

A Surveillance: Alcohol, Tobacco, and Cannabis Commission Administrative Hearing Outcomes and Analysis for Retailer Violations of Underage Sales During Fiscal Year 2023 (FY23)

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Introduction

This surveillance project examines the relationship between local health department (LHD) referrals to the Alcohol, Tobacco, and Cannabis Commission (ATCC) for retailer violations involving underage tobacco product sales in all 24 jurisdictions in Maryland. All 24 jurisdictions are tasked with conducting enforcement operations to deter tobacco product retailers from selling products to individuals under age 21. The Maryland Department of Health (MDH) is tasked with conducting at least one unannounced inspection of each licensed tobacco retailer annually.

Business Regulation Article, §16-308.3, Business Regulation Article, §16.5-217.1, and Business Regulation Article, §16.7-213.1. In Maryland, “tobacco product” is defined as any product that is intended for human inhalation, absorption, ingestion, smoking, heating, chewing, dissolving, or any other manner of consumption that is made of, derived from, or contains tobacco or nicotine. It also includes accessories or components used in any manner of consumption of tobacco products. Tobacco products include cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, snus, electronic smoking devices, filters, rolling papers, pipes, and liquids used in electronic smoking devices regardless of nicotine content. *Business Regulation Article, §16-3A-01.*

The ATCC oversees the licensing, compliance, and enforcement of tobacco laws to prevent underage sales, regulate product distribution, and promote transparency within the industry. The Executive Director may convene administrative hearings to address license violations and has the authority to suspend or revoke the tobacco product retailer license or to reprimand the licensee pursuant to the *Business Regulation Article, §§ Title 16*, governing cigarettes, *16.5*, governing other tobacco products (OTP) and *16.7*, which governs electronic smoking devices (ESDs). *Sections 16-210, 16.5-208, and 16.7-207* provide the ATCC with express authority to take action against the license and/or licensee for violating local, state, or federal law, or other provisions in the title. Specifically, *Section 16-212, 16.5-210, and 16.7-207* state that the Executive Director may, for a first offense, suspend a license for 5 to 20 days, for a subsequent offense, 20 days to 6 months, and for a licensee who willfully and persistently engaged in the prohibited conduct, revoke the license.

Presently, the ATCC advises reporting entities to send a referral to pursue administrative license violations against a tobacco retailer following at least 2 documented tobacco product sales to underage individuals that occurred at the same licensed location within 12 months. The ATCC notes that 1 violation must include a conviction or admission of guilt on a civil or criminal

citation. [*See Tobacco Compliance Bulletin 24-002*](#). This includes criminal citations issued pursuant to *Criminal Law Article, §10-107*, which prohibits the sale of all tobacco products to underage individuals; civil citations issued under the *Health General Article, §24-305*, which applies to underage sales of ESDs, or *Health General Article §24-307*, which addresses underage sales of all tobacco products, including ESDs. Referrals may also be made for retailers who violate the local age of sale laws or federal age of sale laws and regulations. Additionally, the ATCC will take into consideration infractions against retailers for violating state ID check and product placement requirements.

Although this project addresses data collected during FY23 (July 1, 2022 through June 30, 2023) some violations took place during FY22. The [*Tobacco Retail Modernization Act \(2024\)*](#) does include some changes to the law regarding license suspension and revocation, effective October 1, 2024. If a retailer is convicted under *Criminal Law, §10-107* of distributing, purchasing for, or selling a tobacco product to a person under age 21, in addition to financial penalties, the Court must order the Executive Director to suspend the retailer's license for:

- up to 90 days for a second violation within two years of the first;
- 180 days for a subsequent violation within two years of the previous; and
- revoke the license for a subsequent violation within two years of that violation.

Although this does not directly impact the data in this project, it may impact the results of future administrative hearings.

