

July 22, 2024

Juul Labs[®] OMB 12866 Meeting

Prohibition of Sale of Tobacco Products to Persons Younger Than 21 Years of Age

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JLI Position on Tobacco 21



JLI supported raising the minimum age of purchase to 21. A primary reason was to prevent the circumvention of the law observed when the age of purchase was 18. Because many 18-year-olds are still in high school, this increased the opportunity for social sourcing of tobacco products from those of legal age of purchase to their underage peers.



Since the change in the law in 2019, as well as other actions taken to prevent underage access to and use of Electronic Nicotine Delivery Systems (ENDS) products, we have observed precipitous drops in underage use of ENDS products in the government-administered National Youth Tobacco Survey.



Illicit, disposable products from China are undermining these efforts and offsetting the significant declines in underage use prevalence.



To build on Tobacco 21's positive effects in combatting underage use of tobacco products, including ENDS, JLI supports the use of enhanced access controls (EAC) at retail to further drive down underage use of tobacco products.

Literature Supports Tobacco-21 Laws Reduce Use in 18-20 Year Olds

Enforcement efforts play important role in reducing underage use



Tobacco 21 Laws and Youth Tobacco Use: The Role of Policy Attributes

Abigail S Friedman¹, Michael F Pesko¹

Affiliations + expand

PMID: 38091563 PMCID: PMC10726938 (available on 2025-01-01)

DOI: 10.2105/AJPH.2023.307447

Conclusions: Tobacco-21 laws yield reductions in 18- to 20-year old youth cigarette, cigar, and ENDS use



Rates of Age Verification for Cigarette and E-cigarette Purchases as a Function of State T21 Laws Before and After Implementation of the Federal T21 Law in the United States

Katelyn F Romm^{1 2}, Yan Wang³, Nina C Schleicher⁴, Alexandria Pannel⁵, River Williams⁵, Carla J Berg^{4 6}, Lisa Henriksen⁴

Nicotine and Tobacco Research, 2023, **25**, 1386–1390

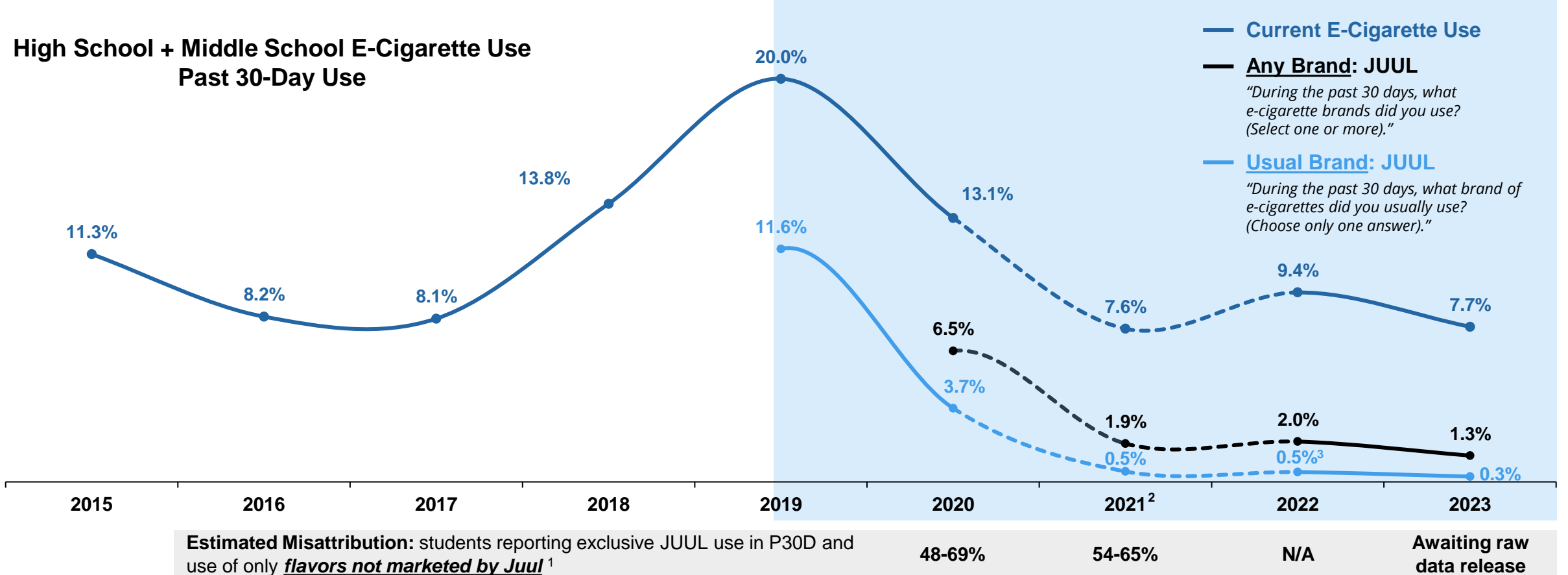
Conclusions: Current findings highlight the importance of monitoring retailer compliance with T21 laws and suggest that gaps in enforcement may undermine the potential impact of these laws on preventing tobacco use among those underage.

