 3% for manufacturer sealed electronic cigarette products and expressed concerns with the rising Utah youth vape rates.
  - Daniel J. Thomas - Coalition for Tobacco Free Youth
    - Spoke in support of the proposed rule amendment, based on medical data, and expressing concerns of vape companies violating marketing laws targeting youth, requesting the nicotine content in vape products sold in Utah be limited to 3%.
  - Todd Hougaard - Utah PTA
    - Spoke in support of the proposed rule amendment and lowering the nicotine content in electronic cigarette products to a less addictive level of 3%.
  - Richard Marianos – Self – minute 23:42
    - Spoke in opposition to the proposed rule amendment, expressing concerns with the counterfeit vape industry and vape criminal activities, noting the rule is fine policy and the Department should consider the effect it will have on law enforcement and the black market.
  - Gayle Ruzicka - Utah Eagle Forum
    - Spoke in support of the proposed rule amendment and lowering the nicotine content in electronic cigarette products to a less addictive level of 3% and expressed concerns with the number of Utah youth that vape.
  - Dr. Karen K. Gerlach - Womble Bond Dickinson
    - Spoke in opposition to the proposed rule amendment and asked the Department to reconsider the nicotine content limit in manufacturer sealed electronic cigarette products, noting the FDA is currently reviewing these products to determine if nicotine concentrations above a certain threshold are not for the benefit of public health.
  - McGyver Clark – Self
    - Spoke in support of the proposed rule amendment and lowering the nicotine content in electronic cigarette products, noting that electronic cigarettes are not an approved cessation tool.

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- Richard J. Nance – Self
  - Spoke in support of the proposed rule amendment and lowering the nicotine content in electronic cigarette products, noting data identifying a significant portion of non-smoker young adults that vape.
- Cade Hyde - SAEV (Students Against Electronic Vaping)
  - Spoke in support of the proposed rule amendment to reduce the amount of nicotine in electronic cigarettes to 3% to protect Utah's youth.
- Gregory Conley - American Vaping Association
  - Spoke in opposition to the proposed rule amendment, encouraging the Department to withdraw the rule, noting they believe the rule is a product standard.
- Walter Plumb - Drug Safe Utah Education
  - Spoke in support of the proposed rule amendment, noting that Canada is enacting a 2% or 20 mg/mL nicotine content limit tomorrow, and the need for Utah to protect kids by taking a firm measure to restrict nicotine content.
- Dr. Michael Madden - Michael Madden MD Consulting
  - Spoke in opposition to the proposed rule amendment, noting the Department's previous rule to limit the nicotine content at 5% is a more reasonable standard and that the FDA is currently considering applications for FDA authorization of electronic cigarette devices and e-liquids.
- Dave Davis - Utah Retail Merchants Association & Utah Food Industry Association
  - Spoke in opposition to the proposed rule amendment, encouraging the Department to amend or withdraw this rule, or alternatively delay the 3% nicotine content limit until after the next legislative session since it is likely to create a 74% market disruption, and he requested a PMTA approved product exemption be added to the rule for FDA approved products.
- Guy Bentley - Reason Foundation
  - Spoke in opposition to the proposed rule amendment, noting how nationally youth vaping has reduced and Utah already has a lower rate than other states and mentioned the research shows higher nicotine content e-cigarettes are more effective to switching existing smokers off cigarettes and limiting the nicotine content could push current users back to cigarettes.
- James S. Depper - Murphy USA
  - Spoke in opposition to the proposed rule amendment prohibiting the sale of manufacturer sealed electronic cigarettes with a nicotine content greater than 3%, as some may return to smoking combustible cigarettes. He noted their stores sell a range of these products containing 1.8% to 5% nicotine, and approx. 80% of their consumers choose products with a nicotine content above 3%.
- John E. Martin - A tobacco and addictions researcher
  - Spoke in opposition to the proposed rule amendment, noting the growing scientific consensus that e-cigarettes are substantially safer than cigarettes, the 5% will continue to allow for effective harm reduction as 75% of e-cigarette users use 5%, capping nicotine concentration exposes users to greater levels of potential toxins.

