

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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September 16, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Pitts
Chairman
Subcommittee on Health
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton, Chairman Murphy, and Chairman Pitts:

Earlier this month, the Centers for Disease Control and Prevention (CDC) released new data showing that the percentage of adolescents who use electronic cigarettes is growing rapidly.¹ We are writing to request that the Committee hold a hearing on the increased use and the health impacts of these “e-cigarettes” and other tobacco products like cigars and pipe tobacco that are currently unregulated by the Food and Drug Administration (FDA).

The authors of the CDC’s report — who are all from either the FDA’s Center for Tobacco Products or the CDC’s Office on Smoking and Health — cite serious concerns about the health effects of the use of e-cigarettes. For instance, they indicate that e-cigarettes may

¹ Centers for Disease Control and Prevention, *Notes from the Field: Electronic Cigarette Use Among Middle and High School Students – United States, 2011-2012* (Sept. 6, 2013) (online at www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?s_cid=mm6235a6_w).

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contain potentially harmful constituents, including irritants and animal carcinogens.² They also raise concerns about the potential negative effects “on adolescent brain development, as well as the risk for nicotine addiction.”³ In an earlier study, FDA found that e-cigarette vapor samples contained toxic chemicals “such as diethylene glycol, an ingredient used in antifreeze.”⁴

Despite these health concerns, e-cigarettes are currently completely unregulated. Manufacturers of e-cigarettes are taking advantage of this regulatory loophole to target children. Manufacturers of traditional cigarettes are banned from introducing flavoring into their products to attract children, but this prohibition does not apply to e-cigarettes. As a result, some e-cigarette makers are producing products with kid-friendly flavors such as “Cherry Crush” and “Cookies & Cream Milkshake.”⁵

Unlike traditional cigarettes, e-cigarettes are also not subject to the federal ban on television advertising. Advertising spending on products like e-cigarettes has skyrocketed from \$2.7 million in 2010 to \$20.8 million last year, using tactics like celebrity endorsements and sports sponsorships to glamorize smoking.⁶ According to the American Lung Association, these products are being directly marketed to kids, “which could result in a lifelong addiction to nicotine.”⁷

The new CDC report shows the dangerous impacts of these practices. Use of e-cigarettes by youth doubled in just one year from 2011 to 2012. Moreover, the CDC data suggest that e-cigarettes could be serving as a gateway product to nicotine addiction. Over 20% of the middle

² *Id.*

³ *Id.*

⁴ Food and Drug Administration, *FDA and Public Health Experts Warn About Electronic Cigarettes* (July 22, 2009) (online at www.fda.gov/NewsEvents/Newsroom/%20PressAnnouncements/ucm173222.htm).

⁵ *E-cigarettes may have a place – just not with minors*, Boston Globe (July 12, 2013) (online at www.bostonglobe.com/opinion/editorials/2013/07/11/cigarettes-may-have-place-just-not-with-minors/aIJcHjP5LJZL6k7cLjQ8OK/story.html).

⁶ *E-Cigarette Makers' Ads Echo Tobacco's Heyday*, New York Times (Aug. 29, 2013) (online at www.nytimes.com/2013/08/30/business/media/e-cigarette-makers-ads-echo-tobaccos-heyday.html).

⁷ *FDA Oversight Badly Needed*, New York Times (Aug. 20, 2013) (online at www.nytimes.com/roomfordebate/2013/08/20/the-ambiguous-allure-of-the-e-cig/fda-oversight-of-e-cigs-badly-needed); *State of Tobacco Control 2013*, American Lung Association (Jan. 16, 2013) (online at www.stateoftobaccocontrol.org/sotc-2013-report.pdf).

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school students who reported using e-cigarettes said they had never tried traditional cigarettes. According to the authors of the CDC report, “This raises concern that there may be young people for whom e-cigarettes could be an entry point to use of conventional tobacco products, including cigarettes.”⁸ As CDC Director Tom Frieden stated when the report was released, “Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes.”⁹

We recognize that some believe e-cigarettes could advance public health if addicted smokers switch to e-cigarettes from traditional cigarettes. Others advance the idea that e-cigarettes could help provide a pathway to smoking cessation. We do not dismiss these ideas, but they need to be proven – and we should invite witnesses to our hearing who can appropriately address these questions.

E-cigarettes are not the only subject that should be addressed at the hearing. Last summer, Rep. Waxman wrote to FDA Commissioner Margaret Hamburg expressing concerns about the decline in consumption of cigarettes being offset by a huge increase in the consumption of cigars and pipe tobacco.¹⁰ CDC found that between 2008 and 2011, cigarette consumption declined by 15% while loose pipe tobacco and large cigar consumption increased by 573% and 126% respectively.¹¹ A minority staff investigation indicated that tobacco companies have taken advantage of tax and regulatory loopholes to avoid FDA regulation and federal taxes.¹² The investigation revealed internal tobacco industry documents showing that manufacturers began relabeling roll-your-own tobacco as pipe tobacco soon after the passage of the bipartisan Children’s Health Insurance Program Reauthorization Act (CHIPRA) and the Family Smoking Prevention and Tobacco Control Act.¹³

⁸ Centers for Disease Control and Prevention, *E-cigarette use more than doubles among U.S. middle and high school students from 2011 to 2012* (Sept. 5, 2013) (online at www.cdc.gov/media/releases/2013/p0905-ecigarette-use.html).

⁹ *Id.*

¹⁰ Letter from Ranking Member Henry Waxman to FDA Commissioner Margaret Hamburg (Aug. 27, 2012) (online at democrats.energycommerce.house.gov/sites/default/files/documents/Hamburg-Cigar-Use-Study-2012-8-27.pdf).

¹¹ Centers for Disease Control and Prevention, *Consumption of Cigarettes and Combustible Tobacco – United States, 2000-2011* (Aug. 3, 2012) (online at www.cdc.gov/mmwr/preview/mmwrhtml/mm6130a1.htm).

¹² *Id.*

¹³ Children’s Health Insurance Program Reauthorization Act, Pub. L. No. 111-3; Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31.

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The emerging public health threats of increased use of unregulated e-cigarettes, cigars, and pipe tobacco threaten to undermine the goal of reducing nicotine addiction and tobacco use, especially among children. That is why we are requesting that the Committee hold a hearing to examine these impacts. The hearing should examine:

1. Trends in the use of e-cigarettes, cigars, and pipe tobacco, and the reason for these trends, including manufacturer advertising directed towards children.
2. The public health threats posed by use of these products.
3. The ability of FDA to exercise its regulatory authority to address these public health concerns and any agency action to date.
4. Statutory changes, if any, needed to bolster FDA's ability to address e-cigarette, cigar, and pipe tobacco use.

We urge you to hold this hearing as soon as possible.

Sincerely,



Henry A. Waxman
Ranking Member
Committee on Energy and
Commerce



Diana DeGette
Ranking Member
Subcommittee on Oversight and
Investigations



Frank Pallone, Jr.
Ranking Member
Subcommittee on Health



John D. Dingell
Member
Committee on Energy and
Commerce