

# Vapor Products Regulations Overview: Federal & Washington State

*New in 2016!*

	FDA Deeming Rule Regulating Electronic Nicotine Delivery Systems Under the Tobacco Control Act of 2009	Washington State Vapor Products Regulation ESSB 6328, 2016
<b>Status</b>	Finalized May 10, 2016. Effective August 8, 2016 for many requirements; others phased in over several years.	Passed March 29, 2016. Governor signed April 19, 2016. Effective June 28, 2016 for most provisions. Licensing requirements take effect once WA Liquor & Cannabis Control Board issues licensing form.
<b>Product Definition?</b>	Any product containing tobacco or nicotine derived from tobacco. ENDS includes nicotine e-juices and device components and parts.	Any noncombustible product that may contain nicotine and produces a vapor or aerosol. Includes liquid nicotine containers and the devices. Does not include marijuana or tobacco products.
<b>Local Preemption?</b>	State & Local Authority mostly preserved. <b>Preempts</b> state/local regulations different from FDA's on product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing practices, and modified risk products. <b>Allows</b> state/local authority to enact no smoking/vaping laws; tax products; raise minimum sales age; regulate sales and advertising (time, place, manner); set fire safety standards; and require information reporting.	Yes, preemption of most local authority except for some restrictions on use. <b>Preempts</b> local licensing or regulations on promotions and sales of vapor products. <b>Preempts</b> local prohibition of tastings inside licensed vapor product retail outlets. <b>Allows</b> local regulations on vaping in indoor public places and in outdoor public places where children congregate.
<b>No Sales/Possession Under 18?</b>	Prohibits sales to minors, retail and internet, with penalties.	Yes, prohibits possession or purchasing by minors under 18 with civil penalty. Sales to minors under 18 prohibited under WA law since 2013.
<b>ID Check?</b>	Yes, under age 27.	Yes. WA requires under age 27.
<b>Prohibits Vaping in Public Places?</b>	Does not address use of vapor products.	Specifically prohibits vaping: inside/outside child care facilities and schools, on outdoor playgrounds when children present, inside school buses, and inside elevators.
<b>Samples/Tasting?</b>	No free product samples containing nicotine.	Allows tastings of vapor products on premises of licensed retailers that exclude minors and meet other requirements. Tasting may be nicotine-free or may contain nicotine if consumer consents. <i>After 8/8/2016, FDA Rule prohibits free nicotine product samples, so <u>free</u> tastings must be zero nicotine e-juice.</i>
<b>Sales Restrictions?</b>	<ul style="list-style-type: none"> <li>Vending machine or self-service sales only where minors prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Vending machine or self-service sales only where minors prohibited.</li> <li>Regulates internet sales to consumers, including age verification.</li> <li>Coupons restricted to in-person sales. No free product coupons unless with a purchase.</li> <li>Sellers must have state license, including retailers, distributors, delivery sales services.</li> </ul>

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<b>Signage?</b>	No requirements.	Retailers must post “No Sales to Minors” signs.
<b>Advertising Restrictions?</b>	Prohibits false, misleading ads by August 2016. Prohibits health claims or modified risk claims like “light”, “low”, “mild” without FDA authorization by August 2017. Requires warnings in advertisements beginning May 2018.	No
<b>Pre-market Product Review?</b>	Yes. No new products after August 2016 without premarket tobacco application (PMTA) to FDA. PMTA required for all products on market after 2007, staggered deadlines over next 2 years.	No
<b>Regulates E-juice ingredients?</b>	Disclosure of ingredients and health-related documents required by Feb. 2017. Disclosure of potentially harmful constituents by August 2019. Domestic manufacturers and importers must register with FDA by December 2016. Manufacturers includes vape retailers that mix e-liquids or make devices No restrictions on flavors.	No. but requires disclosure of nicotine content on label of e-liquids. For “closed system nicotine containers”, annual disclosure of nicotine content to WA DOH. <i>WA labeling requirement expires when FDA label requirement in effect.</i>
<b>Regulates Packaging?</b>	Deeming Rule does not, but the federal 2015 Child Nicotine Poisoning Prevention Act ( <a href="#">S.142</a> ) requires childproof packaging for nicotine e-liquids by July 28, 2016.	Yes. Child-proof packaging required for liquid nicotine containers per federal standards.
<b>Requires Warning Label?</b>	Beginning in May 2018, the label must state, at a minimum: “WARNING: This product contains nicotine. Nicotine is an addictive chemical”.	Yes. Warning label must state: Nicotine harmful; Keep away from children; Vaping illegal under legal age. <i>WA labeling requirement expires when FDA label requirement in effect on May 10, 2018.</i>
<b>Tax?</b>	No	No
<b>Enforcement &amp; Penalties?</b>	Yes	Yes
<b>Online Resources</b>	Complete Deeming Rule: <a href="https://federalregister.gov/a/2016-10685">https://federalregister.gov/a/2016-10685</a> FDA Tobacco Regulation page: <a href="http://www.fda.gov/tobacco">http://www.fda.gov/tobacco</a>	ESSB 6328, Chapter 38, Laws of 2016: <a href="http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6328">http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6328</a> WA DOH Tobacco page: <a href="http://www.doh.wa.gov/YouandYourFamily/Tobacco">http://www.doh.wa.gov/YouandYourFamily/Tobacco</a> WA Liquor & Cannabis Board <a href="http://www.liq.wa.gov/">http://www.liq.wa.gov/</a>

*This overview is not intended to be construed as an exhaustive policy or legal analysis.*