



**Electronic Smoking Devices in Maryland:
*A Safer Path Forward***

PREPARED BY THE OFFICE OF THE COMPTROLLER OF MARYLAND


COMPTROLLER OF MARYLAND

Office of the Comptroller
80 Calvert Street
Annapolis, Maryland 21401
pfranchot@marylandtaxes.gov
www.marylandtaxes.gov

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E-FACTS TASK FORCE MEMBERS

The Honorable Peter Franchot, *Chairman*
Comptroller of Maryland

Dr. Hoover Adger
Professor of Pediatrics and Director of
Adolescent Medicine, Johns Hopkins School of
Medicine

Max Behlke
Director of State Public Policy
JUUL Labs

John Brennan
Parent, Assistant Secretary, Maryland Dept. of
Disabilities

The Honorable Chris Corchiano
Member, Board of Commissioners
Queen Anne's County, Maryland

Jennifer Witten Davis
Maryland Hospital Association

Carl DeLorenzo
Director of Policy & Programs
Howard County Executive's Office

Dr. Letitia Dzirasa, M.D.
Health Commissioner
City of Baltimore

Dr. Dane Foust, Ed.D.
Vice President for Student Affairs
Salisbury University

Dr. Panagis Galiatsatos, M.D.
Director of the Tobacco Treatment Clinic
Johns Hopkins Hospital

Dr. Travis Gayles, M.D., Ph.D.
Health Officer
Montgomery County, Maryland

Dr. Jeff Graham, Ed.D.
Vice President for Student Affairs
Frostburg State University

Brandon Hatton
Senior Regional Manager, State Affairs
JUUL Labs

Teresa Healey-Conway
Executive Director
Anne Arundel & Howard Medical Societies

Kathleen Hoke
Professor
University of Maryland School of Law

The Honorable Tom Hucker
Councilmember
Montgomery County, Maryland

Amanda Howard
Student, Johns Hopkins University

Lea Jaspers
Health Education Specialist
Maryland Department of Education

Dr. Nilesh Kalyanaraman, M.D.
Health Officer
Anne Arundel County, Maryland

Vicki Keller
Tobacco Programs Manager
Baltimore County Department of Health

Dr. Ryan Kennedy, Ph.D.

Assistant Professor
Johns Hopkins University Bloomberg School of
Public Health

The Honorable Benjamin F. Kramer

Maryland State Senator, District 19

The Honorable Clarence Lam, M.D.

Maryland State Senator, District 12

Dr. Daniel J. Levy, M.D.

GBMC Child & Teen Wellness Center

Lauren Levy, JD, MPH

Health Officer
Cecil County Health Department

Kirk McCauley

Washington, Maryland, Delaware Service
Station and Automotive Repair Association

Matt Milby

Vice President
Maryland Vapor Alliance

Dr. Cliff Mitchell, M.D.

Director, Environmental Health Bureau
Prevention, Maryland Department of Health

The Honorable Leon Pinkett

Councilman
Baltimore City Council

Dr. Laurence Polsky, M.D.

Health Officer
Calvert County Health Department

Dr. Maura Rossman, M.D.

Health Officer
Howard County, Maryland

David Sadugor

Vice President
Century Distributors

The Honorable Jacob Shade

President, Board of County Commissioners
Allegany County, Maryland

Dr. Oscar Taube, M.D., FAAP

Chairperson of the Committee on
Adolescence, Maryland Chapter, American
Academy of Pediatrics

Olivia Veira

Teacher, Baltimore City Public Schools

Christian Walker

Student, Harford County Public Schools

Ronald Ward, Jr.

Owner and Operator, The Vaper's Edge

Julian "Blackie" Wills

Executive Vice President
The Wills Group

Mary Yeager

Owner and Operator, The Vaper's Ring

Task Force Staff Director

Justin H. Hayes, Esq.
Alcohol and Tobacco Regulatory Manager
Field Enforcement Division
Office of the Comptroller

ABOUT THE E-FACTS TASK FORCE

Maryland Comptroller Peter Franchot established the e-facts Task Force in October 2019 to examine the public health and safety implications of electronic smoking devices (ESDs) after reports of serious illnesses, lung disease and deaths attributable to vaping.

The goals of the Task Force were:

- To have a better understanding of the nature and characteristics of electronic smoking devices, including the distinction between various products in the marketplace.
- To gain a comprehensive picture of the public health and safety impacts of electronic smoking devices and commercial effects of product sales in Maryland.
- To recommend new and stronger laws to ensure that consumers, particularly among young people, are protected.

Comptroller Franchot announced the appointment of 40 task force members representing every region of the state, comprised of educators, ESD retailers, public health experts, concerned parents, and local and state elected officials.

The task force, which first convened on December 3, 2019 at the University of Maryland College Park Campus, held four public meetings, with each meeting focused on laws and regulations governing ESDs and their health impacts in Maryland. A schedule of task force meetings and their agendas appears in the Appendices. Presentations and other documents from the Task Force meetings can be found on www.marylandtaxes.gov.

In announcing the appointment of the task force, Comptroller Franchot noted that “As Maryland’s chief tobacco regulator, my job is to safeguard public health, protect consumers and keep dangerous products out of the hands of children...With each passing day, we are learning more about the severe health risks and the 33 confirmed deaths (now 64, as of the date of this report) across the United States from vaping. Despite these reports, there is still so much that we do not know about the nature and characteristics of these products. It is imperative that those of us in government work closely with public health officials, advocates and retailers to develop a deeper understanding of these products and establish appropriate laws that govern how they are manufactured, distributed and sold.”

Additionally, the Task Force solicited feedback from industry stakeholders and the public, all with the goal of identifying the best solutions to address the safety and health concerns – particularly, those affecting young people – relating to ESDs.

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*Jeffrey A. Kelly, Director of Field Enforcement, Comptroller of Maryland
Matt Milby, Vice President, Maryland Vapor Alliance
Kathleen Hoke, Professor, University of Maryland, School of Law
Dr. Ryan Kennedy, Ph.D., Institute for Global Tobacco Control
Brandon Hatton; Senior Regional Manager, State and Local Gov't Affairs, JUUL Labs
Dr. Maura Rossman, M.D., Howard County Health Officer
Dr. Panagis Galiatsatos, M.D., Medicine for the Greater Good
John Brennan, Concerned Parent
Lea Jaspers, Maryland State Department of Education
Ron Ward, The Vaper's Edge
Dr. Cliff Mitchell, M.D., Maryland Department of Health
Lori Dodson, Maryland Medical Cannabis Commission
Senator Clarence Lam, M.D., Maryland's 12th District
Jennifer Schneider, Anne Arundel County Department of Health
Kamala Green, Baltimore City Department of Health
Vicki Keller, Baltimore County Department of Health
Jennifer Faulkner, Calvert County Department of Health
Jennifer Padgett, Cecil County Department of Health
Vanda Lerdboon, Howard County Department of Health
Cristina Ruiz-McCalla, Montgomery County Department of Health
Tom Hucker, Montgomery County District 5 Councilmember and Council Vice President*

EXECUTIVE SUMMARY

Electronic smoking devices (ESDs) are not new to the marketplace. In fact, the first commercially-successful electronic cigarette was introduced into the marketplace in 2003 by a Chinese pharmacist named Hon Lik, who hoped to kick his heavy smoking – the habit that killed his father.¹ Around 2007, electronic smoking devices became readily available in the United States.

