



Our Mission: Improve the lives of the world's one billion adult smokers by eliminating cigarettes.

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Written Testimony of

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Concerning

Vaping and Electronic Cigarette Safety

Before the

**Standing Committees on Consumer Protection, Health, and Education
New York State Senate**

Chairman Thomas, Chairman Rivera, Chairwoman Mayer, and Members of Committees,

On behalf of JUUL Labs, thank you for the opportunity to provide comments as the state of New York considers additional regulations of the vapor product category. Our mission is to provide a viable alternative for adult smokers so that we can move them down the risk continuum and ultimately eliminate combustible cigarettes altogether, while continuing to focus our efforts on reversing the trend in youth use. We cannot accomplish this mission without a robust regulatory framework that preserves reasonable access to vapor products for adults, while reducing youth uptake.

We share your concerns about rising use of vapor products among youth and the outbreak of vaping-related illnesses and deaths. JUUL Labs is fully committed to both product quality and preventing underage access to all tobacco products, including vapor. We thank you for your leadership on this issue and appreciate the opportunity to provide our views on additional, category-wide actions that are needed to protect the public health.

OUTBREAK OF VAPOR-RELATED ILLNESSES

We are deeply troubled by the recent outbreak of illnesses and deaths that have been associated with vaping. JUUL Labs has been closely monitoring developments as federal, state, and local public health authorities have investigated the source of these illnesses. According to an October 29, 2019 statement from the Centers for Disease Control and Prevention (CDC), "the latest national and state findings suggest products containing THC, particularly those obtained off the street or from other informal sources (e.g. friends, family members, illicit dealers), are linked to most of the cases and play a major role in the outbreak." Vitamin E acetate, used as a thickening agent in some cannabis vapor products, has also been identified as a potential ingredient of concern in these outbreaks.

JUUL Labs' products do not contain THC, any compound derived from cannabis, or vitamin E acetate. We appreciate the work of the CDC, Food and Drug Administration (FDA), and other public health authorities, and are confident that they will get to the bottom of this issue.

UNDERAGE ACCESS AND APPEAL

We share a common goal with policymakers, regulators, public health, and other stakeholders - prevent the use of tobacco and vapor products, including JUUL, by America's youth. We are committed to addressing underage access to and use of JUUL products, and no non-nicotine user, especially youth, should try JUUL products or any other tobacco product.

I commend you and your colleagues for passing legislation earlier this year that will raise the minimum-purchasing age for tobacco products, including vapor, to 21. When that law goes into effect next week, the state will have taken a critically important step towards reducing underage access and use of these products. As of September, eighteen states have passed such legislation, representing more than one-half of the U.S. population. We have and will continue to actively encourage other states to follow the leadership of the Empire State by raising the minimum-purchasing age to 21.

That is, in part, because Tobacco 21 laws help address the main access point for underage use — social sourcing. Social sourcing — access through third-party sales, shared use, or other non-commercial means — continues to be the main driver of underage use in New York and around the country. Approximately 70–80% of underage use of vapor products comes from social sourcing. In fact, before New York City raised the minimum-purchasing age to 21, it estimated that 90% of the people who minors asked to purchase cigarettes for them were between 18 and 21.

As a company, we have no higher priority than preventing underage use of our products. We have taken definitive steps towards that goal, including:

- Discontinuing the sale of our non-tobacco, non-menthol-based flavored products in the U.S., pending Premarket Tobacco Product Application (PMTA) authorization by the FDA. As you may know, FDA currently is finalizing its guidance on the issue of flavored vapor products, and we will support any enforcement policy that addresses flavored products subject to PMTA authorization.
- Restricting sales on our ecommerce platform (JUUL.com) to those aged 21 years or older, regardless of jurisdiction, through industry-leading age-verification technology, including using third-parties to verify the purchaser's personal information against publicly-available records, and limiting the amount of product that can be purchased.
- Establishing our Retail Access Control Standards (RACS) program for retailers of JUUL products, a technological solution at the point-of-sale that requires electronic ID scanning to verify age and ID validity and limits the amount of product that can be purchased. In the spring of 2019, JUUL Labs ran a pilot study among retail outlets that had adopted RACS, which showed that the overall age-verification failure rate fell from 36.8% before implementation to 0.2% after implementation.
- Deploying a nationwide track-and-trace system that allows us to identify where a JUUL device, confiscated from an underage user, was sold and to undertake an investigation with the retailer to take appropriate action.
- Instituting a "three-strikes policy" as part of our secret-shopper program that will prohibit retailers from selling JUUL products for at least one year if they incur three violations for either age-verification or bulk-purchasing non-compliance within a calendar year.
- Ceasing the promotion of JUUL products on social media and aggressively enforcing against third-party posts that depict JUUL products.
- Suspending the advertising and promotion of JUUL products through broadcast media (e.g., television and radio), print publications, and digital channels.