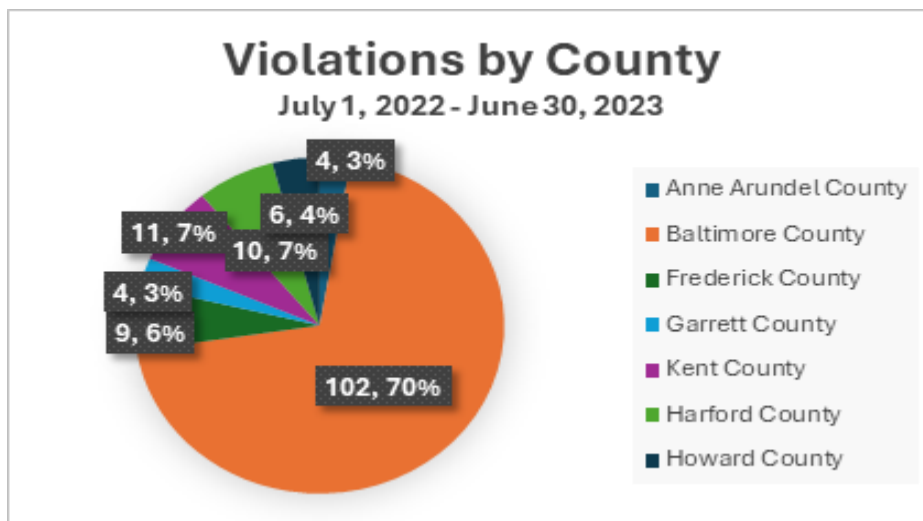
Data and Results

This surveillance project examined the relationship between LHD referrals to the ATCC for retailer violations involving underage sales in each of the 24 jurisdictions in Maryland. Specifically, we examined the number of retailer violations in each county and classified them based on ATCC outcome. Specifically for each county, we have categorized and charted the following:

- Violations reported by county;
- Overall frequency of type of product sold to underage person (cigarette, OTP, ESD);
- Frequency of type of product sold to underage person categorized by county;
- Referral results categorized by outcome (license suspension, revocation, reprimand, pending);
- Reason for LHD referral to ATCC (i.e. 2 or more violations in 12 months OR 2 or more violations in 24 months); and
- Type of retailer license of violator (cigarette, OTP, ESD).

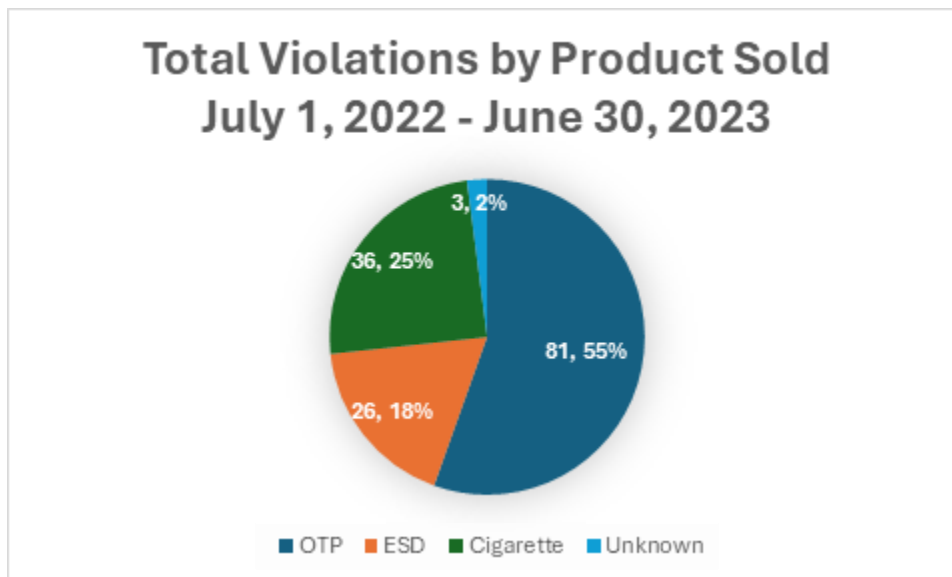
Legal Resource Center (LRC) staff analyzed all data analyzed, obtained directly from the ATCC who compiled the requested information into excel sheets for LRC review.

