



Comptroller of Maryland • Field Enforcement Division

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**TT – 77**

February 10, 2020

**TO: All Wholesalers and Retailers who sell Electronic Smoking Devices (ESDs).**

**SUBJECT: Wholesalers and Retailers must cease all sales and marketing of cartridge-based and disposable ESD products containing flavors other than tobacco or menthol.**

- On January 2, 2020, the FDA announced enforcement actions against “illegally marketed” ESD products – particularly, “flavored, cartridge-based [ESD] product[s]” – “beginning 30 days after issuance.” The FDA’s Final Guidance entered the Federal Register on January 7, 2020 and is now in effect.
- As of 12:00 AM on February 6, 2020, the FDA’s 30-day window closed, and all flavored cartridge-based ESD products are now subject to federal enforcement actions.
- An FDA notice posted on February 7, 2020, indicates that “[u]nder the policy, companies that continue to manufacture, distribute, and sell unauthorized flavored cartridge-based e-cigarettes (other than tobacco or menthol) risk FDA compliance and enforcement actions ranging from warning letters to injunction, seizure, and/or civil money penalty actions where warranted.”
- **While the FDA’s enforcement actions are solely targeting cartridge-based products, “no ENDS products have been authorized by the FDA — meaning that all [ESD] products currently on the market are considered illegally marketed” under federal law and, as such, are unauthorized for sale and subject to regulation at the discretion of the Comptroller’s Field Enforcement Division.**
- **The Comptroller’s Field Enforcement Division is prioritizing its enforcement actions against those unauthorized products most widely used by children – specifically, cartridge-based and disposable ESDs with flavors other than tobacco or menthol.**
- **Under Business Regulation §16.7-207(a)(5), your license to sell tobacco and ESD products in Maryland may be subject to disciplinary action if you do not comply with this directive, as these products are being sold and marketed in direct violation of federal law.**
- Agents from the Comptroller’s Field Enforcement Division will immediately begin license checks and product inspections to ensure compliance with this change.
- Please contact the Comptroller of Maryland’s Field Enforcement Division at 410-260-7314 if you have any questions concerning this notice.

Jeffrey A. Kelly

Director, Field Enforcement Division