



PRESS RELEASE

Attorney General Frosh Urges FDA to Strengthen E-Cigarette Enforcement Guidance

Coalition of Attorneys General Encourage FDA to Expand Guidance to Include Menthol and Disposable, Refillable Products

BALTIMORE, MD (February 27, 2020) – Maryland Attorney General Brian E. Frosh today joined a [bipartisan coalition](#) of 28 attorneys general urging the Food and Drug Administration (FDA) to strengthen its enforcement policy of electronic nicotine delivery systems, or e-cigarettes. The FDA released guidance in January, prioritizing enforcement against flavored, cartridge-based e-cigarettes, with the exception of tobacco or menthol flavored products. The FDA will also prioritize enforcement against e-cigarette products marketed toward minors or manufacturers that have not taken adequate measures to prevent minors from using their products. However, the guidance does not prioritize disposable products or refillable cartridge systems that are popular among youth.

In comments submitted today, the coalition is encouraging the FDA to expand and strengthen its enforcement guidance by including menthol flavors and products that are not cartridge-based. The coalition states that the current policy creates loopholes that manufacturers can exploit and will not help decrease e-cigarette usage among youth.

“The tobacco industry has a long history of using flavored products to entice young users. Now e-cigarette manufacturers seem to be using that same strategy to get our children hooked,” said Attorney General Frosh. “The FDA’s action is riddled with loopholes. It must take stronger steps to ensure that these addictive nicotine products are not available to children.”

Under the new guidance, mint flavored e-cigarette products are included in the FDA’s enforcement priorities, and the coalition is urging the FDA to amend the guidance to include menthol flavors. The attorneys general point out that as a flavor derived from mint, menthol shares many of the same characteristics making it an attractive substitute for youths who would search for a flavor to substitute for mint. The coalition cites the FDA’s own data showing that the use of mint and menthol flavors by high school e-cigarette users dramatically increased, from 16 percent in 2016 to more than 57 percent in 2019. The coalition also points to the FDA’s admission that evidence has shown that individuals who already use flavored tobacco products will likely switch to other flavored tobacco products if their preferred flavor is no longer available.

In addition to menthol serving as a likely mint substitute due to the flavor similarities, the coalition states that the FDA's decision to permit menthol is problematic because the guidance does not explain how the FDA will distinguish between the two similar flavors. The coalition expresses concern that the FDA will be forced to rely on packaging descriptions of the flavors, which the attorneys general argue creates a loophole manufacturers can exploit by simply renaming the flavors on product labels.

The FDA claims its reasoning for allowing menthol is to avoid removing an incentive for adult smokers who might transition from using combustible cigarettes to "potentially less harmful" e-cigarettes. The coalition points to a 2020 surgeon general report that concluded there is not enough evidence to show that e-cigarettes increase smoking cessation. In fact, the coalition argues, the purported benefits of menthol's availability to adult smokers should be outweighed by the risk it poses of attracting youth smokers.

Also in the comments, the coalition states that the FDA's focus on cartridge-based products creates a loophole for self-contained, disposable products that are popular with youth. The coalition points out that with two of the most popular e-cigarette devices among high school students being disposable, the guidance will have the result of pushing youth toward refillable systems.

In Maryland, Attorney General Frosh has sponsored, along with Delegate Dereck E. Davis, legislation prohibiting the manufacture, shipment, import, or sale of flavored tobacco products - which are clearly designed to attract children - within the State. Along with the recent increase in legal age to purchase tobacco products from 18 to 21, the proposed law aims to reduce youth interest and access to electronic smoking devices and other tobacco products, which in turn reduces the likelihood of them ever starting to use tobacco.

Attorney General Frosh joined the attorneys general of Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Maine, Massachusetts, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin in submitting the comments.