Violations by County



Only 7 of 24 Maryland counties submitted retailer referrals to the ATCC. This figure provides a visual representation of the failed retailer tobacco compliance check inspections resulting in referral to the ATCC and sorted by county. There were 146 total violations by retailers resulting in ATCC referral: 102 in Baltimore County, 9 in Frederick County, 10 in Harford County, 11 in Kent, 6 in Howard County, 4 in Garrett County, and 4 in Anne Arundel County.

Violations by Product Sold



This figure depicts the number of total tobacco retailer violations analyzed and categorized by the type of product sold.

“OTP” refers to other tobacco products. Eighty-one (81) violations (55.5%) were the result of OTP sales, the most of any tobacco product category. “OTP ” is defined as a product intended for human consumption or likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any other manner, and that is made of or derived from, or that contains tobacco or nicotine. This also includes components or parts used in consuming the product. *Business Regulation Article, §16.5-101*.

“Cigarette” means “any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.” Twenty-six (26) violations (17.8%) were the result of cigarette sales. *Business Regulation Article, §16-101*

“ESD” refers to electronic smoking devices. The sale of ESDs accounted for 36 violations (24.7%). “Electronic Smoking Device” is defined as “a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device.” These also include components and parts. *Business Regulation Article, §16.7-101*“Synar” refers to state enforcement inspections to ensure compliance with the federal Synar Amendment.

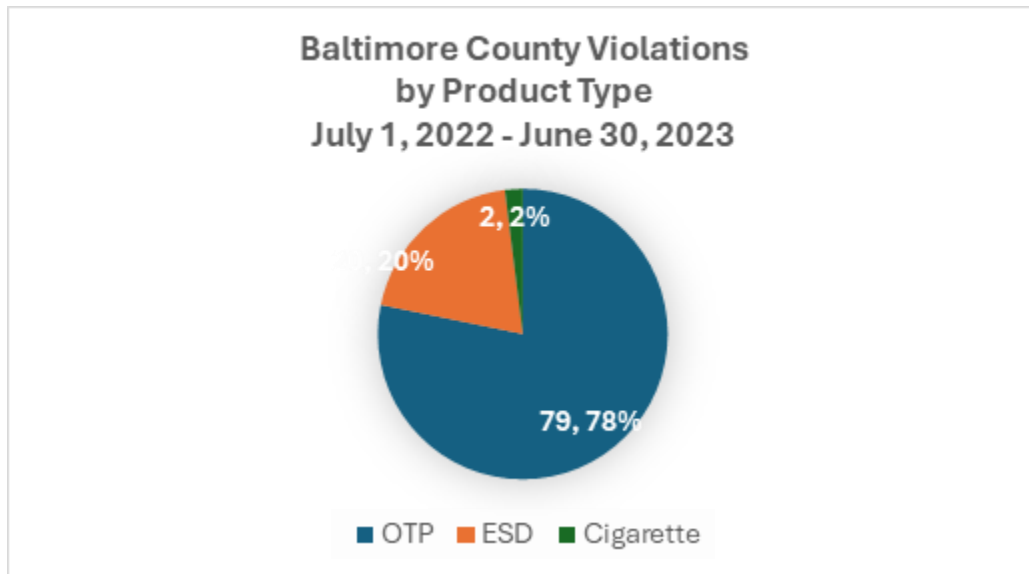
Additionally, 3 retailers were referred to the ATCC because at least one of their violations was failing a Synar compliance check. However, we were not provided with the type of product sold during the inspection (2.1%). The Synar Amendment is a federal law enacted in 1992 that aims to reduce youth access to tobacco products. It mandates that states enact and enforce laws prohibiting the sale or distribution of tobacco products to individuals under 18 (now amended to reflect age 21), conduct random, unannounced inspections of tobacco vendors, and submit annual reports to the Secretary of Health and Human Services. The goal is to limit illegal tobacco purchases to no more than 20% of attempts in each state per year. States who fail to remain under 20% face the loss of federal funds through the Substance Use Prevention, Treatment, and Recovery Services Block Grant.

