



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

**Remarks of Chair Lina M. Khan  
Regarding the Federal Trade Commission E-Cigarette Report for 2015-2018  
Commission File No. P144504**

**March 17, 2022**

The FTC report released today documents a striking *six-fold*-increase in e-cigarette sales over just three years. A set of public health studies have also observed this trend, capturing in particular the prevalence of e-cigarette use among students in both high school and middle school.<sup>1</sup> Given the medical evidence showing that e-cigarette use can lead to nicotine addiction, harm brain development in children and teens, and pose a variety of additional health risks, the trends surfaced by the FTC report are deeply troubling.<sup>2</sup>

A few developments in particular jump out and invite further attention from policymakers. First, the report shows that the significant increase in e-cigarette sales has coincided with notable growth in flavored products, with names like “Bubble Pop” and “Strawberry Cotton Candy.” Fruit, dessert, and other similarly flavored products grew from just 14% of cartridges sold in 2015 to more than 47% of cartridges sold in 2018, suggesting that flavored products could be a key driver of the steep increase in e-cigarette use by teens.

Indeed, surveys and studies have repeatedly tied youth vaping to the availability of flavored cartridges. For example, one national survey of high school students found that over 68% of e-cigarette users used flavored e-cigarettes,<sup>3</sup> while other research shows that youth identify these flavors as a primary reason for e-cigarette use.<sup>4</sup> In 2018, the then-Commissioner of the Food and Drug Administration publicly attributed youth access to flavored tobacco products as a primary factor driving e-cigarette use by adolescents.<sup>5</sup> Our report further suggests that enforcing the FDA’s 2020 action, which effectively banned flavored e-cigarette cartridges,<sup>6</sup>

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<sup>1</sup> Eunice Park-Lee, et al., *Notes from the Field: E-Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021*, 70 Morbidity and Mortality Weekly Report 1387 (2021), <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039a4-H.pdf>.

<sup>2</sup> See, e.g., Dep’t of Health and Hum. Servs., *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* (2016), at 14, [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf).

<sup>3</sup> See Karen A. Cullen, et al., *e-Cigarette Use Among Youth in the United States*, 322 JAMA Online 2095 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6865299/> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6865299/bin/jama-322-2095-s001.pdf>.

<sup>4</sup> See Bridget K. Ambrose, et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA Online 1871 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6467270/>.

<sup>5</sup> See Press Release, U.S. Food and Drug Admin., *FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufacturers for their roles perpetuating youth access*, Sept. 11, 2018, <https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more>.

<sup>6</sup> Press Release, U.S. Food and Drug Admin., *FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint*, Jan. 2, 2020, <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

could be a key tool for protecting children and teens, and that policymakers may be wise to pursue additional limits on a broader set of flavored e-cigarette products.<sup>7</sup>

The FTC report also captures a significant rise in nicotine concentration, showing that manufacturers increased the nicotine concentration of disposable e-cigarettes by 60% in just three years. Studies comparing youth vaping trends across jurisdictions suggest that this rise in nicotine concentration could also be contributing to the rise in e-cigarette use by teens. For example, one study found that the share of youth users in the United Kingdom—which has enacted a strict limit on nicotine content of just 20 milligrams per liter—remained flat during a period when the share of U.S. youth who were e-cigarette users increased.<sup>8</sup> These alarming rates of nicotine may carry serious ramifications for the public, leading to long-term impairments to brain development in ways that affect the mental and physical health of children.<sup>9</sup>

Finally, the growth in e-cigarette use coincides with a massive expansion in efforts by e-cigarette manufacturers to advertise and promote their products, with their expenditures tripling in three years. While the FDA has banned manufacturers from distributing free samples of e-cigarette products—an effort explicitly aimed at limiting youth access<sup>10</sup>—manufacturers have sidestepped the spirit of the ban by distributing deeply discounted samples for one dollar or less. They are also spending heavily to place e-cigarettes in the hands of celebrity endorsers and social media influencers, glamorizing their products much like prior efforts by the tobacco industry.<sup>11</sup>

The Commission will continue to use its data-collection authority to study this market, and the agency has already issued orders seeking similar data from e-cigarette manufacturers for 2019 and 2020. I hope these studies can inform our enforcement and policy work, as well as broader efforts by policymakers as they take steps to address these troubling trends.

Thank you again to our staff for their great work on this project.

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<sup>7</sup> Policymakers previously considered a proposal to ban flavored e-cigarettes. See Kate Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal Inaction*, N.Y. TIMES (Oct. 14, 2019), <https://www.nytimes.com/2019/10/14/health/vaping-e-cigarettes-fda.html>.

<sup>8</sup> See, e.g., David Hammond, et al., *Changes in Prevalence of Vaping Among Youths in the United States, Canada, and England from 2017 to 2019*, 175 JAMA Pediatrics 797 (2020), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2765159>.

<sup>9</sup> Dep't of Health and Hum. Servs., *supra* note 3.

<sup>10</sup> Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 Fed. Reg. 28,974 (May 10, 2016).

<sup>11</sup> See, e.g., Curt Mekemson & Stanton A. Glantz, *How the Tobacco Industry Built Its Relationship with Hollywood*, 11 Tobacco Control 81 (2002), [https://tobaccocontrol.bmj.com/content/tobaccocontrol/11/suppl\\_1/i81.full.pdf](https://tobaccocontrol.bmj.com/content/tobaccocontrol/11/suppl_1/i81.full.pdf). Indeed, many of the leading e-cigarette brands are themselves owned by the descendants of the twentieth-century big tobacco companies. See, e.g., David Dayen, *Big Tobacco Lobbied to Save Vaping. Now It Controls the Leading E-Cigarette Company*, AM. PROSPECT (Oct. 4, 2019), <https://prospect.org/health/big-tobacco-lobbied-to-save-vaping-juul-altria/>.