Retail Regulations: Addressing Electronic Smoking Devices at the Point of Sale

Recorded on September 25, 2015

Katie Byerly
Welcome!

Jessica Eaddy, MPH
CounterTobacco.org’s
New Project Director
and Managing Editor

What’s in a Name?

What’s in a Name?

A FIELD GUIDE TO E-CIGARETTES

http://stillblowingsmoke.org/
What is your state or community doing to regulate e-cigarettes at the point of sale?

POLL

Percentage of stores selling e-cigarettes more than doubled from 2012 to 2015

Draft Results
E-cigarettes sales ($, millions) increased by 132.5%


Industry Targeting

7 Ways E-Cigarette Companies Are Copying Big Tobacco's Playbook
(or, is the FDA getting a handle on e-cigarettes?)

Industry Targeting

SMOKE IN STYLE

You've come a long way, baby.
Industry Targeting
Industry Targeting

Check out how well this spinner is placed!

Retail Tobacco and Health

The Industry Spends $1 Million/ Hour

On cigarette and smokeless tobacco advertising and promotion at the point of sale

- ATTRACT NEW SMOKERS
- SUSTAIN CURRENT SMOKERS
- PREVENT QUITTING & PROMOTE RELAPSE

Health: Reduced Harm?

Clashing Views on E-Cigarettes

The New York Times

Jury is out on health effects of e-cigarettes

Los Angeles Times

- Reduced尼古丁 exposure
- E-cigarettes can help smokers who want to quit
- One study in the Journal of the American Medical Association found that smokers who switched from cigarettes to e-cigarettes were 50% more likely to quit smoking within the following year.
- However, other studies have shown inconsistent results.
- The American Lung Association recommends that e-cigarettes be regulated similarly to traditional cigarettes.
Health: Aerosols

Are E-cigarettes Safer? New Study Says Vapors Trigger Lung Cell Stress

A new study published by researchers from the University of Rochester in the journal Physiological Reports suggest that e-cigarettes and aerosols are the cause of cell stress.

Researchers observed that the e-cigarette aerosol containing nicotine, propylene glycol, and glycerin can activate specific cell-signaling pathways that affect cell viability, proliferation, and DNA damage. They found that the e-cigarette aerosol can cause oxidative stress and alter cell signaling pathways, which may contribute to the development of lung cancers.

The leading cause of lung cancer is a lack of awareness about the dangers of smoking. Many studies have linked smoking to lung cancer, and researchers are working to develop new ways to prevent and treat the disease. The findings of this study suggest that e-cigarettes may be contributing to the development of lung cancer, and further research is needed to better understand the effects of e-cigarettes on lung health.

Health: Toxic Flavors?

E-Cigarette Manufacturers Can Be Toxic to Lung Cells

E-cigarettes are known to be toxic to lung cells, but new research suggests that the toxic effects may extend to other organs as well. A study published in the journal Tobacco Control found that e-cigarette aerosol can cause oxidative stress and alter cell signaling pathways in the liver, heart, and brain.

The study found that e-cigarette aerosol can cause DNA damage in liver cells, and that the aerosol can also affect the heart and brain. The findings suggest that e-cigarettes may be contributing to the development of a range of health problems, and that further research is needed to better understand the effects of e-cigarettes on overall health.

Normalizing Use

E-Cigarettes Are Gateway to Substance Abuse and Addiction

E-cigarettes are often marketed as a way to quit smoking, but research suggests that they may be contributing to the development of additive behaviors. A study published in the journal Addiction found that e-cigarette users were more likely to use other substances, such as alcohol and marijuana, compared to non-users.

The study found that e-cigarette users were more likely to use other substances, such as alcohol and marijuana, compared to non-users. The findings suggest that e-cigarettes may be contributing to the development of addictive behaviors, and that further research is needed to better understand the effects of e-cigarettes on overall health.
Normalizing Use

Youth Initiation

Youth E-Cigarette Use Tripled from 2013 to 2014

Youth Initiation

Awareness of E-cigarette Advertising

Legends for Health: Association of E-Cigarette Advertising and Youth. May 2014.
Adult Use

Trends 2010-2013

• Ever Use: ↑ 11.2% (1.8% to 13%)
• Current Use: ↑ 6.5% (0.3% to 6.8%)
• Use is highest among young adults (18-24, 14.2%)
• 32.5% of current e-cig smoker are never or former smokers


Regulatory Framework

40 AGs urge tight regulation of e-cigarettes

E-Cigarettes: A Nearly $2bn Industry, A Regulatory Wild West

October 21, 2015 4:27 PM ET

Undermining Policy

Dear Smoking Ban,
Undermining Policy

Undermining Policy

Undermining Policy

E-Cigarette Taxation
(as of Jan 2015)

Proposed E-Cigarette Tax Landscape

Public Interest

45 of 48 states reported some policy activity related to e-cigarettes

Policy Options

What can local & state practitioners DO about electronic smoking devices?