County Violations by Product Type

Anne Arundel County

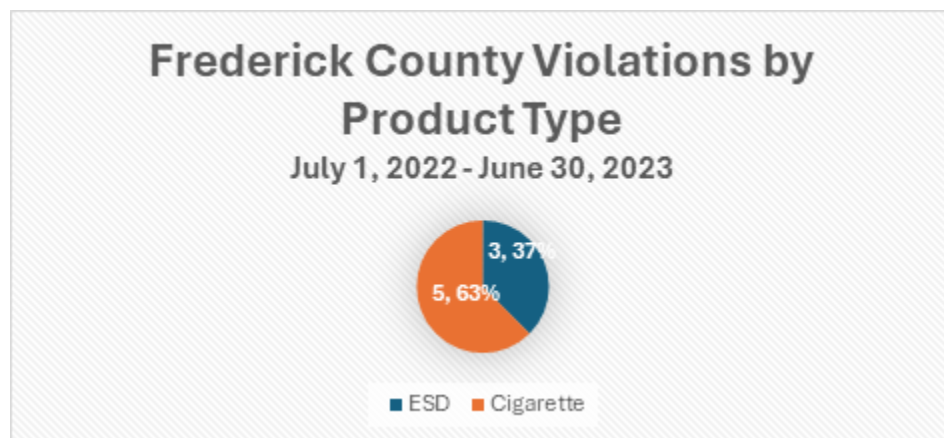
All 4 (100%) violations in Anne Arundel County were the result of the illegal sale of ESDs. One retailer was responsible for all 4 violations in Anne Arundel County.

Baltimore County



This figure shows the violations by tobacco product type in Baltimore County. In Baltimore County, 41 retailers committed 79 violations for selling OTP during at least one violation, 12 retailers committed 20 violations for selling ESDs during at least one violation, and 2 retailers committed 2 total violations for selling cigarettes. Additionally, 1 retailer in Baltimore County was reported for failing a Synar enforcement inspection. Baltimore County had the most violations reported to the ATCC.

Frederick County



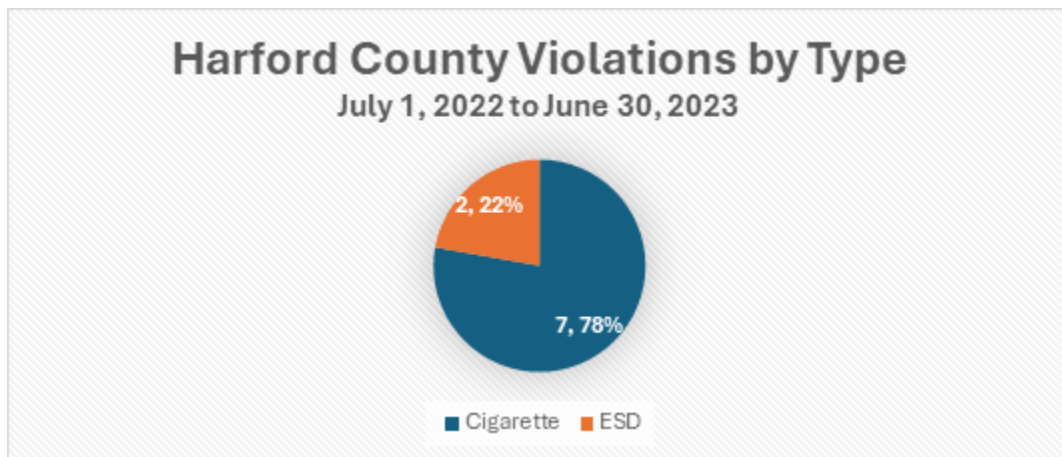
This figure depicts the violations by tobacco product type in Frederick County. In Frederick County, 3 retailers committed 5 total violations for illegally selling cigarettes. Additionally, 2

retailers committed 3 violations for selling ESDs and 1 retailer failed a Synar enforcement inspection.