Over the last decade, sales of ESDs have increased consistently and are forecast to continue trending upward.² An excerpt from a 2018 Centers for Disease Control (CDC) report, which appears below, provides some insight into this product’s dramatic growth among tobacco consumers:

Nationally, the average monthly e-cigarette sales rate as summed across all product types increased by 132%, from 667 units per 100,000 people in 2012 to 1,547 units per 100,000 people in 2016. Unit sales increased by 154% for rechargeables, 27% for disposables, 256% for prefilled cartridges, and 64% for e-liquids. The average monthly sales rate was highest in 2016 among prefilled cartridges (766 units), followed by disposables (445 units), rechargeables (259 units), and e-liquids (77 units).³

In 2018, U.S. consumers spent more than \$10 billion on smokeless tobacco and vaping products, according to a global market analysis conducted by Euromonitor International, which found that the global ESD market is worth \$19.3 billion.⁴ According to the National Institute on Drug Abuse, more than 460 different e-cigarette brands are currently on the market.⁵

While the ESD market expanded every single year, regulations and laws governing the manufacturing, distribution, and sale of ESD products did not. ESD products, for example, were not subjected to the same regulatory rules and taxation as combustible cigarettes and other tobacco products. Scientists and medical professionals have offered conflicting arguments about the health impacts of ingredients contained in ESD products, and for many years, ESD manufacturers and retailers operated with minimal regulation by federal, state, and local entities. A July 2019 Gallup poll found that 64% of U.S. adults said that “laws and regulations covering e-cigarettes should be made more strict.”⁶

Proponents of ESDs have credited their use for the decline in popularity of traditional combustible tobacco products. According to the CDC, smoking has declined in the U.S. from 20.9% (nearly 21 of every

¹ “Hon Lik invented the e-cigarette to quit smoking – but now he’s a dual user.” <https://www.theguardian.com/society/2015/jun/09/hon-lik-e-cigarette-inventor-quit-smoking-dual-user>

² Bonnie Herzog, Wells Fargo Securities: “We Estimate E-Cigs Are <10% of the Total U.S. Nicotine Pool Today, Going to ~30% By 2025.” http://www.natocentral.org/uploads/Wall_Street_Update_Slide_Deck_February_2019.pdf

³ Wang TW, Coats EM, Gammon DG, Loomis BR, Kuiper NM, Rogers T, et al. National and State-Specific Unit Sales and Prices for Electronic Cigarettes, United States, 2012–2016. *Prev Chronic Dis* 2018;15:170555. DOI: <http://dx.doi.org/10.5888/pcd15.170555>

⁴ Jones, Lora (15 September 2019). “Vaping: How popular are e-cigarettes?,” *BBC*. <https://www.bbc.com/news/business-44295336>

⁵ National Institute of Drug Abuse (January 2020). “Vaping Devices (Electronic Cigarettes).” <https://www.drugabuse.gov/publications/drugfacts/vaping-devices-electronic-cigarettes#ref>

⁶ Schaeffer, Katherine (26 September 2019). “Before recent outbreak, vaping was on the rise in U.S., especially among young people,” *Pew Research Center*. <https://www.pewresearch.org/fact-tank/2019/09/26/vaping-survey-data-roundup/>

100 adults) in 2005, to 13.7% (nearly 14 of every 100 adults) in 2018.⁷ A CDC study in 2017 found that 24.6% of respondents indicated that they have completely switched from cigarettes to ESDs, and 35.3% are substituting some cigarettes with ESDs.⁸ Additionally, an October 2019 study in Minnesota found that 35% of cigarette smokers are utilizing e-cigarettes to quit or reduce usage of combustible tobacco products.⁹

In recent years, however, this product – marketed by manufacturers (against the FDA’s guidance) as a safer and healthier alternative to smoking combustible cigarettes – has received considerable public attention due to the significant increase in usage among underaged users, and the lung injuries and deaths in 2019 linked to ESDs.

After the outbreak of lung injuries that medical professionals tied to ESD use, the CDC conducted studies and tests and concluded that the presence of Vitamin E acetate, an additive in some THC-containing ESDs, was likely the cause of the lung injuries. According to the CDC, EVALI cases resulted in a total of 2,758 hospitalizations and 64 deaths, as of February 4, 2020.¹⁰

In recent months, after the health incidents related to ESDs and increase in youth vaping, legislatures and regulatory entities at the federal, state, and local levels of government have enacted or are in the process of enacting new laws and regulations related to ESDs. These governmental actions include:

- In January 2020, the Food and Drug Administration (FDA) finalized its enforcement policy that effectively prohibited the sale of flavored cartridges. The FDA also requires that all ESD products receive authorization from the agency prior to the sale – which, to date, none of the products for sale today have received.
- In February 2020, Maryland Comptroller Peter Franchot, in his capacity as the state’s Chief Tobacco Regulator, announced regulatory and enforcement actions that would prohibit the sale of flavored disposable electronic smoking devices. Maryland became the first state in the nation to prohibit the sale of disposable flavored ESDs.
- 22 states in the U.S. impose state excise taxes on ESD products. Additionally, local jurisdictions across the United States – including Montgomery County, MD – have imposed local excise taxes on ESDs.¹¹
- In 2019, 2 states – Massachusetts and New Jersey – have restricted the sale of all flavored tobacco and ESD products, including menthol flavor.¹²
- In 2019, 8 states issued emergency rules to temporarily ban the sale of flavored e-cigarettes.¹³

⁷ Centers for Disease Control. “Current Cigarette Smoking Among Adults in the United States,” Accessed 13 February 2020. https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm

⁸ Caraballo, R., et al (April 2017). “Quick Methods Used by US Adult Cigarette Smokers, 2014-2016,” *Preventing Chronic Disease*. https://www.cdc.gov/pcd/issues/2017/pdf/16_0600.pdf

⁹ Boyle, R., et al (December 2019). “Who is using and why: Prevalence and perceptions of using and not using electronic cigarettes in a statewide survey of adults,” *Addictive Behaviors Report*. <https://www.sciencedirect.com/science/article/pii/S2352853219301440>

¹⁰ Centers for Disease Control (13 February 2020). “Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products.” https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

¹¹ Cammenga, Janelle (26 June 2019). “How High Are Vapor Excise Taxes in Your State?” *Tax Foundation*. <https://taxfoundation.org/state-vapor-taxes-2019/>

¹² *Campaign for Tobacco Free Kids*. “States and Localities that have restricted the sale of flavored tobacco products.” <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>

¹³ *Id.*

While there is wide ranging debate about the appropriate policy prescriptions to create a legal and statutory framework that protects citizens while ensuring a fair marketplace, there is no question that Maryland must take steps to reduce youth access to ESDs, ensure that the products adult consumers can legally purchase from licensed retailers are safe from adulterants and contaminants, and – if manufactured in Maryland – are produced in facilities that have been inspected and determined to be fit for that purpose.

ISSUE AREAS

The Comptroller’s e-facts Task Force covered a number of issue areas over the course of its meetings. The following subsections provide summaries of the discussions, observations, and findings on these issue areas.

REGULATORY HISTORY OF ESDS IN MARYLAND

The Comptroller’s Field Enforcement Division’s (FED) first encounter with ESDs came just after the establishment of the “Other Tobacco Product” (OTP) category by the Maryland General Assembly in 2011. Once OTP was established in Maryland law, essentially encompassing all tobacco products other than cigarettes, the early leadership of the ESD industry requested a meeting to discuss the future of their products and potential regulation by the Comptroller’s Office. As described by Jeff Kelly, Director of the FED, in his presentation during the 1st meeting of the Task Force, these industry leaders wanted to discuss the benefits of waiting for FDA approval as a “smoking cessation device” versus seeking designation as an “Other Tobacco Product” under the newly-passed legislation creating that category. Given that the early iterations of these products were already “on the street” and were not yet subject to any regulation at the federal level, the industry opted to remain in a ‘grey area’ as neither a smoking cessation device, nor an “Other Tobacco Product.” At that point in history, without Maryland statutory authority or federal designation to act, neither the Comptroller’s FED nor the Maryland Department of Health (MDH) or any other state agency had the power to regulate, ban, or otherwise control the spread of ESDs in Maryland.

In 2016, the FDA issued its “Deeming Rule,” which determined that ESDs are, in fact, ‘tobacco products’ and could be regulated by the federal government and states – ostensibly, much like cigarettes, to which vast tomes of statutory and regulatory language are devoted. While cigarettes have a long history of regulation under state law, Maryland’s statutory language related to ESDs (based on the FDA’s newfound definition and authority) dates to the very next General Assembly session in 2017. In those heady bygone days three years prior to this report, the Maryland General Assembly passed HB523, “an act concerning Electronic Nicotine Delivery Systems and Vaping Liquid—Licensing.” HB523 established authority within the Comptroller’s FED to issue five new licenses specific to ESDs – wholesaler, manufacturer, importer, and two categories of retail licenses: “Vape Shop Vendors” (VSV) and “ESD Retailers” (ESDR). These two

licenses are characterized primarily by the percentage of ESD sales that comprise their total revenues: greater than 70% for VSVs and less than 70% for ESDRs. This new licensing authority, as indicated by Jeff Kelly during his presentation, was created to give state regulators, law enforcement, and local public health departments awareness of where these new products were being sold throughout the state. Unfortunately, HB523 also contained language that expressly allowed any existing cigarette or OTP retailer, wholesaler, or manufacturer to “to manufacture, distribute, or sell electronic smoking devices...in the same capacity as the person is licensed under Title 16 (cigarettes) or Title 16.5 (OTP) and...may not be required to obtain an additional license under this title.”¹⁴ By including this language, the Maryland General Assembly significantly weakened the value of the overall legislation by allowing any of the more than 8,000 cigarette and OTP licensees to sell ESDs without indicating their intent to do so to the State’s chief tobacco regulator.

