

From Policy to Practice

Changes in New York Statewide Tobacco Policies and Tobacco-related Outcomes



New York State
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Executive Summary

During 2019 and 2020, New York State implemented a range of tobacco control policies including an increase in the minimum age for purchasing tobacco products, a restriction on the sale of flavored vaping products, and a prohibition of tobacco product price discounting. These and other policies went into effect amid a changing regulatory landscape and the onset of the COVID-19 pandemic. This report describes recent New York statewide tobacco control policies and brings together findings from multiple data sources regarding key tobacco-related outcomes, with a focus on the flavored vaping product restriction.

- The vaping product tax revenue was higher in the quarters preceding New York's flavored vaping product sales restriction than in later quarters, indicating a drop in sales of vaping products that coincided with the timing of the flavored vaping product sales restriction.
- Flavored vaping product sales have decreased more in New York than in a comparison state without a statewide flavored vaping product sales restriction. We found a decrease in New York sales of flavored vaping products and total vaping products, and we saw an increase in tobacco-flavored vaping product sales after the flavor restriction.
- More New York youth and young adults use vaping products than any other tobacco product. In 2022, 18.7% of New York high school youth reported vaping. In 2021, 19.2% of young adults aged 18-24 reported vaping.
- Most New Yorkers who vape use flavored vapes. More than 97% of high school vapers reported vaping flavors. Approximately 71% of New York adult vapers used flavors in 2021.
- Youth and young adult vapers reported that they obtained flavored vapes through social sources and by buying them in stores, although in-store purchases were more common among those aged 21-24 than those 15-20.
- The persistence of youth and young adult access to tobacco products in spite of the T21 policy indicates that additional retail education and enforcement are needed.
- One-quarter of adult smokers (25.3%) reported using in-store discounts for tobacco products in 2021.
- Tobacco-related outcomes have changed in recent years, but there is still room for improvement.

Background

Purpose of Report

The New York Tobacco Control Program (NY TCP) works towards the core goals of preventing tobacco use initiation, promoting cessation, eliminating exposure to secondhand smoke, and eliminating tobacco-related disparities. A key focus of the Program is to advance policies that promote these goals and support tobacco-free norms. During 2019 and 2020, New York State implemented a range of tobacco control policies including an increase in the minimum age for purchasing tobacco products, a restriction on the sale of flavored vaping products¹, and a prohibition of tobacco product price discounting. These and other policies went into effect amid a changing regulatory landscape and the onset of the COVID-19 pandemic. In this report, we describe the New York statewide tobacco control policies and bring together findings from multiple data sources regarding key tobacco-related outcomes. We explore policy implementation and changes in outcomes, with a focus on the flavored vaping product restriction.

New York Statewide Tobacco Control Policies

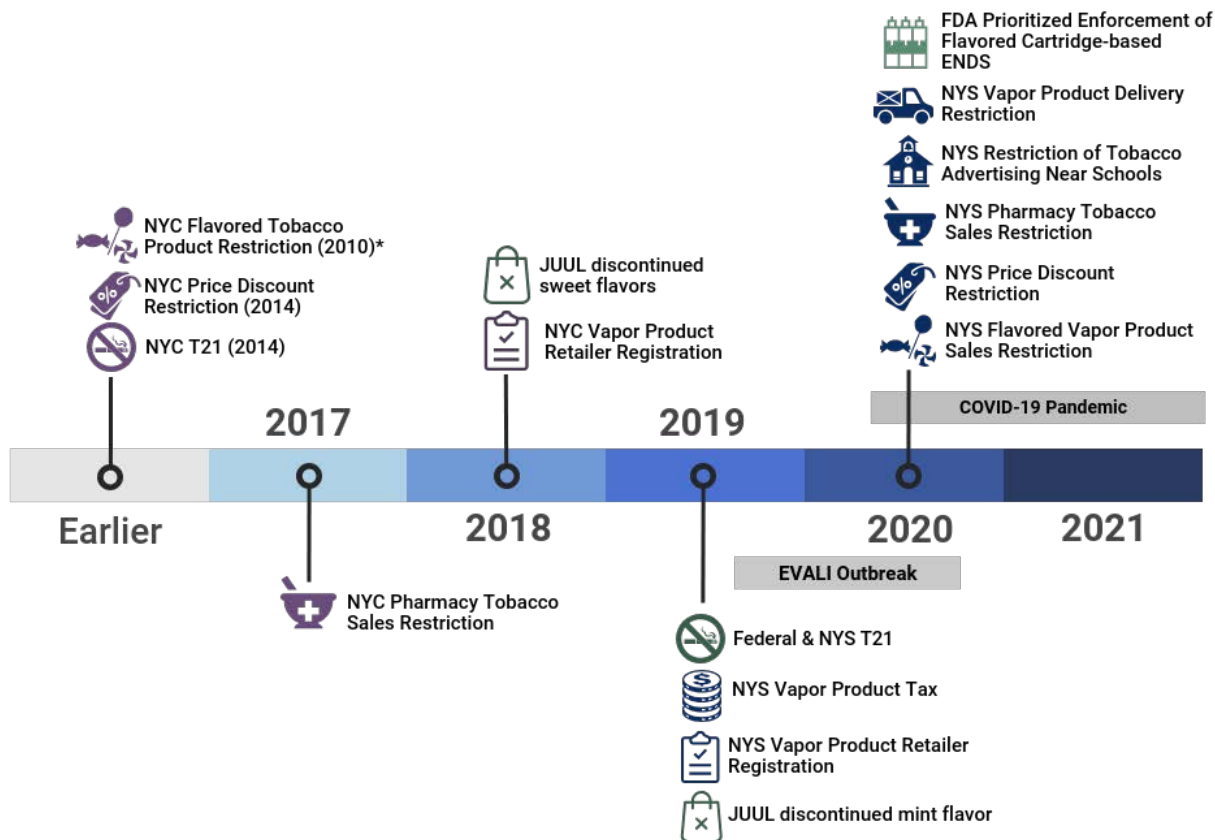
In 2019 and 2020, New York implemented a suite of statewide tobacco control policies. Figure 1 shows these New York State policies, as well as relevant federal laws and regulatory changes, industry actions, policy changes in New York City, and major events like the COVID-19 pandemic. In late 2019, New York State