Garrett County

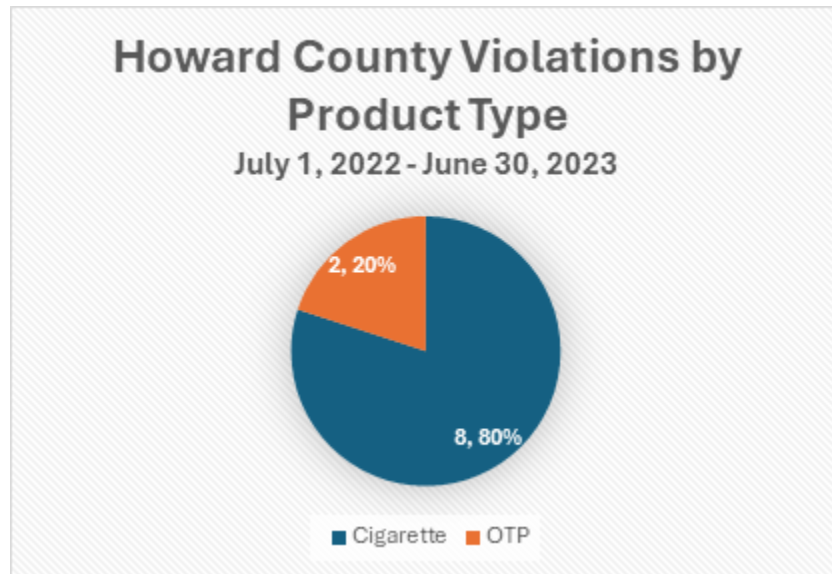
In Garrett County, all 4 retailer violations were the result of the illegal sale of ESDs. Two retailers were responsible for committing these 4 violations.

Harford County



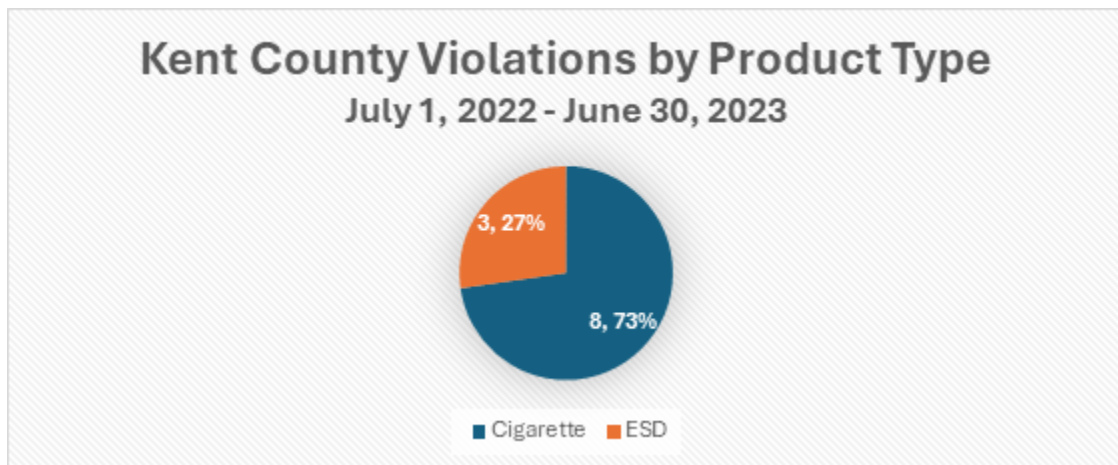
This figure depicts the retailer violations in Harford County, Maryland by tobacco product type. The illegal sale of cigarettes accounted for most of these violations. Four retailers committed 7 violations for selling cigarettes. One retailer committed 2 violations for selling ESDs illegally, and 1 retailer failed a Synar inspection.

