FDA plans curbs on e-cigarette sales over concerns about surge in teen vaping

Juul e-cigarettes are appealing to young people because they are easy to hide and come in a variety of flavors. (Michael S. Williamson/The Washington Post)

By Laurie McGinley
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The Food and Drug Administration, alarmed by a huge increase in vaping among minors, is expected to impose severe restrictions on the sale of e-cigarette products throughout the United States — actions that will probably have a significant impact on an industry that has grown exponentially in recent years with little government oversight.

As soon as next week, FDA Commissioner Scott Gottlieb is expected to announce a ban on the sale of most flavored e-cigarettes in tens of thousands of convenience stores and gas stations across the country, according to senior agency officials. The agency will also impose such rules as age-verification requirements for online sales, the officials say.

Gottlieb also is expected to propose banning menthol in regular cigarettes. The agency has been collecting public comments on such a prohibition, which is a major goal of the public health community but is likely to be strongly opposed by the cigarette industry.

The FDA’s initiatives on vaping are spurred by preliminary government data that show e-cigarette use rose 77 percent among high schoolers and nearly 50 percent
among middle schoolers in 2018. That means 3.5 million children were vaping in early 2018, up 1 million from 2017.

Gottlieb, who once served on the board of a North Carolina vaping company, was at one time viewed as an ally of the e-cigarette industry, and he delayed some critical e-cigarette rules shortly after becoming commissioner in 2017. He has also said his first priority is protecting children from tobacco-related disease. Most vaping products are flavored, and studies show teenagers are attracted to the flavors. “We now have evidence that a new generation is being addicted to nicotine, and we can’t tolerate that,” he said, referring to the vaping data in an interview before he made his final decision on e-cigarette policy.

The only exception to the flavored-products ban in convenience stores involves mint and menthol e-cigarette products. The FDA will continue to permit sales of those flavors because menthol is permitted in regular cigarettes, and the agency doesn’t want to give traditional cigarettes an advantage over e-cigarettes. But the FDA may extend the sales restriction to those flavors if teen vaping doesn’t decline, officials said. Gottlieb’s actions apply to a specific kind of vaping product that dominates the youth market — e-cigarettes that use prepackaged flavor cartridges, or pods. That includes the wildly popular vaping products by Juul Labs. The restrictions don’t apply to the “open-tank” systems available in vape shops.

Research indicates many e-cigarette users are likely to become addicted to nicotine and some will probably end up on regular cigarettes, a product that kills half of its long-term users. Moreover, the long-term health consequences of vaping are not known.

At the same time, vaping devotees and “harm-reduction” advocates have said e-cigarettes represent a powerful tool in helping adult smokers to quit more dangerous cigarettes. They have warned that making it harder for adults to buy e-cigarettes — or depriving them of flavored products — will be detrimental.

“We have to be really careful not to overreact to the youth problem,” said David Abrams, professor of social and behavioral sciences at New York University.

Juul, which accounts for more than 70 percent of the retail market, is sold in tens of thousands of retail outlets.

Gottlieb’s steps will almost certainly be criticized as too aggressive by the industry and too weak by public health groups and Democratic lawmakers, whose election victory will probably embolden them in efforts to curb youths’ use of e-cigarettes.

The tobacco-control groups are demanding restrictions on marketing and a ban on all e-cigarette flavors until manufacturers can prove that such flavors benefit public health by helping adults quit smoking regular cigarettes without increasing vaping by youths.
“As long as the FDA allows these companies to peddle these flavors, you will see a steady increase in kids addicted to this product,” said Sen. Richard J. Durbin (D-Ill.) in a recent interview.

Gottlieb has resisted an across-the-board ban because he wants to ensure that flavored products are available to adults who want to use them as aids to quit smoking regular cigarettes. Such devices could be a potentially less harmful source of nicotine, he said. “We know that adults transition off combustible products and that flavors play a role in that,” he said in an interview. “We don’t want to foreclose the opportunity for adults to get these products.”

Adult smoking rates in the United States dropped to their lowest level last year, at 14 percent, continuing a downward trend after a peak in 1965, but cigarettes kill an estimated 480,000 Americans per year.

The flavored e-cigarette products will be available in vape and tobacco shops, which the FDA believes are more careful about verifying the age of the purchasers. It’s also possible that some flavored products could return to convenience stores — but only if the manufacturers prove a public health benefit and get specific authorization from the agency, which could take years. Under federal law, tobacco products can’t be sold to people under 18. In some states and localities, the age is higher.

Gottlieb also is expected to warn that further e-cigarette restrictions might occur if use by youths doesn’t start to decline.

FDA officials, who recently conducted a crackdown on underage retail sales of e-cigarettes to minors and are investigating whether products are being sold illegally, were alarmed by the number of violations in convenience stores.

Gregory Conley, president of the American Vaping Association, a consumer group, has stressed the importance of having e-cigarettes available to adults in convenience stores and online — especially those who live in rural areas that might not have vape shops. “Severely restricting the availability of these devices does not seem to be in the interest of public health,” he said.

Convenience-store interests already have started questioning Gottlieb’s legal ability to restrict the sale of e-cigarettes to a specific type of store.

Juul, a sleek e-cigarette introduced in 2015, has taken much of the blame for the rise in use by youths. A technical and design breakthrough, the e-cigarette looks like a USB flash drive and, in a break from past vaping products, delivers high levels of nicotine that are smooth, not harsh. Each of its pods, which come in such flavors as mango and cucumber, provides as much nicotine as a pack of cigarettes.

The company’s early marketing strategy included a launch party with attractive young models whose images were shared widely on social media sites such as Twitter and Instagram.
Today, the company is engulfed in a backlash resulting from the surge in youth use. Company officials say that the early marketing campaign was short-lived and didn’t have an impact on sales.

Now the San Francisco-based company is running advertisements that tout its role in helping smokers quit traditional cigarettes. The ads carry the tagline, “The alternative for adult smokers.” It also has pledged $30 million to reduce underage use. Along with four other e-cigarette makers, it is planning to submit plans to Gottlieb on cutting use by youths.

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