

R384-415 Enforcement Protocol

DRAFT

Responsibility for enforcement

The rule and the state health code grants authority to health departments as a whole to enforce public health law. In the case of this rule there is no prescribed program at the health department charged with enforcement. As such it is left up to each local health department (LHD) to decide who will enforce the rule. This will largely come down to resources; Health Promotion (HP) or Environmental Health (EH) may take the lead or it may be a joint effort.

How many and how often

The strategy that each LHD chooses to conduct enforcement checks will be based on need and resources. For a LHD where e-cigarettes are a higher priority and have the appropriate resources are available, enforcement may involve an annual, randomized inspection of each e-cigarette retailer. For those LHDs where this rule is of lower priority or the resources are unavailable, enforcement may involve combining randomized-inspections with other inspections conducted by HP or EH, acting only on complaints, or only inspecting a proportion of the retailers in the local health district.

Education period

LHDs agree that from December 29, 2016 to June 30, 2017, LHD staff will focus on educating retailers on the requirements of the rule. As such, notices will not be given during this period. Starting June 30, 2017, notices will be given for violations of the rule.

Consistency

The majority of logistics for enforcement will be left to the LHDs to decide. When conducting the randomized-inspection the expectation is that any initial visit will not include an audit of the retailer's entire inventory. A randomized-inspection inspects a portion of available product, to identify compliance with the rule. Also, all infringements on the day of inspection are grouped together under one violation.

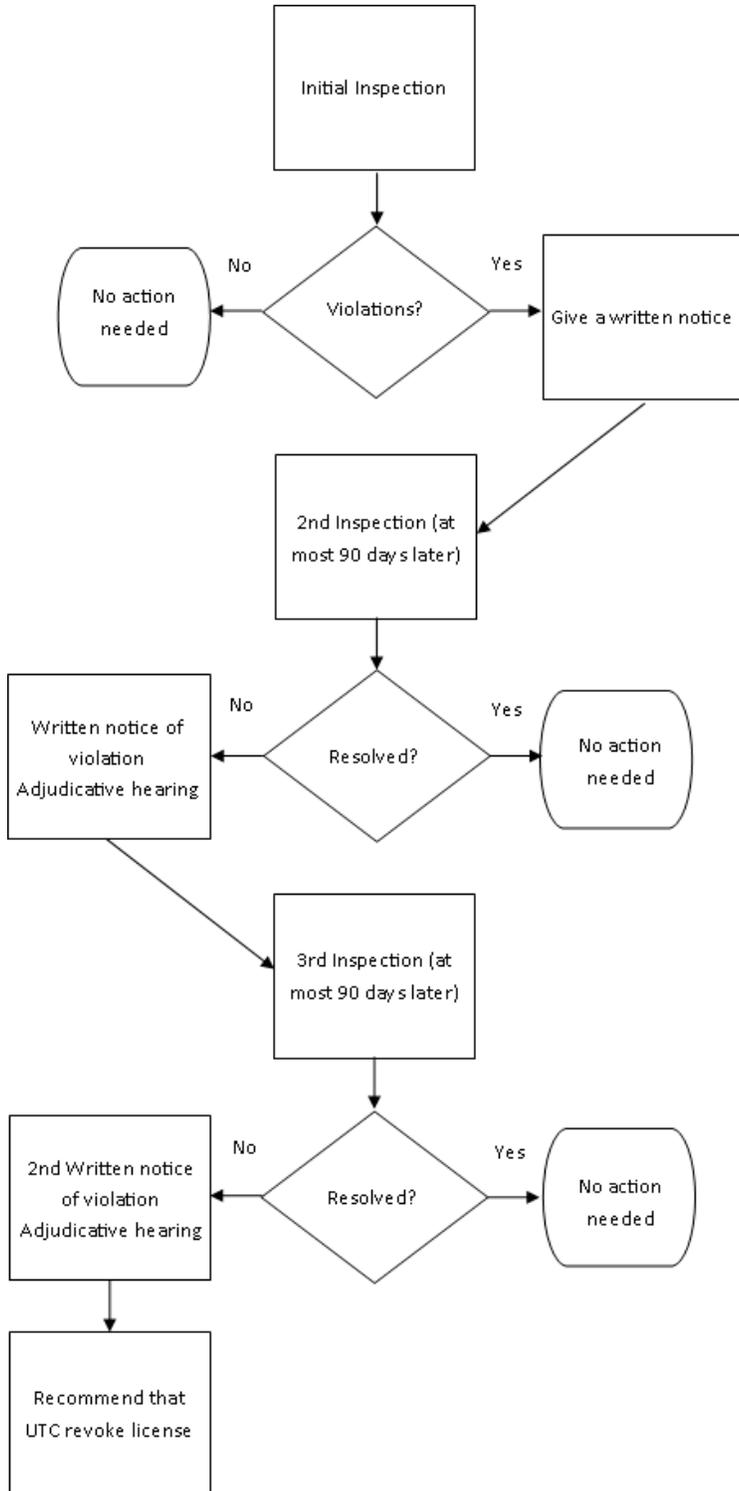
We agree to treat the following violations the same across LHDs and the processes to occur before raising the issue to the Utah Tax Commission (UTC).