Howard County



This figure illustrates the number of retailer tobacco product sale violations by product type in Howard County. Two retailers committed 4 violations for illegally selling cigarettes, and 1 retailer committed 2 violations for illegally selling OTP.

Kent County



This figure illustrates the number of reported retailer violations in Kent County by tobacco product type. Three retailers committed 8 violations for illegally selling cigarettes, and 1 retailer committed 3 violations for selling ESDs illegally.

Referral Results



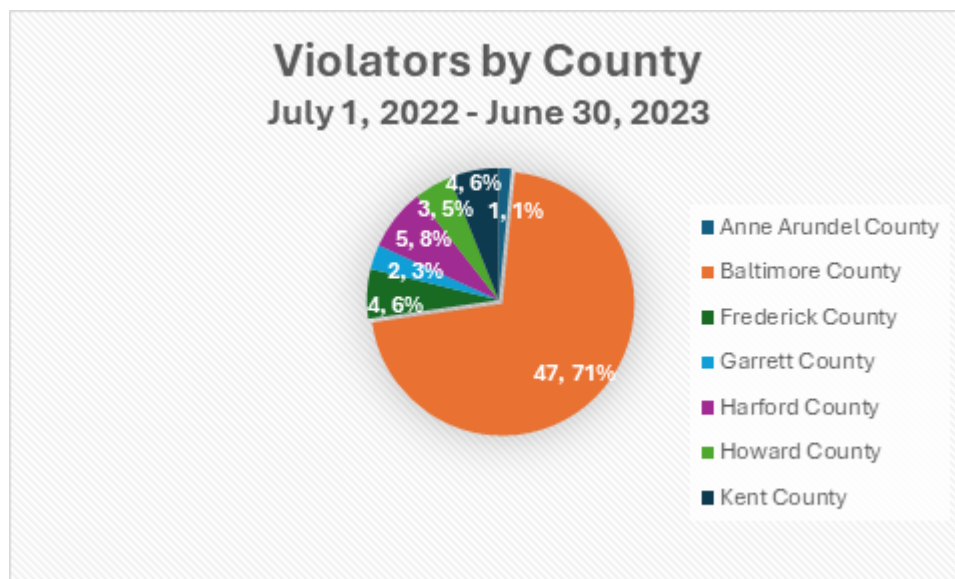
This figure depicts the number of retailer referrals by referral result. There were 66 total retailers referred to the ATCC for administrative action. Five referrals resulted in a reprimand to the retailer and 2 referrals resulted in the suspension of the retailers' license to sell tobacco products. The results from the remaining 59 referrals were still pending as of August 2024.

Reason for Referral



This figure illustrates the reasons for the referral of tobacco retailers. Most of the retailers referred, 62, were due to 2 inspection failures within 12 months. Three retailers were referred for failing 2 compliance inspections in 12 months, in addition to failing a Synar inspection. Additionally, 1 retailer was referred for failing 4 compliance checks within 24 months.