The actions of individual manufacturers will not be sufficient to achieve much needed category-wide change. It will require a more comprehensive regulatory framework, and all parties working collaboratively with regulators, policymakers, and stakeholders to restrict underage access and use, while preserving the availability of vapor products as an alternative for adult smokers. Therefore, we encourage the New York State Senate to consider policies, outlined in the following section, that would accomplish both objectives.

POLICY RECOMMENDATIONS

Licensure and Vapor Product Registry

- Require all manufacturers and distributors of vapor products to obtain a license to sell vapor products in the state. (Retailers are already required to hold a certificate of registration to sell vapor products beginning December 1, 2019.)
- Establish a vapor product registry, published by the State Attorney General, for all authorized vapor/e-liquid nicotine products that will be sold in the state.
 - Require manufacturers, in accordance with the FDA's timeline, to submit to the Attorney General documentation confirming that, for each vapor product offered for sale, the manufacturer has submitted to the FDA a PMTA or otherwise has received a marketing order from FDA as a condition for placement into the state's registry. Manufacturers should be required to notify the Attorney General of any adverse finding by the FDA for pending PMTAs and remove those products from commerce.

Marketing and Packaging Restrictions

- Prohibit marketing, packaging, and labeling for vapor products that feature any of the following:
 - Products intended for children (e.g. toys).
 - Fictional characters (e.g. superheroes, cartoons, etc.).
 - Athletes, sports, or games.
 - Videos, television shows, movies, or other media.
 - Celebrities.
- Prohibit the sale of a liquid nicotine container unless (a) it meets the child-resistant effectiveness standards of 16 C.F.R 1700.15(b), or (b) the liquid nicotine container is a

cartridge that is pre-filled and sealed by the manufacturer of the cartridge and is not intended to be opened by the consumer.

Underage Access and Sales Restrictions

- Increase the monetary penalty for any retailer or individual selling, giving, or furnishing a tobacco, vapor, or alternative nicotine product to a minor.
- Require retailers to scan a government-issued photo identification to verify that the purchaser is 21 years of age or older and that the identification has not expired before completing the transaction.
- Establish bulk-purchasing restrictions, limiting the amount of vapor products, including packages of nicotine-containing e-liquid, that can be purchased in a single transaction at retail.
- Require online retailers to employ either (1) pre-specified age-verification requirements, including using a third party to verify the purchaser's information against publicly-available records or requiring the purchaser to upload his or her government-issued ID for verification, or (2) age-verified signature on delivery of vapor products.

Enhanced Enforcement

- Increase funding for enforcement and retail compliance, including funding for retailers to adopt new technology to prevent underage access, including electronic ID scanners.
- Initiate enforcement against individuals or companies that sell vapor products that are not authorized for sale/distribution in the state.
- Increase penalties for adults that sell or provide vapor products on school property.
- Impose significant monetary penalties on retailers that sell products to minors or fail to properly verify a purchaser's age.

JUUL Labs' ultimate goal is to eliminate combustible cigarettes among adult smokers. Achieving this objective requires a stronger regulatory environment to prevent underage access and use of vapor products, including restricting illegal products from entering the marketplace. The FDA's regulatory process is one part of the solution, but we believe that a category-wide comprehensive approach by the states, as outlined in this testimony, will have a significant impact. Thank you again for the opportunity to provide our perspective.