While all 50 states waited patiently for the FDA to use the authority it gave itself under the “Deeming Rule” to take enforcement actions against or authorize ESDs, Maryland’s General Assembly passed another relevant piece of legislation: HB1169. Among other things, “[t]he bill generally raises, from 18 to 21, the minimum age for an individual to purchase or be sold tobacco products, exempts active duty military members who are at least 18 years old and present valid military identification from the minimum age requirement” (the latter portion of which was invalidated by the U.S. Congress raising the national age to purchase tobacco to 21 – to be discussed later), “repeal[ed] a provision of criminal law that prohibits a minor from using or possessing” tobacco or ESDs, explicitly stated that “a person acting on behalf of a retailer violates specified prohibitions against the sale or distribution of tobacco products or ESDs [to underaged persons], the retailer must pay the civil penalty,” and changed the statutory definition of ESDs to include “any substance intended to be aerosolized or vaporized during the use of the device.”¹⁵ While each of these are significant changes to the law, the last one is potentially the most significant because it required all licensed VSV and ESDR retailers who had been quietly manufacturing e-liquids – in some cases, for years – to apply for and receive a license to operate as an “ESD manufacturer.” Much as HB523 would have allowed the FED to track sellers of ESDs had it not made the issuance of a VSV or ESDR license optional for cigarette and OTP retailers, this provision of HB1169 allowed FED to establish a list of e-liquid manufacturers operating in Maryland for the first time.

Creating and maintaining a registry of e-liquid manufacturers is enormously useful particularly when viewed in the context of the EVALI crisis, where tracking contaminated or adulterated substances through their supply chain could literally prevent loss of life. Unfortunately, when the CDC and MDH began tracking cases of EVALI, HB1169 had not yet gone into effect. However, the requirement to register as an ESD manufacturer prior to engineering e-liquids for sale went into effect on October 1, 2019, and since that time FED has issued 26 licenses for that purpose. Were something like EVALI to happen today, FED is now well-positioned to assist MDH and CDC or any other public health entity with tracking down offending products in the supply chain. Although *tracking* e-liquid products manufactured in Maryland is an important challenge being met by FED under existing laws, no state agency currently

¹⁴ MD Code, Business Regulation § 16.7-102. “Delegation of powers and duties by Comptroller; authority of persons licensed under Title 16 or Title 16.5.”

¹⁵ “Fiscal and Policy Note - House Bill 1169,” Maryland Department of Legislative Services.

possesses the legal authority or technical ability to *test* e-liquid products for safety *before* they reach the marketplace.

As noted in the Executive Summary, the most recent action taken on ESDs in the State of Maryland was on February 10, 2020, when Comptroller Franchot announced the FED would direct all retailers within the state to remove disposable ESDs with flavors other than tobacco or menthol from their shelves. This decision was made after the FDA's January 2, 2020 enforcement actions specifically exempted these products, leaving a wide vulnerability for kids to access cheap, sweet-tasting, easily-accessible nicotine products at any gas station or convenience store. The Comptroller made the decision to take this action after members of the e-facts Task Force confirmed (based on confiscations in schools, college student reports, and other anecdotes) that these products were now the dominant threat to young people after the October 2019 departure of JUUL from the flavored-cartridge product category. Though some critics have viewed this action as an overreach and mistakenly believe the Comptroller is "illegally banning all vape products," e-facts Task Force member, Matt Milby, speaking on behalf of the Maryland Vapor Alliance told telling WBALTV: *"We commend the Comptroller in his efforts to keep these (flavored disposable Electronic Smoking Devices) out of kids' hands."*

ESDS AND E-LIQUIDS – TERMINOLOGY AND BACKGROUND

The language used in Maryland statute – "electronic smoking devices" – applies to a broad range of product names and types (eg. cig-a-like, e-cigarettes, e-cigars, e-hookahs, vape pens, pod systems, tank mods, box mods, vape pens, and cartridge mods) that are, by the most basic definition, portable devices that contain a battery to create heat that turns a liquid into an aerosol for inhalation via a mouthpiece. There are three primary iterations of these devices: non-rechargeable disposables (ex. Blu, Puff Bars), rechargeable cartridge-based devices (ex. JUUL, Vuse), and "tank" devices with removable or rechargeable batteries (ex. Eleaf, Aspire). There is some crossover, in that some "cartridges" are "open" – ie, able to be refilled and used more than once – while some are "sealed" and meant to be discarded after use. Understanding the panoply of devices and terminology of this issue is vital to appropriately target reforms to protect public health and keep these products away from children.

Regardless of the variations in the ESD devices themselves, their exclusive function is to convert an "e-liquid" or "e-juice" from liquid to aerosol for inhalation, largely for the purpose of administering nicotine to the user. The base of these "e-liquids" is typically comprised of propylene glycol and/or vegetable glycerin, which – as Dr. Galiatsatos explained in his presentation during the first meeting of the e-facts Task Force – are on the FDA's list of products "Generally Recognized as Safe" (GRAS). However, as several studies have indicated, the GRAS program *"only assesses product safety for ingestion in food, not inhalation."*¹⁶ In fact, the FDA has pushed back against the ESD industry's misuse of the GRAS program to tout that *"inhalation of such constituents is harmless because they are designated as 'generally*

¹⁶ "Generally Recognized as Safe: Uncertainty Surrounding E-Cigarette Flavoring Safety." International Journal of Environmental Research and Public Health, 2017 Oct 23. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664775/>

*recognized as safe' by the FDA.*¹⁷ FDA responded to these claims by *"disagree[ing] with comments claiming that the aerosol is safe due to certain components being recognized as GRAS...[e]-liquid[s] [are] not food or intended for ingestion; therefore, the fact that propylene glycol and glycerin have been designated GRAS for food does not necessarily mean that these components are safe for inhalation."*¹⁸ Additionally, when users activate an ESD and exhale its emissions, bystanders nearby are also exposed to these constituents, and "[the] majority of studies have concluded that passive exposure may pose a health risk to bystanders, particularly vulnerable populations such as children and teens."¹⁹ As a consequence, there is substantial public health justification to limit indoor use of ESDs and ensure that ESDs and e-liquids manufactured in Maryland are produced in an appropriate facility, from known ingredients, and are tested and verified by an appropriate authority prior to sale.

PUBLIC HEALTH PERSPECTIVES

In August 2019, Wisconsin reported the first cluster of lung injuries to the Centers for Disease Control and Prevention (CDC), for an illness that would come to be called '...e-cigarette, or vaping, product use–associated lung injury' (EVALI). According to the New England Journal of Medicine, "[a]s of January 7, 2020, a total of 2602 cases of EVALI had been reported to the CDC from all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands" which have resulted in 64 deaths nationwide, as of the date of this report. While the vast majority of EVALI-related lung injuries and deaths have been attributed to black market cannabis products rather than conventional ESDs, the crisis highlighted the appallingly weak regulatory framework that exists around these products, and spurred regulators and lawmakers from many states and the federal government to take action to protect the public from a marketplace that has existed without a 'cop on the beat' for entirely too long. Maryland must take action now to ensure products consumers can legally purchase from licensed retailers are safe from adulterants and contaminants, contain the ingredients they are advertised to contain, and – if they are manufactured in Maryland – are produced in facilities that have been inspected and determined to be fit for that purpose.