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- Michelle McOmer - Utah Medical Association
  - Spoke in support to the proposed rule amendment to reduce the amount of nicotine by weight in manufacturer sealed electronic cigarette products be limited to 3% or 36mg/mL by 9/1/2021 and would prefer the rule limit it to 2% but will compromise at 3%. She noted how products using nicotine salts significantly increases the amount of nicotine delivered to the blood and that consumers will adapt to available products sold.
- Kenton Stanhope - Juul Labs Inc (JLI)
  - Spoke in opposition to the proposed rule amendment, noting a key component to switching adult smokers is providing a competitive nicotine effect and experience as compared to combustible cigarettes and expressed concern with the proposed rule amendment limiting the nicotine content of closed systems to 3%, which will hinder consumer nicotine experience. He noted the FDA is establishing tobacco product standards and evaluating the PMTA product application submissions and requests UDOH amend the rule to allow any electronic cigarette product that receives a positive marketing order, including an exception to the 3% nicotine content, be allowed to be sold if the FDA determines the product is appropriate for the protection of public health.
- Beau Maxon - Park City Vapor Company/Vice President of the Utah Vapor Business Association
  - Spoke in opposition to the proposed rule amendment, noting that the Legislature should be the ones to dictate nicotine content restrictions and that UDOH should wait until the FDA releases their findings and decisions on products currently going through the PMTA process. He also noted that UDOH and local county health departments do not currently effectively enforce the rule requirements already in place and law abiding shop owners following the law are at a competitive disadvantage.
- Juan Bravo - Chairman of the Utah Vapor Business Association
  - Spoke in opposition to the proposed rule amendment, reiterating concerns that health departments are not enforcing the existing rule requirements and retailers continue to sell products with higher nicotine concentrations for open system and general retailers are continuing to sell flavored electronic cigarette products, and he expressed concern with how health departments could possibly enforce the new rule requirements.
- Earl Clark - LightUp Discount Tobacco and Glass in Lindon Utah
  - Spoke in opposition to the proposed rule amendment, mentioning he previously smoked 2-3 packs of cigarettes a day and if not for nic salts wouldn't have been able to quit. He owns a retail tobacco specialty business and often gets visited by the local health department, police, and Dept. of Agriculture for each of their annual inspections. He mentioned Utah's laws are very strict already and to stop making this issue about kids.
- Brendon Gunn - Self
  - Spoke in opposition to the proposed rule amendment, saying he is a father of 3 children and does not want his children using vapor or tobacco products. He argued that bureaucracies within the state have failed, and policies have failed to

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educate the youth, and that this is an unfair practice by the Utah Health Department, and they need to start educating the youth better as well as encouraging parents to educate their children and to use less legislation to control people and products.

- Michael Berry - Self
  - Spoke in opposition to the proposed rule amendment, mentioning the fact people keep comparing this to big tobacco is inaccurate and that they are small businesses, part of the fabric of the community. He said they help people get off analog cigarettes and that the science points to vapes being a very effective cessation tool, noting the majority of these systems are sold at a 5% product and question how the Department is pushing the rule without real scientific evidence to support it.

#### **4. Conclusion**

- The virtual public hearing ended at 4:00pm on Wednesday July 7, 2021.

A copy of the proposed rule amendment to R384-415 can be found beginning on page 24 of the Utah Office of Administrative Rules' Utah State Bulletin, published on June 15, 2021 found at [https://rules.utah.gov/publicat/bull\\_pdf/2021/b20210615.pdf](https://rules.utah.gov/publicat/bull_pdf/2021/b20210615.pdf).

Public comments on the proposed rule amendment to R384-415 will be accepted until 7/15/2021 and can be sent to [tobaccorulescomments@utah.gov](mailto:tobaccorulescomments@utah.gov). Please contact TPCP Policy Analyst Christy Cushing for questions at 801-538-6260 or [ccushing@utah.gov](mailto:ccushing@utah.gov).