

## Use of Electronic Smoking Devices in Federal Facilities

Question: Is the use of electronic smoking devices permitted in federal facilities?

Short Answer: No, the use of electronic smoking devices, including “vaporizers”, “vapes” and “E-Cigarettes”, is not permitted in federal facilities. The use of these devices, like use of traditional tobacco products, is limited to designated smoking areas outside of the facility.

### DISCUSSION

#### **A. Electronic Smoking Devices**

E-cigarettes are smokeless nicotine devices typically consisting of a metal tube containing an atomizer, a battery, and a cartridge filled with liquid nicotine. Although the products do not contain tobacco, the liquid nicotine used is derived from the leaves of tobacco plants. The products are designed to deliver nicotine, flavor, and other chemicals to the user by converting the chemicals into aerosol that can be inhaled by the user. Most e-cigarettes are manufactured to look like conventional cigarettes or pipes, however some resemble everyday items such as pens and USB memory sticks.

According to the U.S. Food and Drug Administration (FDA), e-cigarettes have not been fully studied, so consumers do not know the potential risks of e-cigarettes when used as intended, how much nicotine or other potentially harmful chemicals are being inhaled during use, or whether there are any benefits associated with using these products. However, according to voluntary reports to the agency from consumers, health professionals, and concerned members of the public, the use of e-cigarettes has resulted in pneumonia, congestive heart failure, disorientation, seizure, hypotension, and other health problems. Additionally, the use of these products may become harmful over time to those who encounter the mist or vapor they emit, as it may contain vaporized forms of the nicotine and other active ingredients much like traditional cigarettes. These issues are of such concern that the FDA has proposed legislation for the regulation of these products which would allow the FDA to standardize the use and sale of these products much like its regulation of tobacco use.<sup>1</sup>

#### **B. The Use of Electronic Smoking Devices Is Prohibited in Interior Spaces of all Federal facilities And Is Only Permitted in Exterior Designated Smoking Areas.**

President Clinton signed Executive Order 12058 in 1997, prohibiting the use of traditional tobacco products in federal buildings. Federal agencies were then required to enact policies to establish smoke-free environments for employees and visitors to federal facilities. As it follows, 41 C.F.R. § 102-74.315, prohibits smoking in the interior spaces of federal facilities.

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<sup>1</sup> Food and Drug Administration website: <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>.  
Proposed rule: 79 F.R. §23141-23207, April 25, 2014.

Occupational Safety and Health Administration (OSHA) regulations require federal agencies to ensure that employees have working environments which are free from known hazards and health risks. 29 C.F.R. § 1960.8(a). In light of the known health risk to users, and the potential health risks to non-users exposed to the vapor, the usage of electronic smoking devices, like traditional cigarettes, is prohibited in federal facilities. Therefore, as with traditional tobacco use, those employees and visitors to federal facilities who wish to use electronic smoking products must do so in exterior designated smoking areas. 41 CFR § 102-74.365.

### C. Authorities

21 U.S.C. § 321(rr)(i)

“The term “tobacco product” means any product **made or derived from tobacco** that is **intended for human consumption**, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).” (Emphasis added).

Executive Order 13058, *Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace*

*Section 1. Policy.* It is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is thus prohibited in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of intake ducts.

*Section 2. Exceptions.* The general policy established by this order does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area.

Occupational Safety and Health Administration (OSHA) Regulations, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters*, 29 CFR § 1960.8(a)

“(a) The head of each agency shall furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm.”

41 C.F.R. § 102-74.315

“Pursuant to Executive Order 13958, it is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. **The smoking of tobacco products is prohibited** in all interior space owned, rented or leased by the executive branch of the Federal Government.” (emphasis added).

41 CFR § 102-74.335

“Federal agency building managers are responsible for furnishing and installing suitable, uniform signs in the building, and in and around building entrance doorways and air intake ducts, reading “No Smoking,” and “ No Smoking Except in Designated Areas,” or “No Smoking Within 25 Feet of Air Duct,” as applicable.”

41 CFR § 102- 74.365

“[These rules] apply to all property under the authority of GSA and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to this part at each public entrance to each Federal facility.”

41 C.F.R. § 102-74.385

“Persons in and on federal property must at all times comply with **official signs of a prohibitory, regulatory or directory nature** and with the lawful direction of Federal police officers and other authorized individuals.”

#### **D. Conclusion**

Federal laws and regulations authorize the government to take actions to prevent potential or known health risks from affecting Federal property, facilities, and employees. As a result, e-cigarettes are not allowed in Federal facilities and the FPS has the authority to prohibit the use of e-cigarettes in Federal facilities.