For decades, public health experts have worked tirelessly to educate citizens about the dangers of tobacco products. In general, there is consensus, bolstered by a multitude of scientific studies and data, that smoking cigarettes negatively impacts one's overall health. By contrast, the science on the health impacts and potential benefits of ESDs remains inconclusive. In the United Kingdom, for example, ESDs are viewed as an effective vehicle to quit cigarette smoking. John Newton, director of health improvement at Public Health England, was quoted as saying, "[Public Health England's] advice remains that e-cigarettes are a fraction of the risk of smoking, and using one makes it much more likely you'll quit successfully than relying on willpower alone." Indeed, Mr. Ron Ward, owner of The Vaper's Edge noted

¹⁷ Id.

¹⁸ "Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products." Federal Register, 81 FR 28973.

¹⁹ "Lots of Teens Are Breathing in Others' Vaping Fumes." Aug. 28, 2019 (HealthDay News) <https://www.usnews.com/news/health-news/articles/2019-08-28/lots-of-teens-are-breathing-in-others-vaping-fumes>

in his presentation during the 2nd meeting, that the U.K. treats ESDs very differently from the United States. Mr. Ward described a 2016 report from the UK Royal College of Physicians which stated that *“the hazard to health arising from long-term vapour inhalation was unlikely to exceed 5% of the harm from smoking tobacco.”* However, another e-facts Task Force member, Dr. Panagis Galiatsatos, noted in his presentation before the e-facts Task Force that certain ingredients used in ESDs may have negative health impacts, and his *“...concern with electronic cigarettes is the chemicals that’re in there – we don’t know the [effect] of that exposure over time – what’re the health ramifications. The best we can do is extrapolate from the National Cancer Institute’s Division for Environmental Cancers [because] a lot of those chemicals are what we put restrictions on occupational hazard exposures.”* Another member of the Task Force, Dr. Maura Rossman, Health Officer for Howard County, was similarly skeptical about the promised safety of *“[t]hese products that contain other chemicals – some of which we know about and some of which we don’t know because they’re not regulated.”* The CDC reports that cigarette smoking has declined from 20.9% in 2005, to 13.7% in 2018, and whatever percentage of that reduction can be attributed to smokers of combustible cigarettes transitioning to ESDs is laudable. However, while there has been a positive downward trend in the number of combustible cigarette smokers, as noted in Executive Summary, ESD usage is on the rise particularly – and most troublingly – among children.

YOUTH ACCESS AND USAGE

Over just the last ten years, the rate of cigarette smoking among adolescents has dropped dramatically from about 20% in 2010 to about 7.5% in 2018²⁰, and this is rightly viewed as a tremendous success for the public health community’s anti-smoking efforts. However, during the same timeframe, *“...use of e-cigarette, or vaping, products increased by 900% among U.S. middle and high school students between 2011 and 2015”* and topped 27.5% of high school students and 10.5% of middle school students in 2018.²¹ More troubling, the 2018 National Youth Tobacco Study indicates that *“the proportion of current high school e-cigarette users who reported use on 20 days or more (of the prior 30-day period) increased by 38.5 percent, from 20.0 percent in 2017 to 27.7 percent in 2018”* – meaning that nearly 30% of high school students are regularly using (and therefore, likely addicted to) ESDs that contain the powerful addictive drug - nicotine. The neurological and developmental case was eloquently made by Dr. Galiatsatos during the first meeting when he said: *“The diabolical thing about nicotine...is that structurally it mimics acetylcholine, one of the most abundant neurotransmitters we have in our brain...We are all conditioned to do things, like Pavlov’s dog was conditioned when the bell rang. This rewiring to create conditioning to be rewired to smoke...nicotine does this constantly. It will create rewiring that is almost permanent if you introduce nicotine to a [young person’s] mind before it fully stops developing at the age of 25.”*

This is all especially troubling because *just* as the public health community was tentatively celebrating a generational decline in the use of tobacco, ESDs threaten to hook another generation on nicotine – and

²⁰ National Adolescent Drug Trends in 2018, New England Journal of Medicine.

²¹ “The EVALI and Youth Vaping Epidemics — Implications for Public Health” (New England Journal of Medicine) Brian A. King, Ph.D., Christopher M. Jones, Dr.P.H., Grant T. Baldwin, Ph.D., and Peter A. Briss, M.D. citing: Cullen KA, Gentzke AS, Sawdey MD, et al. e-Cigarette use among youth in the United States, 2019. JAMA 2019 November 5.

if ESDs become outlawed or tightly regulated, there are reasonable fears that adolescent tobacco use will rebound. As Dr. Maura Rossman stated during her presentation to the Task Force, “[n]icotine is a highly-addictive product...and we do know from studies that the use of these nicotine products can lead to use of cigarette products later on.” This is not an idle concern, as it has been borne out by generations of young people before this one facing the challenge of ESDs, as Dr. Galiatsatos pointed out during his presentation: “Every single one of those patients who comes to my [tobacco cessation] clinic all discusses this same thing of how they keep relapsing back to cigarettes. And what they all have in common is that they all began to smoke at a young age – less than 18...If we do not act now to protect our youth, we will fail an entire generation.”

Much of the concern surrounding ESD use among adolescents can rightly be directed to the advent of readily-available, inconspicuous, highly addictive, and inexpensive “pod-based” devices, particularly those marketed and sold by JUUL. John Brennan, a parent of a teenager who has developed an addiction to JUUL and nicotine, stated the following in his presentation before the e-facts Task Force: “My teenager found JUUL products easily accessible through friends, the local 7-11, the internet, or upperclassmen - who at the time were old enough to purchase JUUL products directly.” Hopefully, raising the age to purchase these products to 21 across the board will reduce the opportunity for adolescents to receive these products from slightly-older peers. However, the ‘upperclassmen vulnerability’ is just one weakness in the existing regulatory arsenal standing between kids and nicotine.

Over the course of the task force’s deliberations, it became glaringly apparent that despite current statutory restrictions in place to prevent underage access to ESDs, teenagers were still able to obtain ESDs through illegal ‘straw purchases.’ Vicki Keller, Tobacco Programs Manager for the Baltimore County Department of Health indicated during her presentation to the Task Force that the unpublished “2018 Maryland Youth Risk Behavior Survey & Youth Tobacco Survey” found that ‘Proxy Purchases’ make up 19.6% of the total means by which youth gain access to ESDs. That figure is actually *second* among the elicited sources for ESDs reaching kids, right behind ‘Borrowed them/someone gave them to me’ – which came in at a stunning 53.3%. Those figures from a local public health officer directly comport with those provided by Max Behlke, Director of State Public Policy for JUUL Labs, whose comments to the Task Force included the company’s internal statistic that “[a]bout 80-90% of access for youth comes from ‘straw sellers’ – or people that buy [ESDs] and then give it to youth...[and so] imposing more penalties on ‘straw sellers’ is something worth considering.”

Another avenue where young people acquire ESDs is among the most problematic – the internet. As Ms. Keller indicated during her presentation, approximately 6% of sales-to-minors in Maryland occurred via internet sales.²² Some more-mainstream online retailers of ESDs – like JUUL Labs – have implemented robust (though, not infallible) age verification systems with the goal of ensuring “no one under the age of 21 can buy any JUUL products on our website, regardless of flavor, while preventing bulk purchases to all customers.”²³ While the online safeguards implemented by JUUL are laudable and no doubt required significant resources to establish, there are legitimate questions that remain

²² 2018 Maryland Youth Risk Behavior Survey & Youth Tobacco Survey

²³ JUUL Labs (22 January 2019). “Updates to Juul.com’s Online Age Verification System.” <https://newsroom.juul.com/updates-to-juul-coms-online-age-verification-system/>

unanswered about whether or not *any* age verification system is ‘childproof.’ Fundamentally, few online ESD retailers have the robust age-verification systems that larger corporate operations – like JUUL – have in place. To illustrate this point, during the first meeting of the e-facts Task Force, Staff Director Justin Hayes displayed two ESD products that he was able to purchase online – using a fake name and an untraceable payment source available to teens – without identity or age verification of any kind. Unless and until we can say with absolute certainty that the purported online buyers of ESD products are indisputably of appropriate age to purchase those devices, Maryland should not permit internet sales of ESDs.