(Funding: U.S. National Cancer Institute)

T21 Success: Underage Use Declined After Change in Law

2023 NYTS results: Past 30-Day Use for High School and Middle School (e-cigarette use)

High School + Middle School E-Cigarette Use Past 30-Day Use



Source: [CDC MMWR: Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023](#)

1. Estimated based on students reporting exclusive JUUL use (as opposed to usual brand use as charted). High end of range based on those reporting use of any flavors not distributed by Juul. Low end of range based on those not reporting “No”, “Don’t know ” or “Menthol” flavored ENDS use in past 30 days. Juul has only distributed tobacco and menthol flavors since November 2019.

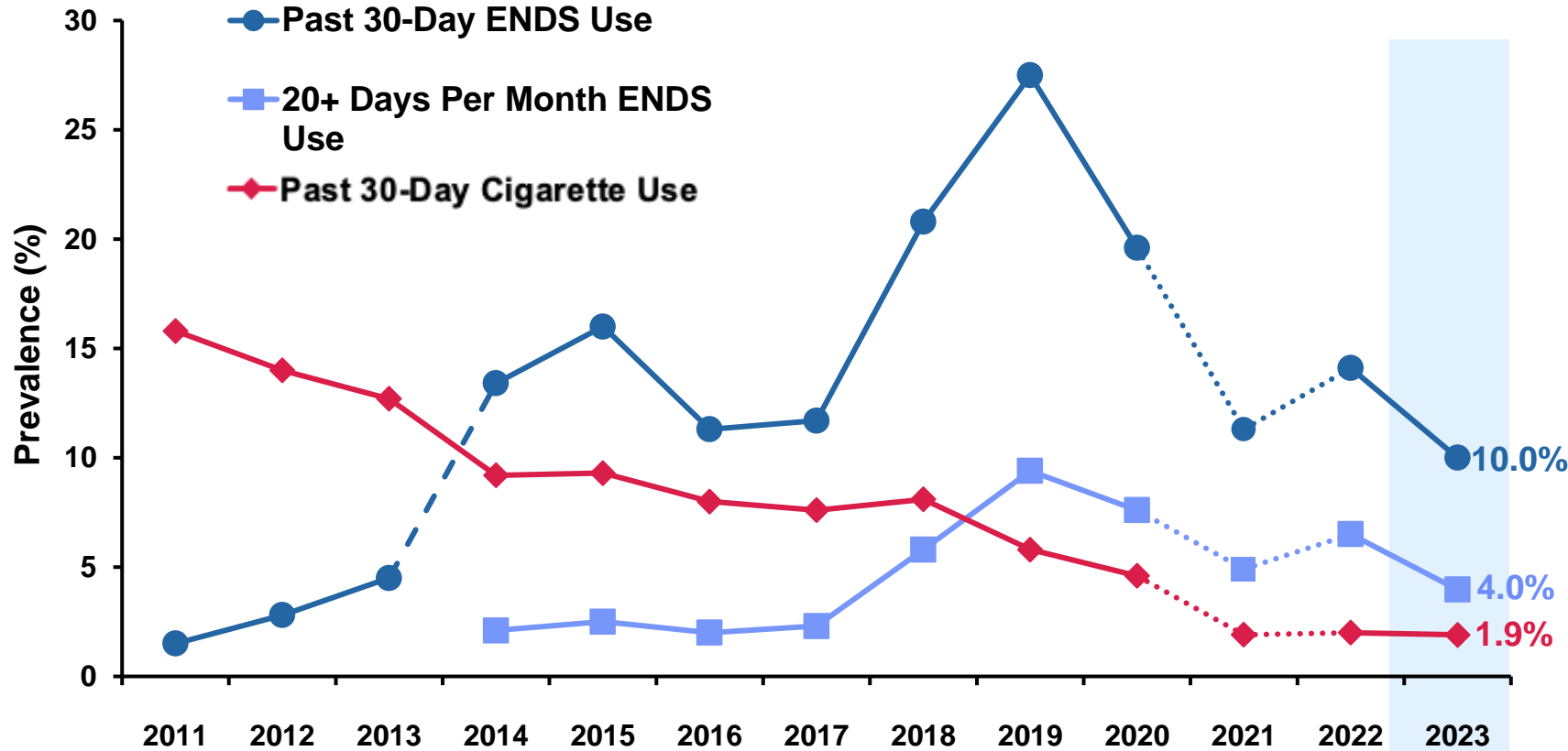
2. 50.8% of student respondents reported completing the survey in a school building or classroom and 49.2% at home or some other place. Youths who reported participating in the 2021 NYTS in a school building or classroom reported a higher prevalence of e-cigarette use compared with youths participating at home or at some other place; 15.0% of high school students who took the survey in a school building or classroom reported currently using e-cigarettes compared with 8.1% of those who took the survey at home or at some other place (p <0.001).