¹ In this report, we generally use the phrase “vaping products” to refer to the products also called electronic cigarettes, e-cigarettes, or electronic nicotine delivery systems (or “vapor products” in New York State law).

set the minimum legal sales age for tobacco products at 21, required vaping product retailers to register with the state, and established a 20% sales tax on vaping products. In 2020, New York prohibited the sale of tobacco products in pharmacies; prohibited price discounts, coupons, and promotions for tobacco products; and restricted the sale of flavored vaping products. These statewide policies were not the only changes affecting the retail environment at this time, as there were other changes in the regulatory landscape and the retail environment. Similar versions of some of these policies had been implemented in New York City prior to the statewide policies such as New York City's price discounting restriction in 2014 and prohibition of tobacco sales in pharmacies in 2017; other local New York jurisdictions also adopted tobacco control policies, but we focus primarily on statewide policies plus some relevant ones from the most populous city in the state. Public health crises, including the outbreak of e-cigarette or vaping product use associated lung injury (EVALI) and the COVID-19 pandemic, emerged in 2019 and 2020.

We provide policy effective dates and some additional detail on selected New York statewide tobacco control policies effective in 2019 and 2020 in Table 1.

Figure 1. Timeline of Selected New York Tobacco Control Policies and Other Events



*The 2010 NYC flavored tobacco product restriction excluded e-cigarettes and menthol, mint, and wintergreen flavors.
 NYC = New York City; NYS = New York State; FDA = Food and Drug Administration; EVALI = E-cigarette, or Vaping product, Use Associated Lung Injury; T21 = Tobacco 21 or minimum age requirement for tobacco product purchase; ENDS = Electronic Nicotine Delivery Systems.

Table 1. Selected New York State Tobacco Control Policies

Policy	Effective Date	Policy Description
NYS T21	November 2019	Raised the minimum legal age of retail tobacco sales, including vaping products, to 21 years of age throughout the state
NYS Vaping product Tax	December 2019	Implemented a 20% supplemental sales tax to retail sales of vaping products with or without nicotine
NYS Vaping product Retailer Registration	December 2019	Required every New York retailer that intends to sell vaping products to be registered as a vaping products dealer
NYS Pharmacy Sales Restriction	May 2020	Prohibited tobacco product sales in pharmacies, including pharmacies within another store (e.g., grocery stores); includes tobacco products, vaping products, and herbal cigarettes
NYS Flavored Vaping product Sales Restriction	May 2020	Restricted the sale of flavored vaping products in New York so that only tobacco flavor or unflavored vaping products may be sold. Products with marketing authorization for FDA are exempted