There is bipartisan agreement among leaders in Washington and states across the nation that the youth vaping epidemic requires legal, regulatory, and statutory action. On December 20, 2019, the United States Congress made the sale of tobacco and ESD products to individuals under 21 years of age illegal under federal law.²⁴ In contrast to tobacco industry expectations for a drawn-out phase-in process, the FDA implemented this change just one day later. A mere 12 days later, on January 2, 2020, after years of regulatory inaction that precipitated an explosion in adolescent use of ESDs, the FDA finalized its enforcement policy on “*unauthorized flavored cartridge-based e-cigarettes that appeal to children...*” and gave retailers 30 days to remove these products from their shelves.

However, in the same industry advisory that detailed the FDA’s actions against flavored cartridge-based ESDs, the FDA specifically – and inexplicably – exempted flavored *disposable* ESDs from enforcement. After consultations with members of the e-facts Task Force and the determination that these products had become the nicotine-delivery product of choice for young people after the October 2019 departure of JUUL from the flavored-cartridge product category, Comptroller Franchot took action as Maryland’s chief tobacco regulator to remove these products from retailers’ shelves effective February 10, 2020.

COMPTROLLER FRANCHOT’S FEBRUARY 2020 REGULATORY ACTION

On February 10, 2020, Maryland Comptroller Peter Franchot announced that his Field Enforcement Division (FED) is taking a first-in-the-nation approach to prohibiting the sale of certain Electronic Smoking Devices (ESDs) marketed towards kids.

“In addition to the FDA’s prohibition of flavored e-cigarette cartridges, I have directed our enforcement agents to take more aggressive action by prohibiting the sale of disposable ESDs with flavors other than tobacco or menthol,” Comptroller Franchot said. “As the state’s tobacco regulator, it’s my legal and moral responsibility to protect consumers, especially children, from the hazardous substances contained in these unauthorized products.”

Last October, the Comptroller created the e-facts Task Force on Electronic Smoking Devices to learn more about the industry and to consider what regulatory and legislative action should be taken. The task

²⁴ H.R.1865 — 116th Congress (2019-2020).

force has met three times and will hold its final session on February 17 to discuss this report and its recommendations.

"In recent months, we've heard troubling reports of health-related issues, including deaths, that have been directly attributable to the use of ESDs," Franchot said. "At the same time, the use of ESDs among teens has skyrocketed. I will not stand idly by letting kids get addicted to nicotine and hurt by these unregulated products that are marketed directly towards them."

Last month, the FDA announced enforcement actions against "illegally marketed" ESD products – particularly, "flavored, cartridge-based [ESD] product[s]," which took effect on February 6.

However, flavored disposable e-cigarettes, which are growing in popularity among youngsters, are not covered under the FDA prohibition – a loophole that precipitated the Comptroller's announcement today. The FED will prioritize its enforcement actions towards unauthorized disposable products most widely used by children – those bearing names such as Strawberry Hard Candy, Pineapple Lemonade, Mango Bomb, Berry Gelato, Lush Ice and O.M.G.

"The federal flavor ban left a gaping hole for disposable flavored vape products," said Dr. Kathleen Hoke, a University of Maryland Law School Professor and Director of the Legal Resource Center for Public Health Policy. "I am happy to know Comptroller Franchot is putting children first by closing that gap."

The Field Enforcement Division notified industry leaders to make them aware of this state policy change. In addition, the agency posted an informational bulletin about the targeted enforcement on the Comptroller's website.

As the state's tobacco regulator, the Comptroller issues licenses to wholesalers and retailers of tobacco products and ESDs. If those licenses are deceptively, fraudulently or unlawfully used, the Comptroller can suspend or revoke those licenses or assess additional penalties.

Agents from the Comptroller's Field Enforcement Division will immediately begin license checks and product inspections to ensure compliance.

"As a parent of two teenagers whose family has been directly impacted by the vaping epidemic, I applaud the Comptroller's enforcement actions against those ESD products that are most commonly used by kids," said John Brennan, an Anne Arundel County resident and a member of the e-facts Task Force. "Disposable ESDs give children a relatively inexpensive and easily accessible path toward nicotine addiction. Keeping unregulated highly addictive ESDs out of the hands of our children is a step in the right direction."

FOOD & DRUG ADMINISTRATION'S JANUARY 2020 REGULATORY ACTION

Amid the epidemic levels of youth use of e-cigarettes and the popularity of certain products among children, the U.S. Food and Drug Administration issued a policy prioritizing enforcement against certain unauthorized flavored e-cigarette products that appeal to kids, including fruit and mint flavors. Under this policy, companies that do not cease manufacture, distribution and sale of unauthorized flavored cartridge-based e-cigarettes (other than tobacco or menthol) within 30 days risk FDA enforcement actions.

“The United States has never seen an epidemic of substance use arise as quickly as our current epidemic of youth use of e-cigarettes. HHS is taking a comprehensive, aggressive approach to enforcing the law passed by Congress, under which no e-cigarettes are currently on the market legally,” said HHS Secretary Alex Azar. “By prioritizing enforcement against the products that are most widely used by children, our action today seeks to strike the right public health balance by maintaining e-cigarettes as a potential off-ramp for adults using combustible tobacco while ensuring these products don’t provide an on-ramp to nicotine addiction for our youth. We will not stand idly by as this crisis among America’s youth grows and evolves, and we will continue monitoring the situation and take further actions as necessary.”

“As we work to combat the troubling epidemic of youth e-cigarette use, the enforcement policy we’re issuing today confirms our commitment to dramatically limit children’s access to certain flavored e-cigarette products we know are so appealing to them – so-called cartridge-based products that are both easy to use and easily concealable. We will continue to use our full regulatory authority thoughtfully and thoroughly to tackle this alarming crisis that’s affecting children, families, schools and communities,” said FDA Commissioner Stephen M. Hahn, M.D. “Coupled with the recently signed legislation increasing the minimum age of sale of tobacco to 21, we believe this policy balances the urgency with which we must address the public health threat of youth use of e-cigarette products with the potential role that e-cigarettes may play in helping adult smokers transition completely away from combustible tobacco to a potentially less risky form of nicotine delivery.

While we expect that responsible members of industry will comply with premarket requirements, the Comptroller’s Field Enforcement Division ready to take action against any unauthorized e-cigarette products as outlined in our priorities. We’ll also closely monitor the use rates of all e-cigarette products and take additional steps to address youth use as necessary.”

The final guidance outlining the agency’s enforcement priorities for electronic nicotine delivery systems (ENDS), such as e-cigarettes and e-liquids, comes as the 2019 National Youth Tobacco Survey (NYTS) results on e-cigarette use show that more than 5 million U.S. middle and high school students are current e-cigarette users (having used within the last 30 days) – with a majority reporting cartridge-based products as their usual brand.

The NYTS survey, which is conducted annually by the FDA in conjunction with the Centers for Disease Control and Prevention, also shows that of current youth e-cigarette users in 2019, approximately 1.6

million were using the product frequently (use on 20 days or more in a 30-day period), with nearly one million using e-cigarettes daily.

Additional data from another federal survey further underscore that youth are particularly attracted to e-cigarette flavors such as fruit and mint, much more so than tobacco or menthol flavored e-cigarettes. These overall levels of youth e-cigarette use are particularly concerning because using e-cigarettes puts them at risk for nicotine addiction and other health consequences. In particular, evidence shows that youth exposure to nicotine can adversely affect the developing adolescent brain and that, compared with non-users, youth who use e-cigarettes are more likely to try conventional cigarettes in the future.

On Aug. 8, 2016, all e-cigarettes and other ENDS products became subject to the FDA's tobacco authorities, including the premarket authorization requirements in the Federal Food, Drug, and Cosmetic Act (FD&C Act). All e-cigarettes and other ENDS products on the market at that time needed to have authorization from the FDA to be legally marketed.

However, as an exercise of its enforcement discretion, the agency had deferred enforcement of the premarket authorization requirements. To date, no ENDS products have been authorized by the FDA — meaning that all ENDS products currently on the market are considered illegally marketed and are subject to enforcement, at any time, in the FDA's discretion.