3. “Data were statistically unreliable because of unweighted denominator <50 or a relative SE >30%.” [CDC MMWR 10/7/2022](#)

Underage Use of Illegal Disposable Products Are Off-Setting Declines

More than 60% of adolescents who use ENDS report using a disposable product

High School Students – NYTS



	2019	2023	% Change	
HIGH SCHOOL	P30D Use ¹	27.5%	10.0%	(-64%)
	Pod Systems ²	15.5%	1.6%	(-90%)
	Disposables	0.7%	6.4%	(+810%)
	Frequent Use ³	9.4%	4.0%	(-57%)
MIDDLE SCHOOL	P30D Use ¹	10.5%	4.6%	(-56%)
	Pod Systems ²	4.8%	0.7%	(-85%)
	Disposables	0.3%	2.0%	(+570%)
	Frequent Use ³	1.9%	0.9%	(-53%)

*The ability to compare results during COVID data collection is limited because of methodological changes.

Proliferation of Illegally-Marketed Disposable Products Undermines a Well-Regulated, Responsible Marketplace

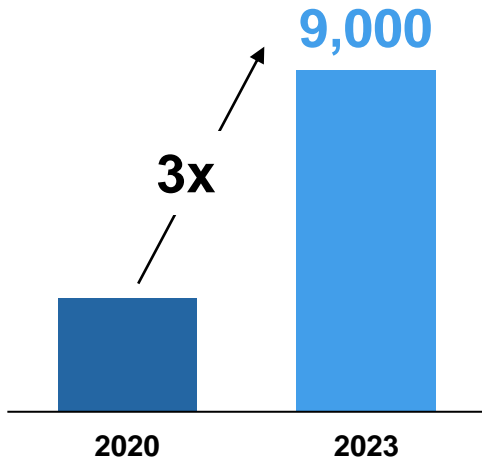


AUG 8, 2016

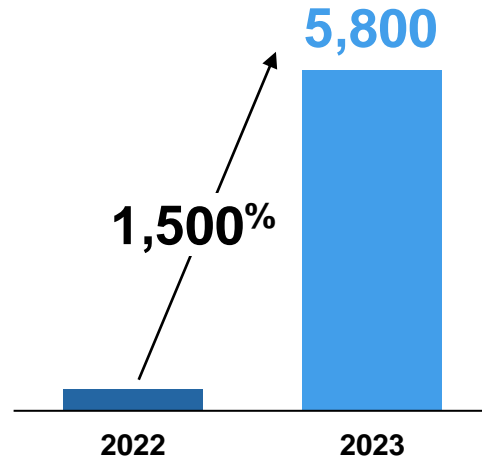
FDA's Deeming Rule extends jurisdiction to ENDS products

Any new product introduced to the market after 8.8.16 requires PMTA marketing authorization

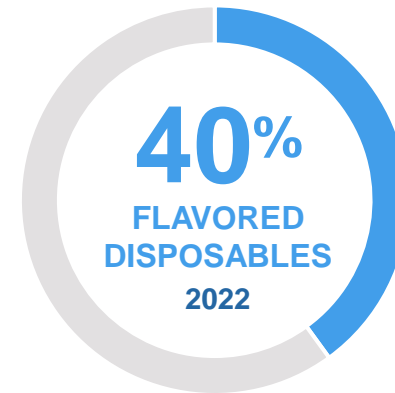
DIFFERENT ENDS PRODUCTS
sold in the U.S.