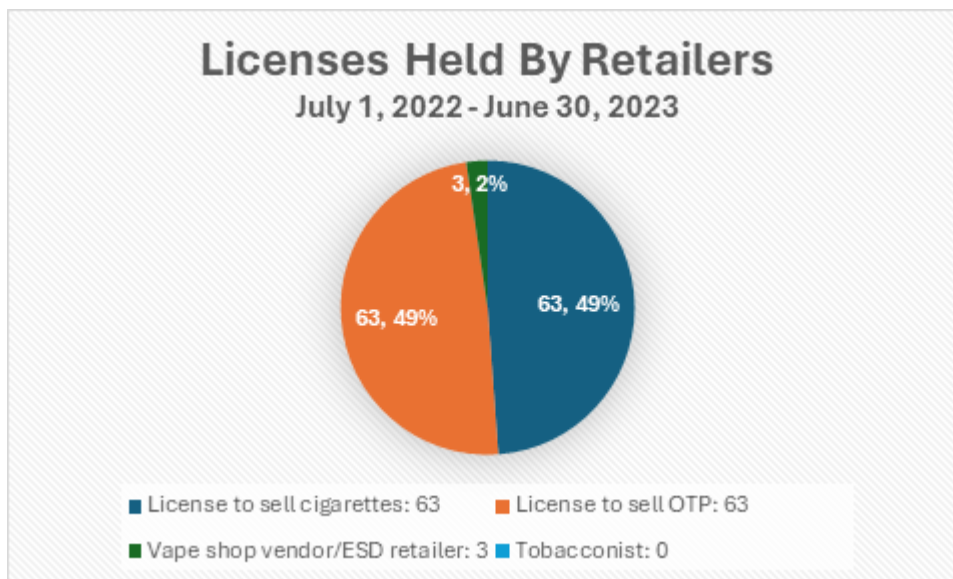
Violators by County



This figure illustrates the number of retailers referred to the ATCC for administrative action due to illegal sales to underage individuals. Of the jurisdictions who reported retailers to the ATCC,

Baltimore County had the largest number of violators and Anne Arundel County reported the fewest.

Licenses Held by Retailers



To sell tobacco in Maryland, a retailer must obtain a county tobacco retailer license. The type of license required (i.e. cigarettes, ESDs, or OTP) depends on the products sold.

To sell cigarettes in Maryland, retailers must obtain a license through the Office of the County Clerk at the Circuit Court in the jurisdiction where the business is located. If a retailer sells OTP, it must obtain a license to do so unless it already has a license to sell cigarettes. To sell ESDs in Maryland, retailers must obtain a license unless they already have a cigarette or OTP license. Because a product-specific license is not required to sell OTP or ESDs, the type of license held by each retailer does not necessarily dictate which products they sell.

Limitations

The FY23 data includes referrals obtained between July 1, 2022 and June 30, 2023. All data requested was obtained from the ATCC in August 2024. Although we anticipated that some of the ATCC's decisions would still be pending and/or hearings not yet taken place, we were surprised that 59 of the 66 retailers referred were still in a "pending status" given that all referrals had been sent a full calendar year earlier. Therefore, this project was unable to meaningfully examine the results of retailer referrals during FY23 although we did obtain other interesting insights described in the summary of findings and reflected in the charts.

Similarly, we learned subsequent to the data analysis that some local health departments sent referrals to a retired ATCC employee via email in FY23. These referrals were not included in the data sent to the LRC because they went unanswered. Therefore, the data analyzed does not include the exhaustive list of retailer referrals.

Summary of Findings

- Seven of the 24 Maryland Counties referred retailers to the ATCC for administrative action due to illegal sales to underage individuals during FY2023.
- Five referrals resulted in a reprimand to the retailer and 2 referrals resulted in suspension of the retailers' license to sell tobacco products. The results from the remaining 59 retailer referrals were still pending as of September 2024.
- The referrals included detailed information about 146 violations among 66 retailers.
- OTP was the most frequent product sold illegally, followed by ESDs, then cigarettes.
- 62 of the retailers were referred to the ATCC for administrative action for selling tobacco products to an underage person 2 times within 12 months; 3 retailers were referred for selling to an underage person 2 times in 12 months in addition to 1 failed Synar inspection, and 1 retailer was referred 4 times in 24 months.
- The 66 retailers referred to the ATCC held 129 total licenses; 63 were licensed to sell cigarettes; 63 were licensed to sell OTP; 3 were licensed to sell ESDs. All but 2 retailers held multiple licenses.
- This project presented significant limitations that impact interpretation of the findings, namely, the ATCC's significant backlog of pending cases as well as the referrals which went unanswered because they were sent to the retired employee.

Recommendations

- Local Health Departments should promptly refer tobacco retailers to the ATCC in accordance with Tobacco Compliance Bulletin 24-002 because there will be a lengthy delay in action taken against the retailer.
- Local Health Department staff should continue to check in with the ATCC regularly to ensure that their referrals have been received and processed.