

Responses to Senator Grassley's Questions for the Record

Senate Committee on the Judiciary Hearing

Combatting the Youth Vaping Epidemic by Enhancing Enforcement Against Illegal E-Cigarettes

June 12, 2024

Q1: Far too many youths have picked up vaping as a first-time habit. How many youths have picked up vaping in comparison to using traditional cigarettes, and why?

A1: Through implementation of evidence-based policies and programs, youth use of traditional cigarettes has declined substantially, from over 30 percent of high school students in the late 1990s to 1.9 percent of high school students in 2023.¹

But as youth use of cigarettes was declining, e-cigarettes entered the U.S. market and have become popular with youth. Since 2014, e-cigarettes have been the most popular tobacco product among youth, and youth use of e-cigarettes reached an all-time high in 2019.² While youth use of e-cigarettes is down from 2019, more than 2.1 million youth reported currently using e-cigarettes in 2023, including 10 percent of high school students.³

Each day, more than 1,400 youth under age 18 try a cigarette for the first time, but three times as many -- more than 4,300 youth -- try an e-cigarette for the first time.⁴

A major reason why youth are using e-cigarettes is because of the flavors.⁵ The Tobacco Control Act prohibited flavors in cigarettes except for menthol-flavored cigarettes. But e-cigarettes are available in thousands of flavors, including mango, blue razz and pink punch. In 2017, researchers identified more than 15,500 unique e-cigarette flavors available online.⁶ Flavors make e-cigarettes more attractive and easier for youth and young adults to use. FDA has found that "non-tobacco flavored e-cigarettes, including menthol flavored e-cigarettes, have a known and substantial risk with regard to youth appeal, uptake and use."⁷ Last year, nearly 90 percent of youth e-cigarette users used flavored products.⁸

E-cigarettes have also been marketed in ways that appeal to youth. E-cigarette companies have used some of same marketing strategies that tobacco companies used to make cigarettes popular with youth, such as use of celebrity spokespeople and sponsorship of sporting events and music festivals.⁹ E-cigarette companies also have maintained a strong presence on social media. In 2021, 3.1 million youth who used social media reported seeing e-cigarette-related content daily, and 4.5 million reported seeing that type of content weekly.¹⁰

We are concerned that the nation's successful efforts to reduce youth cigarette smoking over the past two decades could be undermined by e-cigarettes. We do not want e-cigarettes to introduce another generation of young people to nicotine addiction and tobacco use.

Q2: What steps must be taken to ensure that vapor products are sold and used for their intended purpose of tobacco cessation, and not as a gateway substance for youth nicotine addiction?

A2: While Congress has enacted legislation to increase the legal age of sale of tobacco products to age 21 and set standards for online sales of e-cigarettes, those actions have not been sufficient to prevent youth use of e-cigarettes. FDA must also address what it is about e-cigarettes that make them so appealing to youth. Flavors increase the appeal and use of e-cigarettes by youth. Using the premarket review process to remove flavored e-cigarettes from the market will reduce the risk that e-cigarettes will become a gateway for youth nicotine addiction.

Specifically, FDA must complete its premarket review of e-cigarettes, deny applications for flavored e-cigarettes, and step up enforcement action (along with the Department of Justice and other enforcement agencies) to remove unauthorized e-cigarettes from the market.

The requirement that e-cigarettes undergo premarket review by FDA is an important tool to protect public health and to reduce youth e-cigarette use. To receive market authorization, a manufacturer must provide strong evidence that its e-cigarette provides a public health benefit by helping adult smokers to quit that exceeds the risks to youth. Given the risks that flavored e-cigarettes present to youth, FDA has so far denied applications for millions of flavored e-cigarettes and authorized just four flavored e-cigarettes.¹¹

But many manufacturers, distributors, and retailers are disregarding the premarket review requirement. The e-cigarette market in the U.S. consists almost entirely of unauthorized, illegal products. FDA has authorized 27 e-cigarette products, but more than 6,000 e-cigarette products are available for sale in the U.S.¹² Swift and strong enforcement action by FDA, DOJ, and other agencies is needed to remove unauthorized e-cigarettes from the market, which will reduce the number of kid-friendly flavored e-cigarettes on the market. While the recent creation of a federal multi-agency task force was welcoming news, this task force will only have an impact if it quickly leads to concrete and comprehensive enforcement actions.

