



# REGULATING TOBACCO

The Big Cities Health Coalition (BCHC) is a forum for the leaders of America's largest metropolitan health departments to exchange strategies and jointly address issues to promote and protect the health and safety of the 62 million people they serve. Together, these public health officials directly affect the health and well-being of nearly **one in five Americans.**

Together, we aim to create healthy, more equitable communities through big city innovation and leadership.

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## ► Regulating Tobacco Products

Over the years, cigarettes have been the leading cause of preventable death in the United States, accounting for one in five fatalities—more than alcohol, AIDS, car accidents, illegal drugs, murders, and suicides combined.<sup>1</sup> More than 16 million Americans are also living with a disease caused by smoking, including stroke, heart disease, cancer, and emphysema.<sup>2</sup> While traditional cigarettes still pose a significant health in the U.S., the market has rapidly changed in the past several years, with a focus on products that appeal to youth and minorities.

In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act (TCA), which gave the U.S. Food and Drug Administration (FDA) authority to regulate tobacco products using a public health standard.<sup>3</sup> The TCA prohibited certain characterizing flavors, but notably left menthol in the marketplace. Despite this, the market for flavored tobacco products has been growing, particularly as vaping expands. Even with the January 2020 enforcement policy to reduce youth access to flavored e-cigarettes, thousands of flavored products remain available at over 100,000 locations across the country.<sup>4</sup> In the rapidly evolving tobacco market, menthol cigarettes and other tobacco products (smokeless tobacco, cigarillos, and vaping products) are aggressively marketed to appeal to new customers, targeting youth in particular with flavors that play a key role in enticing new users to a lifetime of addiction.<sup>5</sup>

In December 2016, a report by the Surgeon General concluded that e-cigarette use by young people is

a public health concern, noting use of e-cigarettes has surpassed that of regular cigarettes among those under 18 years old.<sup>6</sup> Two years later, the Surgeon General followed that up with an advisory on e-cigarette use among youth, officially declaring e-cigarette use among youth in the U.S. “an epidemic.”<sup>7</sup> This report noted the nicotine salts that comprise certain popular e-cigarettes allow users to inhale more easily and with less irritation. Certain e-cigarettes available in the U.S. have a nicotine level so high that, in some countries, they are illegal for consumers of any age.<sup>8</sup> In 2019, 5.3 million youth, 28% of high school students and 11% of middle school

students, were current e-cigarette users—an increase of over 3 million students since 2017.<sup>9</sup> One out of nine high school seniors (12%) reported that they vaped nicotine nearly daily and the majority of current youth e-cigarette users use flavored products (69%).<sup>10,11</sup>

The impetus to reduce tobacco use and vaping is even greater now than ever. The CDC, FDA, and NIH have indicated that tobacco smoking and vaping can suppress the immune system and increase the risk for developing lung and heart disease and infections, putting smokers at increased risk of contracting COVID-19 and associated complications.<sup>12</sup>



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Additionally, there was a recent outbreak of e-cigarette, or vaping, product use-associated lung injuries (EVALI). As of February 18, 2020, a total of 2,807 hospitalized EVALI cases or deaths have been reported to CDC from all 50 states, the District of Columbia, and two U.S. territories (Puerto Rico and U.S. Virgin Islands), including sixty-eight confirmed deaths in 29 states and the District of Columbia.<sup>13</sup> This outbreak started in spring of 2019 and peaked in September 2019. Laboratory sample analyses have showed that vitamin E acetate, an additive in some THC-containing e-cigarette, or vaping, products, is strongly linked to the EVALI outbreak.<sup>14</sup>

Even as the federal government ramps up its age restrictions, e-cigarette regulations, and flavor enforcement, loopholes remain.<sup>15,16,17</sup> Big city health departments across the country have led in this space for years, filling gaps in federal regulations, using

innovative and comprehensive policy levers to reduce tobacco use and save countless lives.

## POLICY RECOMMENDATIONS

- ▶ Congress should encourage the FDA to use its authority to remove all non-tobacco flavored e-cigarettes, including mint and menthol flavors, from the marketplace both in retail stores and online.
- ▶ Congress should encourage the FDA to fully implement proposed graphic warnings for cigarette packages and advertisements that will more sufficiently educate the public about the dangers of tobacco use.
- ▶ Congress should do everything in its power to ensure that FDA uses its full authorities under the TCA to regulate all tobacco products and support the Agency in fully implementing comprehensive tobacco flavor restrictions.

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## ENDNOTES

1 [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm).

2 Ibid.

3 <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview>.

4 [https://www.tobaccofreekids.org/press-releases/2020\\_02\\_05\\_trump-roadmap](https://www.tobaccofreekids.org/press-releases/2020_02_05_trump-roadmap).

5 U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. 2016, [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf).

6 Ibid.

7 U.S. Department of Health and Human Services. *Surgeon General's Advisory on E-cigarette Use Among Youth*. 2018, <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-general-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

8 <https://www.globaltobaccocontrol.org/e-cigarette/product-regulation-nicotine-volumeconcentration-safetyhygiene-ingredientsflavors>.

9 Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students —United States, 2019. *MMWR Surveill Summ* 2019; 68. [https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm?s\\_cid=ss6812a1\\_w](https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm?s_cid=ss6812a1_w).

10 Ibid.

11 Miech, Richard, et al. "Trends in Adolescent Vaping, 2017–2019." *New England Journal of Medicine* 2019; 381.15: 1490–1491. <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

12 <https://www.tobaccofreekids.org/assets/factsheets/0410.pdf>.

13 [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html).

14 Ibid.

15 <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21>.

16 <https://www.fda.gov/consumers/consumer-updates/facts-fdas-new-tobacco-rule>.

17 <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.