Beginning 30 days from the publication of the notice of availability of this guidance in the Federal Register, the FDA intends to prioritize enforcement against these illegally marketed ENDS products by focusing on the following groups of products that do not have premarket authorization:

- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access;
- Any ENDS product that is targeted to minors or likely to promote use of ENDS by minors; and
- Cartridge-based ENDS products are a type of ENDS product that consists of, includes, or involves a cartridge or pod that holds liquid that is to be aerosolized when the product is used. For purposes of this policy, a cartridge or pod is any small, enclosed unit (sealed or unsealed) designed to fit within or operate as part of an ENDS product.

By not prioritizing enforcement against other flavored ENDS products in the same way as flavored cartridge-based ENDS products, the FDA has attempted to balance the public health concerns related to youth use of ENDS products with considerations regarding addicted adult cigarette smokers who may try to use ENDS products to transition away from combustible tobacco products.

In addition to data showing that cartridge-based ENDS products are most commonly used among youth, important findings from the 2019 Monitoring the Future focusing on youth use of JUUL indicate that youth preference for menthol- and tobacco-flavored e-cigarettes is much lower than that for mint- and fruit-flavored e-cigarettes.

Because of the relatively low numbers of youth using both menthol- and tobacco-flavored, cartridge-based ENDS products, these products are not among the current enforcement priorities. However, should the FDA become aware of an increase of youth using any other flavored products (both cartridge-based or otherwise), the agency will take additional steps to address youth use of those products if necessary.

For all other products (cartridge-based or otherwise), including menthol-, tobacco-, and non-flavored ENDS products, the FDA will also prioritize enforcement where the manufacturer fails to take adequate measures to prevent youth access. For example, the FDA will consider whether the manufacturer has implemented adequate programs to monitor retailer compliance with age-verification and sales restrictions or if it has established and enforced penalties against retailers that fail to comply with those programs.

The agency also will consider whether the manufacturer uses adequate age-verification technology (or requires that retailers who sell its products use such technology) to prevent underage access to its website and to prevent underage sales through the internet. In addition, consideration will be given to whether the manufacturer limits (or requires retailers who sell its products to limit) the quantity of ENDS products that a customer may purchase within a given period of time.

The FDA also intends to prioritize enforcement with respect to any ENDS products that are targeted to youth or likely to promote use of ENDS by youth. Examples include: products marketed with labeling and/or advertising that resemble kid-friendly foods and drinks such as juice boxes or kid-friendly cereal; products marketed directly to minors by promoting ease of concealing the product or disguising it as another product; and products marketed with characters designed to appeal to youth.

Importantly, the FDA's enforcement priorities are not a "ban" on flavored or cartridge-based ENDS. The FDA has already accepted and begun review of several premarket applications for flavored ENDS products through the pathway that Congress established in the Tobacco Control Act. Manufacturers that wish to market any ENDS product – including flavored e-cigarettes or e-liquids – are required by law to submit an application to the FDA that demonstrates that the product meets the applicable standard in the law, such as whether the product is appropriate for the protection of the public health. If a company can demonstrate to the FDA that a specific product meets the applicable standard set forth by Congress, including considering how the marketing of the product may affect youth initiation and use, then the FDA could authorize that product for sale.

The guidance also states that, after May 12, 2020, the FDA intends to also prioritize enforcement against any ENDS products that continue to be sold and for which the manufacturers have not submitted a premarket application.

For ENDS products other than those in the three groups described, if premarket applications are submitted by that date, the FDA intends to continue to exercise enforcement discretion for up to one year pending FDA review of the applications, unless there is a negative action by the FDA on such application or the product is authorized to be marketed by the FDA.

The FDA has demonstrated a deep commitment to taking steps to prevent youth from using and becoming addicted to any tobacco product, including e-cigarettes. This enforcement policy is an important step in the agency's ongoing work to ensure these products are not marketed to, sold to, or used by kids, as outlined in the agency's Youth Tobacco Prevention Plan, including investing in public education campaigns to educate youth about the dangers of e-cigarette use, provide resources to educators, parents and community leaders to prevent youth use, as well as further explore how to help those kids who are already addicted to e-cigarettes quit.

The FDA, an agency within the U.S. Department of Health and Human Services, protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices. The agency also is responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, products that give off electronic radiation, and for regulating tobacco products.

POLICY & REGULATORY RECOMMENDATIONS

To avoid becoming mired in debates already underway in the Maryland General Assembly, the Task Force will not weigh in on existing legislation related to appropriate taxation rates for ESDs or the outright banning of all e-liquid flavors, but will instead focus on novel, evidence-based approaches to curbing youth exposure to nicotine and preventing adulterated or contaminated products from causing injury to adult consumers.

Accordingly, the Comptroller's e-facts Task Force hereby makes the following recommendations to safeguard overall public health and protect young people from lifelong addiction to nicotine:

1. BAN ALL DIRECT-TO-CONSUMER INTERNET AND MAIL ORDER SALES OF ESDS.

The General Assembly should pass legislation to prohibit all sales of ESDs that do not occur face-to-face. Today, many children receive their first ESD in a package delivered to their mailbox without their parents' knowledge or any attempt at age verification by internet-based sellers. This needs to stop, and the Comptroller's Field Enforcement Division is committing to working with the Maryland Attorney General's Office and the federal government to enforce a total ban on internet, mail order, and direct-to-consumer sales of ESDs into Maryland.

2. RESTRICT SALES OF FLAVORED E-LIQUIDS AND REFILLABLE "TANK" SYSTEMS EXCLUSIVELY TO "VAPE SHOP VENDORS," PROHIBIT ENTRY TO THESE RETAILERS BY ANYONE UNDER THE AGE OF 21, AND PROHIBIT THESE RETAILERS FROM SELLING ALL OTHER TOBACCO/NICOTINE PRODUCTS.

The General Assembly should pass legislation to prohibit sales of flavored e-liquids and refillable "tank" systems by grocery stores, convenience stores, and gas stations, and restrict sales of those products exclusively by those businesses licensed as "Vape Shop Vendors" [VSVs]. As part of this legislation, VSVs

should be made to register with the local health department (in addition to getting their state license), prohibit the entry of anyone under age 21 into a vape shop at any time, and prohibit vape shops from selling any other tobacco products.

3. REQUIRE ESD MANUFACTURERS TO PROVIDE COMPONENT AND INGREDIENT LISTINGS TO THE STATE OF MARYLAND BEFORE PRODUCTS CAN BE SOLD AND REQUIRE LABORATORY TESTING TO VERIFY THESE CLAIMS BEFORE PRODUCTS CAN BE SOLD AT RETAIL.

In order to pinpoint the cause of an outbreak of illnesses like EVALI, the State of Maryland should know precisely what e-liquids and ESD devices contain before these products ever reach consumers. The General Assembly should establish authority for the Field Enforcement Division’s Laboratory in Jessup to conduct testing of ingredients, ESD component parts, and vapor contents prior to marketing of any device or e-liquid in Maryland.

4. REQUIRE SEPARATE MANUFACTURING, WHOLESALE, AND RETAIL LICENSES FOR EACH CATEGORY OF PRODUCT (CIG/OTHER TOBACCO PRODUCT/ESD) AND INCREASE LICENSURE FEES FOR EACH CATEGORY.

Legislation passed by the General Assembly in 2017 created a licensing ambiguity that allows any cigarette or ‘other tobacco product’ wholesaler/distributor/retailer to sell ESDs without acquiring a separate license to do so. The Maryland General Assembly should correct this ambiguity, and require every wholesaler, manufacturer, distributor, or retailer of ESDs to acquire a separate and specific license to do so – and enforce parity across the spectrum of fees for each of these license types, so that the cost to become an ESD manufacturer or OTP manufacturer or cigarette manufacturer is the same.

5. PASS CORRECTIVE LEGISLATION TO BRING MARYLAND IN COMPLIANCE WITH THE NEW FEDERALLY-MANDATED MINIMUM AGE OF 21 TO PURCHASE TOBACCO AND ESDS – WITHOUT EXCEPTIONS.

The General Assembly should bring Maryland law into compliance with the new federal standard age for tobacco/ESD sales. Maryland law currently exempts “active duty member[s] of the military; [who] present valid military identification” from 2019 legislation that increased the minimum age to purchase tobacco and ESD products to 21. As noted, the federal government recently changed the law – effective nationwide – to 21 without exceptions.

