

## Why Regulate the Sale of Flavored Tobacco Products?

Characterizing flavors do not simply increase the general appeal of tobacco products, but also provide an avenue for marketing the products to youth.<sup>1</sup> Flavored tobacco products are packaged and marketed in ways that appeal to youth. They typically come in brightly colored packaging, emphasizing their sweet flavoring, including youth-friendly flavors such as grape, cherry, and cotton candy. Tobacco products—including flavored products, which are sold by most stores—are often displayed in the front of the store near candy or at kids' eye level.<sup>2</sup> E-cigarette flavors are particularly egregious, as is their marketing, which is not yet regulated and can be found not just in the retail environment, but through other media prohibited for conventional tobacco products.

Youth tobacco users often begin with flavored products and, overall, use flavored tobacco products at high rates.<sup>3</sup> Characterizing (detectible) flavors in cigarettes, smokeless tobacco, and e-cigarettes tend to mask the harshness of tobacco and other constituents; thus users may use flavored products with greater frequency, inhale more deeply, and perceive flavored products to be safer than other products.<sup>4</sup> Flavor compounds in e-cigarettes were found to be potentially toxic, creating a health risk even in nicotine-free form.<sup>5</sup>

Evidence shows that menthol-flavored products in particular are more addictive and harder to quit.<sup>6</sup> In 2012, menthol flavored cigarettes accounted for nearly one-third of the cigarette market.<sup>7</sup>

After the FDA banned characterizing flavors in cigarettes, an adolescent's probability of becoming a cigarette smoker declined.<sup>8</sup> In an evaluation of New York City's restriction on the sale of flavored tobacco products other than cigarettes, researchers found that after the ban, teens were less likely to ever try flavored tobacco *and* less likely to ever try any type of tobacco.<sup>9</sup>

Review our [technical report on Tobacco Retail Licensing](#) to understand how local governments may regulate where and how tobacco products are sold.

<sup>1</sup> Flavored tobacco appeals to youth. U.S. DEP'T OF HEALTH AND HUMAN SERVICES, PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL 535–539 (2012); see also Li-Ling Huang et al., *Impact of non-menthol flavours in tobacco products on perceptions and use among youth, young adults and adults: a systematic review*, TOB. CONTROL tobaccocontrol-2016-053196, 9 (2016) (“Flavours in tobacco products seem to have a universal and rather strong appeal to youth and young adults interested in initiating tobacco use or experimenting with different products due to the variety and availability of flavours, are reported as a reason for using most tobacco products, and appear to play a more important role in the use of e-cigarettes, hookah, little cigars and cigarillos among younger people.”).

<sup>2</sup> CTR FOR PUBLIC HEALTH SYSTEMS SCIENCE, POINT-OF-SALE REPORT TO THE NATION: THE RETAIL AND POLICY LANDSCAPE. 9 (2014), [https://cphss.wustl.edu/Products/Documents/ASPiRE\\_2014\\_ReportToTheNation.pdf](https://cphss.wustl.edu/Products/Documents/ASPiRE_2014_ReportToTheNation.pdf) (last visited Jun 28, 2016) (reporting that 9 percent of stores surveyed in 2012 placed tobacco products within 3 feet of the floor and 10 percent placed them within 12 inches of candy, and reporting that 82 percent of stores sold flavored cigars).

<sup>3</sup> See Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871–1873 (2015) (using PATH data, finding nearly 80 percent of current tobacco users use flavored products, and the majority of ever-users reported first product used was flavored); Catherine G. Corey et al., *Flavored Tobacco Product Use Among Middle and High School Students—United States, 2014*, 64 MORB. MORTAL. WKLY. REP. 1066–1070 (2015) (using NYTS data, finding 70 percent of current tobacco users using at least one flavored product); Andrew Hyland, PRESIDENTIAL SYMPOSIUM: HIGHLIGHTED FINDINGS FROM WAVE 1 OF THE POPULATION ASSESSMENT OF TOBACCO AND HEALTH (PATH) STUDY (2016) (finding two-thirds of youth ENDS use is flavored, over 80 percent youth ENDS users report “flavor” as a reason to use ENDS and youths’ most commonly expressed product preference is for flavored ENDS).

<sup>4</sup> U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *supra* note 10 at 535–539; Joshua R. Smith et al., *Determinants of Hookah Use among High School Students*, 13 NICOTINE TOB. RES. 565–572 (2011). <sup>5</sup> Vicky Yu et al., *Electronic Cigarettes Induce DNA Strand Breaks and Cell Death Independently of Nicotine in Cell Lines*, 52 ORAL ONCOL. 58–65 (2016).

<sup>6</sup> FOOD AND DRUG ADMINISTRATION, PRELIMINARY SCIENTIFIC EVALUATION OF THE POSSIBLE PUBLIC HEALTH EFFECTS OF MENTHOL VERSUS NON-MENTHOL CIGARETTES. (2013), <http://www.fda.gov/downloads/UCM361598.pdf> (last visited Jun 28, 2016); Jonathan Foulds et al., *Do smokers of menthol cigarettes find it harder to quit smoking?*, 12 Suppl 2 NICOTINE TOB. RES. OFF. J. SOC. RES. NICOTINE TOB. S102-109 (2010).

<sup>7</sup> Federal Trade Commission, *Cigarette Report for 2012*, 8 (2015).

<sup>8</sup> Charles J. Courtemanche, Makayla K. Palmer & Michael F. Pesko, *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, AM. J. PREV. MED. (2017).

<sup>9</sup> Shannon M. Farley & Michael Johns, *New York City flavoured tobacco product sales ban evaluation*, 26 TOB. CONTROL 78–84 (2017) (finding 37 percent lower odds for trying flavored products after the ban and 28 percent lower odds for trying any products).

