

Department of Health and Social Services

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MEMORANDUM

DATE: December 15, 2016

TO: Stacy Toner, Deputy Director

FROM: Daniel Collison, Research Analyst III
Joe Darnell, Investigator IV

SUBJECT: Results of pilot *Electronic Nicotine Delivery Systems (ENDS)* investigations

Investigators with the DBH Tobacco Section conducted pilot Electronic Nicotine Delivery Systems (ENDS) investigations during June through September of this year. Investigations involved under-age youth who attempted to purchase ENDS products, i.e. e-cigarettes and vaping fluids. Adult investigators directed investigations and accompanied youth to investigation sites.

Vaping fluid investigations resulted in a **26.1%** sell rate to minors. The vaping fluid sell rate is nearly five times greater than a preliminary **5.4%** tobacco sell rate to minors. E-cigarette investigations resulted in a **9.1%** sell rate to minors, nearly double the tobacco sell rate to minors. (See attached table: *Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors.*)

Pilot ENDS investigations were completed at 23 vape shops. The majority of the shops (12) are located in Anchorage; the balance are in Eagle River, Fairbanks, Ketchikan, Soldotna, Valdez and Wasilla. (Investigations were attempted at an additional 18 vape shops but were not completed because the vendor was out-of-business, temporarily closed or located in a private residence.) These vendors represent all known or suspected vape shops in Alaska. E-cigarette investigations were completed at 33 convenience stores/gas stations located in the same area as vape shops. Note that because the pilot ENDS investigation sample size was relatively small, it may be difficult to extrapolate investigation results for a larger population of ENDS vendors.

The pilot ENDS investigations were also conducted concurrently with federally required undercover Synar investigations of tobacco products.

These investigations establish baseline sell rates of vaping products and e-cigarettes to minors in anticipation of federal Synar regulation updates, which will likely mandate ENDS investigations.

Federal Regulatory Changes: Federal Synar regulations require states to restrict youth access to tobacco. States must also conduct undercover investigations of tobacco vendors, whereby minors attempt to purchase tobacco products.

On May 5, 2016, the US Food and Drug Administration (FDA) issued final rules that classify ENDS products as tobacco products for the purpose of regulatory oversight. Following the FDA's lead, the federal Synar program has indicated it will release proposed changes to its regulations before the end of FFY17 (August 31, 2017).

Alaska Statute & Regulatory Changes: Synar regulation updates will likely require changes to Alaska statute and regulations, including:

- restricting youth access to ENDS products, including e-cigarettes and vaping products, and
- conducting undercover youth investigations of e-cigarette vendors and vape shops, presumably by the DBH Tobacco Section **which currently does not have statutory enforcement authority for ENDS products.**

Attachment: *Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors*

Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors*

Investigation Disposition	PILOT Electronic Nicotine Delivery Systems (ENDS) Investigations				Federally Required Synar Investigations	
	Vaping Fluid		Electronic Cigarettes			
	<i>Requested Product:</i> 6mg or 8mg apple or watermelon flavored vaping fluid		<i>Requested Product:</i> BLU disposable single e-cigarette pack		<i>Requested Product:</i> Cigarettes, Chew, Small Cigars/Cigarillos	
	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL
NO Sale to Minor	17	73.9%	30	90.9%	401	94.6%
Sale to Minor	6	26.1%	3	9.1%	23	5.4%
Vendor TOTAL	23	100.0%	33	100.0%	424	100.0%

*Investigation period: June - September 2016.

Anchorage Only

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	Vaping Fluid		Electronic Cigarettes			
	<i>Requested Product:</i> 6mg or 8mg apple or watermelon flavored vaping fluid		<i>Requested Product:</i> BLU disposable single e-cigarette pack		<i>Requested Product:</i> Cigarettes, Chew, Small Cigars/Cigarillos	
	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL
NO Sale to Minor	6	50.0%	16	94.1%	128	97.7%
Sale to Minor	6	50.0%	1	5.9%	3	2.3%
Vendor TOTAL	12	100.0%	17	100.0%	131	100.0%