6. AMEND THE MARYLAND CLEAN INDOOR AIR QUALITY ACT TO INCLUDE EMISSIONS FROM ESDS.

The General Assembly should amend the text of the Maryland Clean Indoor Air Quality Act to include emissions from ESDs in order to protect children and adults from secondhand exposure to nicotine and other constituent elements of ESDs.

7. INCREASED CRIMINAL/CIVIL PENALTIES FOR ‘STRAW BUYERS’ PURCHASING ON BEHALF OF OR TRANSFERRING TOBACCO OR ESDS TO INDIVIDUALS UNDER THE AGE OF 21.

The General Assembly should amend the statute relating to illegal purchases or transfers on behalf of individuals under 21 be expanded to include ESDs and any other product containing nicotine. As it stands, Criminal Law § 10-107 only refers exclusively to sale of “a tobacco product” without specific mention of ESDs or other products containing nicotine. Because so-called ‘straw purchases’ constitute a primary means (approximately 20%) for young people to access ESDs, the penalties for this practice should include the potential for incarceration and increased fines.

8. REQUIRE RETAILERS TO PURCHASE AND USE ID-SCANNING TECHNOLOGY FOR EACH SALE – WITHOUT THE POSSIBILITY OF A MACHINE “OVERRIDE” – AND REQUIRE AN ID SCAN TO “UNLOCK” PURCHASE OF TOBACCO/ESDS AND OTHER AGE-RESTRICTED PRODUCTS.

The Comptroller’s Office will promulgate a regulation to require retailers of tobacco and ESD products to acquire point-of-sale systems that incorporate a fully “locked down” process for all tobacco/ESD product codes wherein the scanning of government-issued identification proving legal age is required to complete a sale. This regulation will remove “human error” out of the equation for retailers and prevent unlawful point-of-sale purchases by individuals under the age of 21.

9. REQUIRE EDUCATION FOR RETAILERS UPON RENEWAL OR ISSUANCE OF LICENSE BY COMPTROLLER.

The Comptroller’s Office will promulgate a regulation to require retailers of tobacco and ESD products to complete (prior to the forthcoming license year, 2021) an educational program created by the Department of Health advising them on the dangers of tobacco/ESD use to all consumers – generally – and, specifically, how tobacco/ESDs are harmful to underage users.

10. ESTABLISH DISCIPLINARY PROTOCOL FOR RETAILERS WHO SELL ESDS, E-LIQUIDS, OR TOBACCO PRODUCTS TO INDIVIDUALS UNDER 21 – INCLUDING SUSPENSION/REVOCATION OF THEIR LICENSE.

The Comptroller’s Office will promulgate regulations to codify progressive discipline for retailers that are cited by local health departments for violations of local/state laws relating to tobacco and ESDs, establish clear policies and procedures for submission of referrals with standard criteria, create predictable consequences for violators, and communicate enforcement outcomes immediately to local Tobacco Coordinators.

11. PUBLISH QUARTERLY LIST OF TOBACCO/ESD VIOLATORS ON THE COMPTROLLER’S WEBSITE.

The Comptroller’s Office will utilize its website and social media platforms to publicize “bad actors” in Maryland who sell to minors, offer unauthorized products for sale, or otherwise violate local, state, or federal laws.

12. ESTABLISH A STATEWIDE, CONSISTENT, NON-DISCIPLINARY POLICY FOR TOBACCO/ESD PREVENTION AND DIVERSION WITH UPDATED AND AGE-RELEVANT INFORMATION TO BE USED BY EDUCATORS AND ADMINISTRATORS.

The Maryland State Department of Education and the Department of Health should produce a statewide policy that directs the actions that educators and administrators should take when confronted by a student found using or possessing tobacco/ESDs. From both inside and outside the Task Force, reports describe a disjointed, misdirected, and excessively-punitive process for young people caught with tobacco/ESDs. MSDE and MDH should work collaboratively on a policy that treats tobacco/ESD use as a symptom of nicotine addiction, rather than a disciplinary challenge.



Task Force Meeting Schedule

meetings may be subject to change

Tuesday, December 3, 2019

2:30 PM - 4:30 PM

University of Maryland, College Park
Colony Ballroom, Stamp Student Union
3972 Campus Drive
College Park, Maryland 20742

Thursday, January 9, 2020

2:00 PM - 4:00 PM

Anne Arundel Community College
Multipurpose Room, Cade Center for Fine Arts
101 College Parkway
Arnold, Maryland 21012

Monday, January 27, 2020

2:00 PM - 4:00 PM

Johns Hopkins University
Ballrooms B/C, Charles Commons
3301 North Charles Street
Baltimore, Maryland 21218

Monday, February 17, 2020

2:00 PM - 4:00 PM

Assembly Room, Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401

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e-facts Task Force – 1st Meeting

2:30 PM – 4:30 PM

*University of Maryland, College Park
Colony Ballroom, Stamp Student Union
3972 Campus Drive, College Park, Maryland 20742*

AGENDA

- **Welcome**
 - *The Honorable Peter Franchot, Comptroller of Maryland*

- **Overview of the Goals of the e-facts Task Force**
 - *Justin Hayes, Task Force Staff Director, Alcohol & Tobacco Regulatory Manager, Field Enforcement Division, Comptroller of Maryland*

- **Vaping 101 Panel**
 - *Jeffrey A. Kelly, Director of Field Enforcement, Comptroller of Maryland*
 - *Matt Milby, Vice President, Maryland Vapor Alliance*
 - *Kathleen Hoke, Professor, University of Maryland, School of Law*
 - *Dr. Ryan Kennedy, Ph.D., Institute for Global Tobacco Control, JHU Bloomberg School of Public Health*

- **Stakeholder Panel**
 - *Brandon Hatton, Senior Regional Manager, State and Local Government Affairs, JUUL Labs*
 - *Dr. Maura Rossman, M.D., Howard County Health Officer*
 - *Dr. Panagis Galiatsatos, M.D. Co-Founder & Co-Director, Medicine for the Greater Good*

- **Group Discussion**

- **Closing Remarks (Comptroller Franchot)**

###



e-facts Task Force - 2nd Meeting

2pm, Thursday, January 9, 2020 - Anne Arundel Community College, Cade Center

AGENDA

- **Welcome**
 - Peter Franchot, *Comptroller of Maryland*

- **Recap of Recent FDA Action Related to ENDS**
 - Justin Hayes, *e-facts Task Force Staff Director, Comptroller of Maryland*

- **Youth Access and Prevention Panel**
 - John Brennan, *Concerned Parent*
 - Lea Jaspers, *Maryland State Department of Education*
 - Ron Ward, *The Vaper's Edge/CASAA*

- **"EVALI" Lung Injury and Regulatory Response Panel**
 - Dr. Cliff Mitchell, M.D., *Maryland Department of Health*
 - Lori Dodson, *Maryland Medical Cannabis Commission*
 - Senator Clarence Lam, M.D., *Maryland's 12th District*

- **Wrap Up**

- **Closing Remarks**
 - Peter Franchot, *Comptroller of Maryland*

###



e-facts Task Force – 3rd Meeting

2pm, Monday, January 27, 2020 – Johns Hopkins University, Charles Commons

AGENDA

- **Welcome**
 - **Peter Franchot**, *Comptroller of Maryland*

- **Recap**
 - **Justin Hayes**, *e-facts Task Force Staff Director, Comptroller of Maryland*

- **Enforcement: A Local Agency Perspective**
 - **Jennifer Schneider**, *Anne Arundel County Department of Health*
 - **Kamala Green**, *Baltimore City Department of Health*
 - **Vicki Keller**, *Baltimore County Department of Health*
 - **Jennifer Faulkner**, *Calvert County Department of Health*
 - **Jennifer Padgett**, *Cecil County Department of Health*
 - **Vanda Lerdboon**, *Howard County Department of Health*
 - **Cristina Ruiz-McCalla**, *Montgomery County Department of Health*

- **Montgomery County: A Local Government Perspective**
 - **Tom Hucker**, *District 5 Councilmember and Council Vice President*

- **Pending Legislation Before the MD General Assembly**
 - **John Handley**, *Legislative Director, Comptroller of Maryland*

