

Congress of the United States
Washington, DC 20515

March 13, 2020

The Honorable Sanford Bishop
Chairman
House Appropriations Committee
Subcommittee on Agriculture Rural
Development, Food and Drug Administration,
and Related Agencies
Washington, DC 20515

The Honorable Jeff Fortenberry
Ranking Member
House Appropriations Committee
Subcommittee on Agriculture Rural
Development, Food and Drug Administration,
and Related Agencies
Washington, DC 20515

Dear Chairman Bishop and Ranking Member Fortenberry:

As the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Subcommittee works on the Fiscal Year (FY) 2021 appropriations bill, we urge you to include report language to address the e-cigarette epidemic among our nation's youth in the report.

As you know, e-cigarettes have been the most commonly used tobacco product by youth since 2014. High school students alone have seen a 135 percent increase in e-cigarette use from 2017, with over one in four high school students now using e-cigarette products.ⁱ In fact, one in nine high school seniors report that they are vaping nicotine daily.ⁱⁱ This epidemic is even reaching younger children, with reports showing that children as young as 12 to 15 are using these products. This increases the likelihood that youth will subsequently transition to other tobacco products.

Per the CDC, this rise in e-cigarette use can be attributed to the popularity of flavored products that appeal to youth.ⁱⁱⁱ In recent years, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products, especially e-cigarettes. Research shows that these flavors play a key role in youth use of tobacco products. Flavors improve the taste and mask the harshness of tobacco products, making it easier for kids to try the product and ultimately become addicted. In fact, over 80% of children who ever used tobacco products started with a flavored product, and at least two-thirds of youth tobacco users said they use these products "because they come in flavors I like."^{iv} These flavors, including gummy bear, fruity cereal, and cotton candy, are aimed at kids and are readily available in both retail stores and online.

Manufacturers of e-cigarettes and certain other tobacco products will be required to submit applications by May 12, 2020 that FDA will review to determine whether these products are "appropriate for the protection of public health." This product review provides an important opportunity for FDA to remove from the market e-cigarettes and other tobacco products that are fueling youth use.

Although the House recently passed H.R. 2339, the *Reversing the Youth Tobacco Epidemic Act of 2019*, to address this issue, the urgency of this situation cannot allow us to wait on the Senate to act. As such, we urge you to include the following report language urging FDA to not grant a marketing order to any product that has increased or is likely to increase youth initiation of nicotine or tobacco and to remove from the market any devices and e-liquids for which premarket tobacco product applications are not submitted to FDA by May 12, 2020:

Requested Report Language:

Tobacco. — The Committee is aware that the Family Smoking Prevention and Tobacco Control Act requires new tobacco products to undergo a product review by the Food and Drug Administration to ensure that they are appropriate for the protection of public health. The Committee also knows that manufacturers of e-cigarettes and other deemed tobacco products already on the market as of the effective date of the deeming rule were required to submit product applications to the Food and Drug Administration by May 12, 2020. Given that the Food and Drug Administration and Surgeon General have called youth use of e-cigarettes an “epidemic” and a recent Surgeon General report concluded that “there is presently inadequate evidence to conclude that e-cigarettes, in general, increase smoking cessation,” it is the view of the Committee that any e-cigarette that has increased or is likely to increase youth initiation of nicotine or tobacco products cannot meet the public health standard required under the Tobacco Control Act. It is also the expectation of the Committee that the Food and Drug Administration will promptly take enforcement action to remove from the market any new tobacco product for which a manufacturer has not submitted a premarket tobacco product application or a substantial equivalence report by May 12, 2020. The Committee also directs the Food and Drug Administration within 60 days of enactment to provide the Committee a list of all e-cigarettes and other deemed tobacco products for which marketing applications were submitted by May 12, 2020 and a report on the effect that its January 2, 2020 guidance, which removed some flavored ENDS from the market, is having on youth, including whether youth are switching to flavored ENDS that remain on the market under the guidance.

We thank you for your consideration of this report language to address this public health crisis.

Sincerely,



Debbie Mucarsel-Powell
Member of Congress

Member of Congress

ⁱ FDA, “Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products,” September 11, 2019, <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized->

non?utm_source=CTPEblast&utm_medium=email&utm_term=stratout&utm_content=pressrelease&utm_campaign=ctp-vaping

ⁱⁱ Miech, R, et al., “Trends in Adolescent Vaping, 2017-2019,” *New England Journal of Medicine*, published online September 18, 2019.

ⁱⁱⁱ Centers for Disease Control and Prevention (CDC), “Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018,” *Morbidity and Mortality Weekly Report (MMWR)*, 67(45):1276-1277. https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_w. Current use defined as any use in the past month

^{iv} National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* [Internet]. Atlanta (GA): Centers for Disease Control and Prevention (US); 2016. Chapter 2, Patterns of E-Cigarette Use Among U.S. Youth and Young Adults.

FDA Deeming Rule for E-Cigarettes and Vaping Products, FY 2021
List of Signatories
March 13, 2020

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