High and low priority violations are listed below:

High Priority	Low Priority
<i>Violations pose an immediate threat to the public.</i>	<i>Violations do not pose an immediate threat to public health but violates provisions of the state rule.</i>
<ul style="list-style-type: none">- No Safety Warning- Nicotine Concentration too high- No Child resistant packaging- Contains prohibited additives- No Evidence of Pre-Market Review	<ul style="list-style-type: none">- Safety warning not 30% of panel- Safety warning has no color contrast or is the wrong font- Incorrect safety warning wording- Cannot produce required documents- Nicotine Free Safety Warning

Low Priority Process

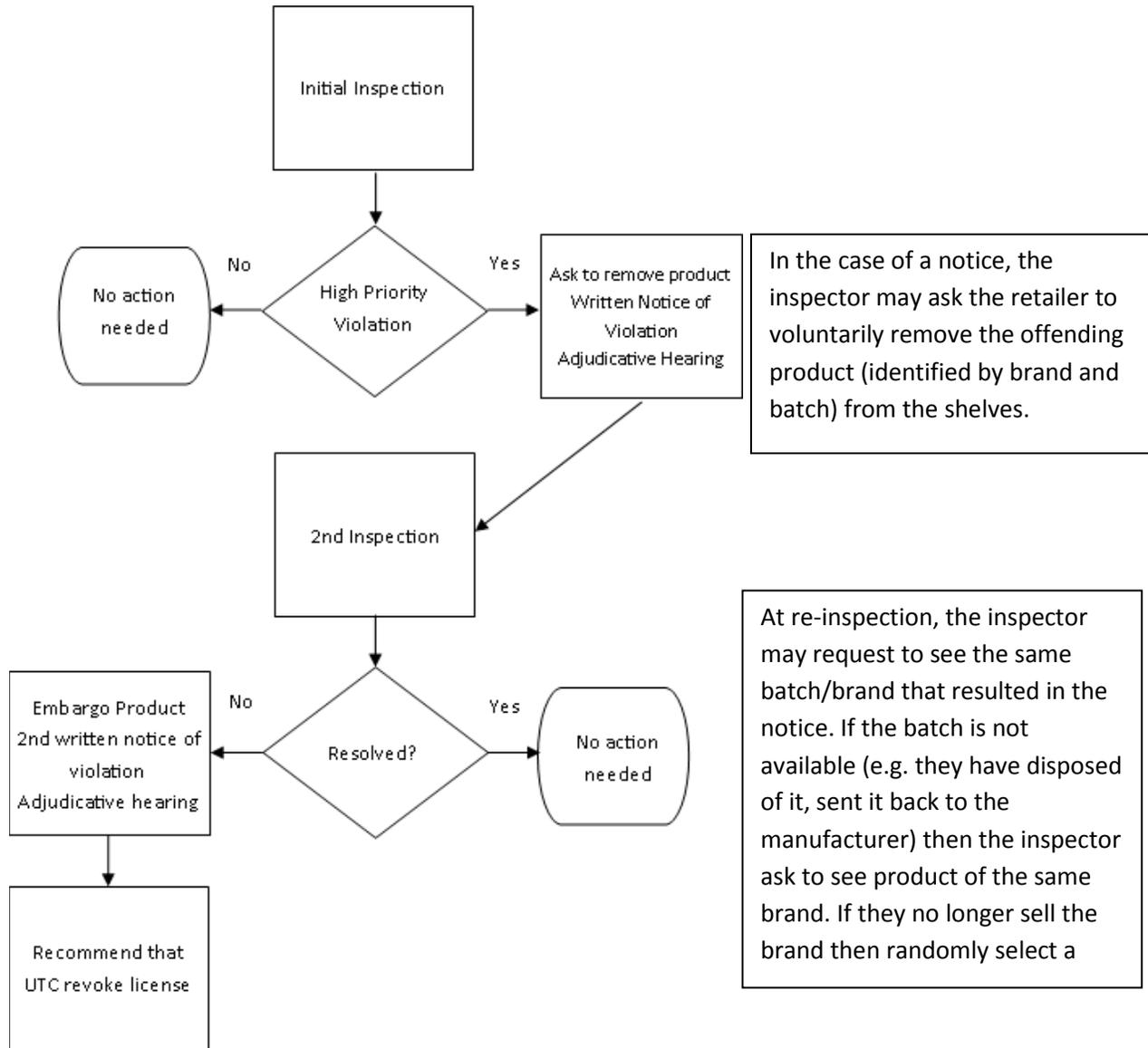
For low priority violations LHDs agree to raise violations to the UTC for revocation upon the second notice of violation in one calendar year.



In the case of a notice, the inspector may ask the retailer to voluntarily remove the offending product (identified by brand and batch) from the shelves.

At re-inspection, the inspector may request to see the same batch/brand that resulted in the notice. If the batch is not available (e.g. they have disposed of it, sent it back to the manufacturer) then the inspector may ask to see product of the same brand. If they no longer sell the brand then randomly select a new product

High Priority Process



For high priority violations the inspector may request paper or electronic copies of the retailer's transaction statement for that product. If unable to produce within 5 working days, this becomes a low priority violation.

Data sharing

To aid in enforcement, the Utah Department of Health (UDOH) will help to facilitate data sharing between LHDs. Data will include e-liquid brands that have consistently shown that they are compliant or non-compliant with the standards of the rule and what action was taken. Sharing this information will allow LHDs to focus their attention on brands that may not be compliant. This information will only be accessible to LHD staff and identifiable data may not be shared with retailers. At the end of each fiscal year, the UDOH will aggregate the data and produce a report outlining the number of actions taken against retailers. This report may be shared with retailers and the public.

LHDs that find e-liquid brands manufactured in the State and that violate the Rule will notify the LHD where the e-liquid brand is manufactured. LHDs with a regulation for manufacturing e-liquid will notify and follow-up with the manufacturer concerning the violation at the retailer.