- **Discussion of Task Force Recommendations**

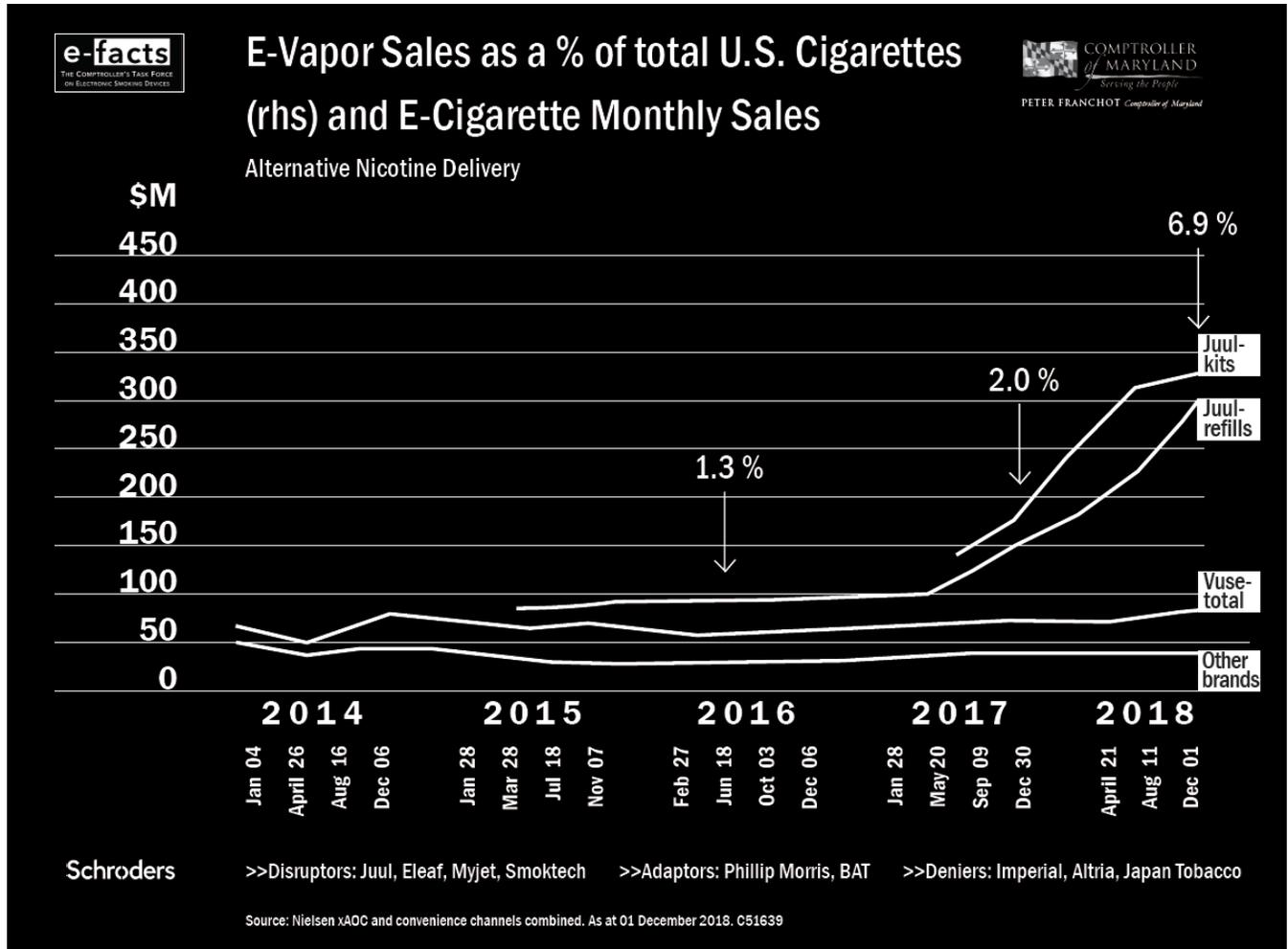
- **Closing Remarks**
 - **Peter Franchot**, *Comptroller of Maryland*

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CHART: REGIONAL COMPARISON OF ESD LAWS

	TAXED BY STATE?	MUST BE 21 TO PURCHASE?	MUST BE 21 TO POSSESS?	INTERNET SALES REQUIRE 21+ ID?	BAN ON USE IN PUBLIC AREAS?	NEED A STATE LICENSE OR PERMIT TO SELL RETAIL?
 Regional Comparison of ESD Laws  <small>PETER FRANCHOT, Comptroller of Maryland</small>						
MD 	No.	Yes.	No.	No.	No. No statewide ban, but some jurisdictions have restrictions.	Yes. Either a Vape Shop Vendor, ESD Retailer, or Cigarette/Other Tobacco Product license is required.
VA 	No.	Yes.	Yes.	Yes. Age verification required at delivery.	Yes. No use permitted on school grounds, property, or buses.	No.
DE 	Yes. 5 cent excise tax per fluid ml.	Yes.	No.	Yes. Age verification required at delivery.	Yes, wherever smoking is prohibited.	Yes. A license is required to sell e-liquid, but no license is required to sell e-cigarette devices.
PA 	Yes. 40% of purchase price charged to the retailer.	Yes. (* Pending Gov. signature 2019.)	Yes. (* Pending Gov. signature 2019.)	No.	No, except workplaces/bars in Philadelphia	Yes, retail tobacco products license is required.
DC 	Yes. Rate equal to tax on cigarette pack. As of October 2019, 96% of wholesale sale price.	Yes.	Yes.	No.	Yes, wherever smoking is prohibited.	Yes, a retail license is required.

CHART: E-VAPOR SALES AS A PERCENTAGE OF TOTAL U.S. CIGARETTES AND E-CIGARETTE MONTHLY SALES

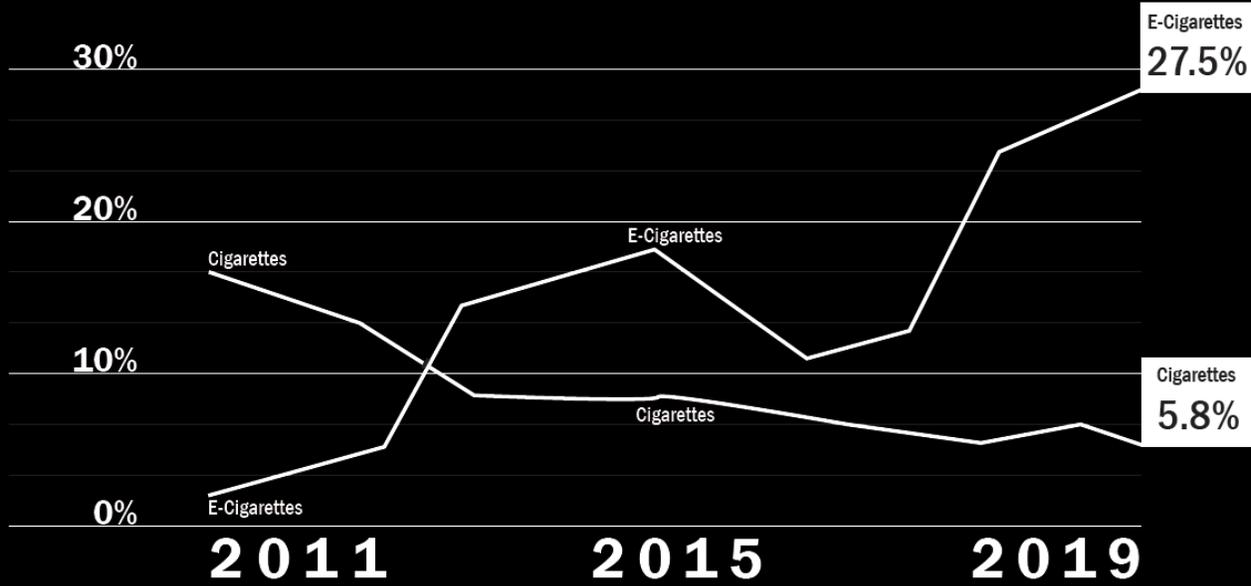




E-Cigarette Use Soars at U.S. High Schools



A GROWING PERCENTAGE OF HIGH SCHOOL STUDENTS REPORT USING E-CIGARETTES WITHIN THE LAST 30 DAYS.



Source: National Youth Tobacco Survey, U.S. Food and Drug Administration