

STATE OF CALIFORNIA
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February 26, 2019

RE: State of California Tobacco Education and Research Oversight Committee encourages local jurisdictions to regulate flavored tobacco products even after proposal by the United States Food and Drug Administration to regulate flavored tobacco products

To Whom It May Concern,

The Tobacco Education and Research Oversight Committee (TEROC) is a legislatively mandated oversight committee that monitors the use of Proposition 99 and Proposition 56 tobacco tax revenues for tobacco control, prevention education, and tobacco-related research in California.^{1,2} TEROC advises the California Department of Public Health; the University of California; and the California Department of Education with respect to policy development, integration, and evaluation of tobacco education programs funded by Proposition 99 and Proposition 56. TEROC is also responsible for the development of a master plan for the future implementation of tobacco control and research, and making recommendations to the State Legislature.

Our 2018-2020 Master Plan, [*New Challenges – New Promises for All*](#) lays out a vision and framework for becoming a tobacco-free state. This Master Plan recommends that all local jurisdictions in California join the now over 30 communities that have passed ordinances banning or restricting the sale of flavored tobacco products in order to *Eliminate Tobacco-Related Health Disparities, Protect Youth and Young Adults, and Counter the Tobacco Industry*.

On November 15, 2018, the United States Food and Drug Administration (FDA) announced plans to restrict the sale of flavored electronic cigarettes (e-cigarettes) - except mint, menthol and tobacco flavors - to age-restricted/adult-only in-person locations; and ban flavored cigars and menthol cigarettes.

While TEROC supports the FDA’s statement of its future intentions to regulate non-menthol flavored tobacco products, its exemptions leave vulnerable populations unprotected which is unacceptable if we are to eliminate tobacco-related disparities and accelerate declines in tobacco use among these groups. The FDA’s regulations need to be comprehensive to encompass all flavored tobacco products and prohibit their sale from any location.

The FDA’s proposal would exempt mint and menthol flavored e-cigarettes. Mint and menthol flavorings are particularly problematic. Youth are more likely to use flavored tobacco³, and are most attracted to candy-, fruit- and menthol-flavored e-cigarettes.^{4,5} From 2017-2018, current e-cigarette use among high school students increased from 11.7% to 20.8%, an alarming 78% increase in only one year. Of these current high school student e-cigarette users in 2018, over half (51.2%) use menthol- or mint-flavored e-cigarette products, a 21% increase from 2017.

Furthermore, limiting flavored tobacco product sales to adult-only stores may have unintended consequences. For example, while well-intentioned, the FDA’s 2009 removal of



non-menthol flavored cigarettes from the market⁶ was at least partially back-filled by the sale of other flavored tobacco products.⁷ Since 2008, sales of flavored cigars increased by almost 50% with low cost packs of 2-3 flavored cigars that are frequently used by young adults increasing from less than 1% of cigar sales to 40% between 2008 and 2015.^{8,9}

The FDA proposal would restrict the sale of flavored e-cigarettes to age-restricted/adult-only in-person tobacco stores. However, California adult-only tobacco stores and vape shops have higher rates of illegal sales to underage young adults than any other store type. In 2018, more than one-third of tobacco-only stores and vape shops in California sold tobacco products to young adults. In addition, the FDA's proposal would prohibit persons under the age of 18 to enter these locations. This still allows for potential illegal underage sales in California, where the minimum age of sale for tobacco products is 21 years of age.¹⁰

For these reasons, the FDA's regulations need to include all flavored tobacco products and prohibit their sale from any location in order to protect the health of our young people.

Timing of when the FDA may release its proposed regulations is highly uncertain. TEROC expects it will take years before any regulation is adopted and enforced. The tobacco industry may also challenge the FDA's regulations, causing further delays and potentially weaken protections. The FDA's regulatory effort to regulate electronic cigarettes, which took 5 years from proposal to finalized regulation, is one such example.

The federal Family Smoking Prevention and Tobacco Control Act of 2009 authorizes states and local jurisdictions to pass policies that are more stringent than federal law to restrict or prohibit the sale of tobacco products.¹¹ **TEROC applauds the over 30 local jurisdictions that have not waited for federal action and adopted policies to ban or restrict the sale of flavored tobacco products in order to protect their communities.**

TEROC strongly encourages local jurisdictions without such flavored tobacco policies to not wait nor rely on the FDA to protect our local communities. California has shown that local policies can and should be stronger than the FDA's proposal to fill critical gaps that leave youth and other tobacco-related priority populations unprotected. Local policies are important in influencing not only state and national policies, but also tobacco-free social norms.

For these reasons, local flavored tobacco policy work is still needed. **As a result, TEROC encourages local jurisdictions to continue their efforts to restrict or prohibit the sale and distribution of flavored tobacco products, including menthol.** TEROC continues to stand with local communities and jurisdictions in their efforts to protect the public health and well-being of California residents.

Michael K. Ong, M.D., Ph.D.



Chairperson

References

1. Health & Safety Codes §§ 104365-104370.
2. Rev. & Tax. Code § 30130.56(e). In.
3. Villanti AC, et al. Flavored tobacco product use among US young adults. *American Journal of Preventive Medicine*. 2013;44(4):388-391.
4. Hoffman AC, et al. Flavour preferences in youth versus adults: a review. *Tobacco Control*. 2016;25(Suppl 2):ii32-ii39.
5. Pepper J, K. Ribisl, and N. Brewer. Adolescents' interest in trying flavoured e-cigarettes. . *Tobacco Control*. 2016:p. tobaccocontrol-2016-053174.
6. M. M. FDA exercises new authority to regulate tobacco products, but some limits remain. *JAMA*. 2009;302(19):2078-2081.
7. Courtemanche CJ PM, Pesko MF. . Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *American Journal of Preventive Medicine*. 2017;52(5):e139-e146.
8. Giovenco DP, Miller Lo EJ, Lewis MJ, Delnevo CD. "They're pretty much made for blunts": product features that facilitate marijuana use among young adult cigarillo users in the United States. *Nicotine & Tobacco Research*. 2016;19(11):1359-1364.
9. Delnevo CD GD, Miller Lo EJ. Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act. *Tobacco regulatory science* 2017;3(2(Suppl 1)):S8-S16.
10. California Department of Public Health CTCP. *Young Adult Tobacco Purchase Survey, 2018*. Sacramento, CA: California Department of Public Health; October 2018 2018.
11. Wellington N. Focus on Flavors: The Authority of a State or Local Government to Restrict or Prohibit the Sale or Distribution of Flavored Tobacco Products. In: California Department of Public Health CTCP, ed. Sacramento, CA 2016.