Preventing youth e-cigarette use is necessary because e-cigarettes are highly addictive and expose users to nicotine and other harmful substances. Youth are especially vulnerable to nicotine addiction, and nicotine exposure during adolescence can harm the developing brain, which can impact learning, mood, and attention.¹³ According to an advisory from the U.S. Surgeon General, “any e-cigarette use among young people is unsafe.”¹⁴

Regarding tobacco cessation, it is also important to note that FDA has approved seven tobacco cessation medications (i.e., five types of nicotine replacement therapy, varenicline, and bupropion). But FDA has not approved any e-cigarettes as a tobacco cessation medication. While some smokers have used e-cigarettes to stop smoking cigarettes, leading public health authorities, such as the U.S. Surgeon General and the U.S. Preventive Services Task Force, have found that current evidence is inadequate to conclude that e-cigarettes increase smoking cessation.¹⁵ A majority of adult e-cigarette users continue to smoke cigarettes or never smoked cigarettes.¹⁶

¹ Birdsey, J, et al., “Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023,” *Morbidity and Mortality Weekly Report (MMWR)* 72(44):1173-1182, November 3, 2023, <https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm>;

University of Michigan, Monitoring the Future: Trends in Last 30 Days Prevalence of Use in 8th, 10th, and 12th Grade, <https://monitoringthefuture.org/data/bx-by/drug-prevalence/#drug=%22Cigarettes%22>. Accessed on June 27th, 2024.

² Wang, T., et al., "Tobacco Product Use and Associated Factors Among U.S. Middle and High School Students – United States, 2019," *Morbidity and Mortality Weekly Report (MMWR) Surveillance Summaries* 68(No. SS-12): 1-22, 2019 https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T1_down.

³ Birdsey, J, et al., "Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023," *Morbidity and Mortality Weekly Report (MMWR)* 72(44):1173-1182, November 3, 2023, <https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm>.

⁴ Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, "Results from the 2022 National Survey on Drug Use and Health," *NSDUH: Detailed Tables*, Table 4.10A, <https://www.samhsa.gov/data/report/2022-nsduh-detailed-tables>.

⁵ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. <https://www.ncbi.nlm.nih.gov/books/NBK538680/>

⁶ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.

⁷ U.S. Food & Drug Administration, "FDA Denies Marketing of Two Vuse Menthol E-Cigarette Products Following Determination They Do Not Meet Public Health Standard," January 24, 2023, <https://www.fda.gov/news-events/press-announcements/fda-denies-marketing-two-vuse-menthol-e-cigarette-products-following-determination-they-do-not-meet>.

⁸ Birdsey, J, et al., "Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023," *Morbidity and Mortality Weekly Report (MMWR)* 72(44):1173-1182, November 3, 2023, <https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm>.

⁹ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. <https://www.ncbi.nlm.nih.gov/books/NBK538680/>

¹⁰ Gentzke, A, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021," *Morbidity and Mortality Weekly Report (MMWR)* 71(5):1-29, March 11, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf>.

¹¹ U.S. Food & Drug Administration, "FDA Authorizes Marketing of Four Menthol-Flavored E-Cigarette Products After Extensive Scientific Review," June 21, 2024. <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-four-menthol-flavored-e-cigarette-products-after-extensive-scientific>.

¹² CDC Foundation & Information Resources, Inc., "Monitoring U.S. E-Cigarette Sales: National Trends," <https://www.cdcfoundation.org/programs/monitoring-e-cigarette-use-among-youth>. Data from Information Resources, Inc. (IRI), which includes e-cigarette sales data from convenience stores, gas stations and other retail store chains. Sales from the internet and tobacco-specialty stores, including vape shops, are not included.

¹³ Centers for Disease Control & Prevention, "E-Cigarette Use Among Youth," May 15, 2024, <https://www.cdc.gov/tobacco/e-cigarettes/youth.html>.

¹⁴ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

¹⁵ HHS, Office of the Surgeon General, "Smoking Cessation: A Report of the Surgeon General," 2020 <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-full-report.pdf>; United States Preventive Services Task Force, "Interventions for Tobacco Smoking Cessation in Adults, Including Pregnant Persons, Final Recommendation Statement", 2021 <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/tobacco-use-in-adults-and-pregnant-women-counseling-and-interventions>.

¹⁶ QuickStats: Percentage Distribution of Cigarette Smoking Status Among Current Adult E-Cigarette Users, by Age Group – National Health Interview Survey, United States, 2021. *Morbidity and Mortality Weekly Report (MMWR)* 2023; 72:270. DOI: <http://dx.doi.org/10.15585/mmwr.mm7210a7>.