SALES OF UNIQUE DISPOSABLE PRODUCTS
in various flavors and formulations



\$7 BILLION ENDS RETAIL MARKET



ALL OF THESE DISPOSABLE PRODUCTS ARE ILLEGAL

Introduced after Aug. 8, 2016

Lack marketing authorization or don't comply with FDA compliance policy



Subject to FDA's enforcement authorities today



Federal Government Stepping Up Enforcement of Illicit E-Cigarettes

Multi-agency taskforce includes DOJ, FDA, ATF, USMS, USPIS, and FTC



Office of Public Affairs
U.S. Department of Justice

PRESS RELEASE

Justice Department and FDA Announce Federal Multi-Agency Task Force to Curb Distribution and Sale of Illegal E- Cigarettes

“Curbing the widespread availability of illegal ENDS products is a top priority of the Justice Department’s consumer protection efforts,” said Deputy Assistant Attorney General Arun G. Rao of the Civil Division’s Consumer Protection Branch. “Together with our law enforcement partners, we look forward to advancing aggressive and innovative solutions to the unique and constantly evolving problem of illegal vaping products.”

Enhanced Access Controls to Restrict Access and Improve Compliance

Requirement to Implement Enhanced Access Controls for the Sale of JUUL Products in Some Settlements

BARCODE SCANNER

Capable of scanning government IDs and verifying information

AUTOMATED VERIFICATION

Ability to verify the information and that the ID is not expired

VISUAL CONFIRMATION

Visually confirm the customer matches the individual represented in the ID

AUTOMATED LIMITS

Automated blocking of transactions involving more than 1 JUUL device and/or 16 JUULpods

AUTOMATED BLOCKING

Ability to automatically block any transaction that does not comply

DATA PROTECTION

Not use any data obtained for any purpose including marketing

Industry Support for Technological Standards to Improve Compliance

NACS



TruAge™

National Association of Convenience Stores (NACS) announced TruAge – a digital ID verification system

- Software-based program builds off Enhanced Access Controls
- Facilitates digital age verification at retail for all age-restricted products
- Commitments from over 140 retailers covering over 30,000 outlets and 4 point-of-sale vendors
- Supported by major tobacco and alcohol manufacturers



We Card launched a nationwide public-awareness campaign on electronic ID scanning for tobacco and other age-restricted products

- Incorporated ID scanning as a “best practice” for age-verification
- Supporting manufacturer product-quantity limits to address social sourcing
- Developed “manager training series for retailers” to supplement initiatives

JLI Supports Formalizing Sales & Marketing Practices Endorsed by FDA

The Public Health Rationale for Recommended Restrictions on New Tobacco Product Marketing (2019 Memo)

REDUCING

Youth-Appeal of
Product Marketing

- Avoid the use of imagery and themes known to resonate with youth, such as aspirational content depicting tobacco use as “cool,” attractive, rebellious, and/or risky
- Avoid bright, bold, cheerful designs and colors, which can influence youths’ product choices
- Must ensure all labeling, advertising, marketing, and promotional materials are clearly tailored to appeal to adults
- Must use models that are obviously older adults (ages 35–54) who look like and/or explicitly state they are current tobacco users

LIMITING

Youth-Exposure
to Tobacco
Product Marketing

- It is possible, efficient, and necessary for firms to take advantage of data sources, methodologies, and technologies to help ensure that tobacco product marketing is targeted to adults and that “spill” to youth audiences is minimal
- Technology allows for a highly targeted approach to tobacco advertising delivery, which can help ensure that youth exposure is minimized, while at the same time not restricting access to adults
- Due to social media marketing being unable to effectively target age-verified adults, it is critical to mitigate against the incredible reach and influence of social media, including “organic” influencer promotion, particularly given users’ ability to self-report age
- Firms must ensure their social media accounts, as well as those of any influencers promoting a tobacco product on a firm’s behalf, use the available age-restriction controls to restrict youth access

PROPOSED MARKETING RESTRICTIONS

in PMTA
Authorization Orders

- Must use competent and reliable data sources, methodologies, and technologies to establish, maintain, and monitor highly targeted advertising and marketing plans
- Must target specific adult audiences by age-ranges and other demographic and/or psychographic characteristics that reflect the intended target audience
- Must incorporate actions taken to restrict youth-access and limit youth-exposure to the products’ labeling, advertising, marketing, and/or promotion
- Restrictions on use of owned, earned, shared, and/or paid social media to create labeling for, advertise, market, and/or promote the products
- Restrictions on use of earned media and/or public-relations outreach to create labeling for, advertise, market, and/or promote the products