



We agree that there is an urgent need for action to reverse underage vaping rates. Tobacco products of any kind are only for adults 21 and over. Recent data show that 27.5 % of high school students have tried e-vapor products. That is totally unacceptable. Underage tobacco use is harmful and it undermines the public's confidence in the regulatory system.

It is true that e-vapor has real potential to be a reduced harm product for adult smokers over the long term. And it is also true that flavors play an important role in adult smokers converting to non-combustible products like e-vapor. Under close FDA oversight, that conversion should be actively encouraged. But e-vapor's future for adult smokers – and the harm reduction potential it offers – cannot become a reality without addressing these alarming underage use rates.

State government and industry each have a central role in solving this problem. We commend the State of New York for raising the minimum age of purchase for tobacco products to 21. For our part, since last year we have been actively advancing legislation at the state and federal levels to raise the minimum age to 21. Although today we do not have products in the vapor category, last year we voluntarily removed from the market all flavored vapor products other than tobacco, menthol, and mint. We have also added \$100 million to our existing investment in positive youth development and underage tobacco prevention.

But there is more to be done. We support additional, immediate policy interventions that can add to the mix of efforts we are seeing across all stakeholders.

Flavors

We understand and agree that more regulation of flavored vapor products is overdue. We believe FDA is best positioned to take appropriate regulatory action. For example, we have said FDA should remove egregious flavor varieties like “Gummy Bears” and “Captain Crunch” – the kind of youth-oriented brands that have no place on the market. More recently, FDA announced that it would restrict the availability of flavored e-vapor products pending FDA authorization. We support FDA taking this action and we look forward to reviewing the plan when it is announced.

If states decide to adopt their own independent restrictions on flavored vapor products in parallel with the FDA, we would urge them to take steps to prevent the growth of a black market in unsafe products. One way to help achieve that goal is to ensure products that receive FDA authorization under the Pre-Market Tobacco Application (PMTA) process can continue to be sold to adults 21 and over. FDA cannot authorize a product for sale under this PMTA review unless it concludes it is “appropriate for the protection of public health.” That review includes careful examination of any risk of youth appeal. And once a product receives that FDA

authorization, it is subject to extensive post-marketing surveillance and detailed reporting to FDA.

Additional Measures

We support a number of other legislative and executive actions that could reshape the law in a way that puts an end to these underage vaping trends.

Minimum Age. Increasing the legal age of purchase to 21 is Altria's top legislative priority in statehouses and in Congress. We know from government youth surveys that three-fourths of youth e-vapor access comes from "social sources" like a friend or classmate, and that most high schoolers turn 18 before graduating. Increasing the age of purchase to 21 takes these access points out of high school. As of September 2019, 52% of the population now lives in a state with a 21 law. Every state should join in raising their age to purchase to 21 to increase the impact of this policy on driving down youth use.

For states like New York that have already enacted 21 legislation, full enforcement of this law means reducing access to these products for teenagers. We would support a surge in enforcement activities to ensure no one under 21 can buy any tobacco products – including e-vapor. These actions might include state-level enforcement, with a state enforcement agency charged with coordinating retail compliance checks. It could also include imposing a minimum number of compliance checks of stores selling e-vapor or any tobacco product. We are also aware of those who advocate for expanding minimum age laws to prohibit illegal purchasing or possession of tobacco products by minors, or stiffening enforcement against those who purchase tobacco products for minors, and we would support those changes as well.

Marketing Restrictions. Marketing restrictions for e-vapor products should be similar to those for cigarettes and traditional tobacco products.

Licensing. New York just enacted retail licensing for vapor products. This requirement should be implemented and enforced as promptly as possible.

Sales Limits. New York could enact limits on the quantities of vapor products that may be sold in a single transaction.

Online Sales. New York could impose strict age-verification requirements on online sales of these products.

Schools. All tobacco products, including vapor, should be banned from the grounds of all public schools.

Fines and Penalties. States should consider increasing fines and penalties for selling tobacco products to minors or for selling counterfeit or illegally smuggled tobacco products.