

ASSOCIATION RESOURCE

Electronic Cigarettes Overview – 12/9/2013



The U.S. Food and Drug Administration defines electronic cigarettes, or e-cigarettes, as battery-powered products designed to deliver nicotine or other substances to a user in the form of a vapor. While e-cigarettes don't produce tar or carbon monoxide, initial studies have found carcinogens and toxic chemicals in the vapor.¹ Furthermore, studies have not found that e-cigarettes are any more effective than the patch in helping smokers quit.

The use of e-cigarette by minors and adults is rising dramatically. One major argument in favor of greater regulation is the growing use of the devices by American teenagers. A report by the Centers for Disease Control and Prevention found that the percentage of students in grades 6 through 12 who had ever used e-cigarettes increased from 3.3 percent in 2011 to 6.8 percent in 2012.² Those who reported currently using the devices increased from 1.1 percent to 2.1 percent. Based on these numbers, the CDC estimates that 1.78 million middle and high school students nationwide have tried e-cigarettes. Some consumers believe that e-cigarettes are a safe alternative to cigarettes, despite the fact that they are addictive – especially alarming given that the Substance Abuse and Mental Health Services Administration has found that nearly 90 percent of all smokers begin smoking as teenagers.³

E-cigarettes aren't currently subject to the restrictions that apply to tobacco cigarettes. There are no extra taxes or restrictions on advertising. And unlike traditional tobacco products, there are no federal age restrictions that would prevent children from obtaining e-cigarettes. Unless jurisdictions pass legislation stating otherwise, minors are free to buy e-cigarettes in stores and online.

In California, the sale of e-cigarettes to minors has been prohibited since 2011, but their use is still largely unregulated. As a result, local cities and counties have taken steps to ensure that e-cigarettes are regulated and monitored in their communities. As of November 2013, 44 cities and counties in California had prohibited the use of e-cigarettes in certain outdoor areas, indoor areas, or both. The American Lung Association in California's Center for Tobacco Policy & Organizing has published a list of local policies on the use of e-cigarettes.⁴ Please note that the list does not include the most recent legislation efforts in cities and counties.

In addition, as of July 2013, 59 cities and counties in California had included e-cigarettes in their strong local tobacco retailer licensing policies – these require retailers to obtain a license to sell e-cigarettes by clarifying the definition of "tobacco products" in their local tobacco retailer licensing ordinances.⁵

The National Association of Attorneys General has urged the FDA (via a letter signed onto by Kamala Harris) to act quickly "to ensure all tobacco products are tested and regulated to ensure that companies do not continue to sell or advertise" to youth, and use its authority to regulate electronic cigarettes as "tobacco products" under the Tobacco Control Act.⁶ The FDA is seeking to expand its oversight over e-cigarettes, and draft regulation from the FDA is currently under an interagency review at the White House budget office's Office of Information and Regulatory Affairs. The Obama administration has indicated that it will release the proposal to the public in December.

¹ "FDA Warns of Health Risks Posed by E-Cigarettes," *U.S. FDA*, July 23, 2009; reviewed Sept. 17, 2013.

<http://www.fda.gov/forconsumers/consumerupdates/ucm173401.htm>

² "Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012," *CDC Morbidity and Mortality Weekly Report*, Sept. 6, 2013. http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?s_cid=mm6235a6_w

³ SAMHSA calculation based on data in 2011 National Survey on Drug Use and Health.

⁴ "Local Policies on the Use of Electronic Cigarettes," *American Lung Association in California, The Center for Tobacco Policy & Organizing*, Nov. 2013. <http://center4tobaccopolicy.org/wp-content/uploads/2013/11/Local-Policies-on-Use-of-E-Cigs-Nov-2013.pdf>

⁵ "Tobacco Retailer Licensing and Electronic Cigarettes," *American Lung Association in California, The Center for Tobacco Policy & Organizing*, July 2013. <http://center4tobaccopolicy.org/wp-content/uploads/2013/08/E-cigarettes-in-TRL-8.9.13.pdf>

⁶ Letter to Commissioner Hamburg, *U.S. FDA*, Sept. 24, 2013. <http://www.tn.gov/attorneygeneral/cases/ecigarettes/ecigaretteletter.pdf>