• Update definitions
• Inclusive licensing
• Restricting self service
• Restrict promotions
• Ban sampling
• Child safe packaging
• Flavor restrictions
• Taxes

Resources
Resources

Coming in 2016:
e-STARS & v-STARS

Help develop these tools:
October 26, 29
CounterTobacco.org for details

Thank you!

info@countertobacco.org

@CounterTobacco
OVERVIEW

1. How are electronic smoking devices currently regulated?

2. How can states and local communities address electronic smoking devices at the POS?
HOW ARE ELECTRONIC SMOKING DEVICES CURRENTLY REGULATED?
History of FDA’s e-cigarette regulation

2009: First attempt of the FDA to regulate e-cigarettes as a drug delivery device

2010: United States Courts of Appeals Sottera, Inc v. FDA
Holdings: “The FDA lacked authority under FDCA’s drug/device provisions to regulate tobacco products customarily marketed without claims of therapeutic effect; FDA had authority to regulate tobacco products customarily marketed without claims of therapeutic benefit under the Tobacco Act."

Deeming Rule

April 2014: the FDA issued its proposed “Deeming Rule,” which would extend its regulatory authority over e-cigarettes, cigars, pipe tobacco, and hookah tobacco

Until the rule is adopted, FDA lacks authority to regulate the sale or manufacturing of e-cigarettes as tobacco products

If passed, the Deeming Rule Would:

- Prohibit sales to minors
- Restrict vending machine sales
- Prohibit free samples
- Require health warnings
- Require disclosure of ingredients
- Allow for FDA review
- Require scientific evidence to support claim that an e-cig product is less harmful
What Deeming Won't Do

Deeming rule will not affect states' and localities' ability to regulate:

- Licensing requirements
- Sales restrictions and “plug-ins”
- Taxes
- Marketing restrictions allowable under 1st Amendment

Advance Notice of Proposed Rulemaking — E-liquids

The FDA has started rulemaking process concerning nicotine warnings and child-resistant packaging for liquid nicotine, nicotine-containing e-liquid(s).

HOW CAN STATES AND LOCAL COMMUNITIES ADDRESS ELECTRONIC DEVICES AT THE POS?
In light of pending laws & regulations at the federal level ...

What can state and local governments do?

Available at:
www.tclonline.org

U.S. E-Cigarette Regulations - 50 State Review (2016)

This finding is a snapshot of existing state and local excise taxes on e-cigarettes. This report was created using TSI's 50 state- and local-level regulatory tracking system. The following states have enacted a comprehensive regulatory regime regulating e-cigarettes:

1. California
2. Connecticut
3. Delaware
4. Illinois
5. Maryland
6. Massachusetts
7. New York
8. Rhode Island
9. Vermont
10. Washington

Each state has its own unique set of regulations, which may change over time. Please note that some states may have regulations that are more restrictive than those included in this report.

This information was last updated on May 23, 2016.

For more information, visit www.tclonline.org.
Defining ENDS as “Tobacco Products”

“Tobacco Products” means:
(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, inhaled, chewed, absorbed, nasally inhaled, snorted, sucked, or injected by any other means, including but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
(2) any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Tobacco Products”

“Tobacco Products” means:
(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, inhaled, chewed, absorbed, nasally inhaled, snorted, sucked, or injected by any other means, including but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
(2) any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
Vending Machine Sales Prohibited

Ban Self-Service Displays
BAN SAMPLING

Prohibit Price Promotions

- BOGO
- Coupon redemption

LABELING

SURGEON GENERAL’S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
States have broad authority
Cities and counties are limited to authority granted by state

Taxes
What Products to Tax?
• E-liquids with nicotine
• E-liquids without nicotine?
• How to address component parts?

Taxes
Additional considerations:
• What should the tax rate be?
  • Fixed rate, or ad valorem tax at equivalent rate for cigarettes?
• Determining the point of intervention?
  • Depends partly on whether state or local
  • The unique problem posed by vape shops
Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

© 2015 ChangeLab Solutions
Thank you!

Ian McLaughlin, JD
imclaughlin@changelabsolutions.org
www.changelabsolutions.org

Follow us on Twitter!
@ChangeLabWorks