Policy	Effective Date	Policy Description
NYS Restriction of Tobacco Advertising near Schools	July 2020	Prohibited businesses from storefront or window display of tobacco and vaping product advertisements and paraphernalia near schools (within 1,500 feet of a school outside New York City and within 500 feet of a school in New York City)
NYS Price Discount Restriction	July 2020	Prohibited tobacco product price reduction mechanisms for the sale of tobacco products, including vaping products, such as coupons and buy-one-get-one promotions.
NYS Vaping product Shipment and Delivery Restriction	July 2020	Restricted shipment or delivery of vaping products to only registered retailers

In addition to tobacco control policy changes in New York, other events influenced the regulatory and product landscape (see Figure 1). These include industry, regulatory, and public health-related events (Rogers et al., 2022):

- JUUL discontinued sweet flavors (November 2018). JUUL suspended the sale of mango, fruit, cucumber, and creme flavored JUUL pods in retail stores (and suspended online sales of these flavors in November 2019).
- EVALI Outbreak (March 2019 – February 2020). The first hospital admission for patients with EVALI was recorded in March 2019, with cases sharply increasing in August 2019 and peaking in September 2019. By February 2020, a total of 2,807 hospitalized EVALI cases or deaths had been reported to CDC.
- JUUL discontinued mint flavor (November 2019). JUUL suspended the sale of mint flavored JUUL pods in retail stores and on their website.
- Federal T21 (December 2019). Legislation amending the Food, Drug, and Cosmetic Act raised the minimum legal age of retail tobacco sales, including vaping products, to 21 years of age nationwide.
- FDA prioritized enforcement of flavored cartridge-based ENDS (February 2020). FDA prioritized enforcement of

unauthorized flavored (other than tobacco or menthol) cartridge-based vaping products.

- COVID-19 pandemic (declared a pandemic in March 2020). On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. In response to the pandemic, stay-at-home orders, social distancing restrictions, and other public health measures affected the retail environment and how people made purchases.

Data Sources

For this report, we present selected findings on tobacco-related outcomes from a range of data sources to provide insights on policy implementation and outcomes relevant to the policies and potential unintended consequences. These data sources include routine population-level surveillance surveys, administrative and economic records, sales data, and specific studies conducted as part of RTI’s evaluation of NY TCP. We also report selected findings from published studies that are relevant to New York’s policies. A brief overview of the data sources and the relevant measures is shown in Table 2.

Table 2. Tobacco-related Data Sources Used in This Report

Data source	Description of Data Source	Relevant Measures
NYS Department of Tax & Finance (DTF) retailer licensing lists	Lists of retailers that have active licenses to sell tobacco and/or vaping products from 2011 through 2021, as available	Implementation: number of retailers licensed to sell tobacco and/or vaping products
NYS DTF reports of vaping product taxes paid	Monthly collection reports of vaping product tax for January 2020 through June 2022 (https://www.tax.ny.gov/research/collections/monthly_tax_collections.htm)	Vaping product sales tax revenue

Data source	Description of Data Source	Relevant Measures
Retail scanner sales data	Customized NielsenIQ retail sales datasets for New York and a comparison state (California) including weekly sales from June 10, 2018 to June 5, 2021	Changes in sales of vaping products, overall and by flavor category
New York Youth Tobacco Survey	School-based surveys of New York middle and high school students conducted every other year by NY TCP; we include selected findings from 2010-2022. More than 4,000 students completed surveys in 2022.	Prevalence of tobacco product use and use of flavored vaping products
Online survey of NY youth and young adult vapers	Online survey of New York youth and young adults (ages 15-24) who vaped within the past 12 months, recruited using social media for NY TCP; conducted in 2021 (n=493)	Flavors of vaping product used; source of vaping products
New York Adult Tobacco Survey	Annual survey of New York adults aged 18+ conducted by NY TCP, including selected findings from 2011-2021. <ul style="list-style-type: none"> In figures showing trends in outcomes from NY ATS, we show a break in the trend from 2019 to 2020 due to data collection methodological changes to improve precision and accuracy of estimates. 	Prevalence of tobacco product use and use of flavored vapes; use of discounts for tobacco products
Focus group studies	<ul style="list-style-type: none"> Focus groups with youth and young adults who have vaped in the past year, conducted virtually in May through July 2021; 33 respondents in 6 focus groups 	Source of flavored vaping products; difficulty obtaining flavored vaping products
	<ul style="list-style-type: none"> Focus groups with New York adults who use tobacco products and have low income, conducted virtually in September 2021; 23 respondents in 4 focus groups 	Sources of less expensive tobacco products

With multiple tobacco control policies going into effect in a short period of time, we are limited in the extent to which we can attribute changes in tobacco-related outcomes to one specific policy, particularly because many contextual factors changed as well.

Policy Implementation

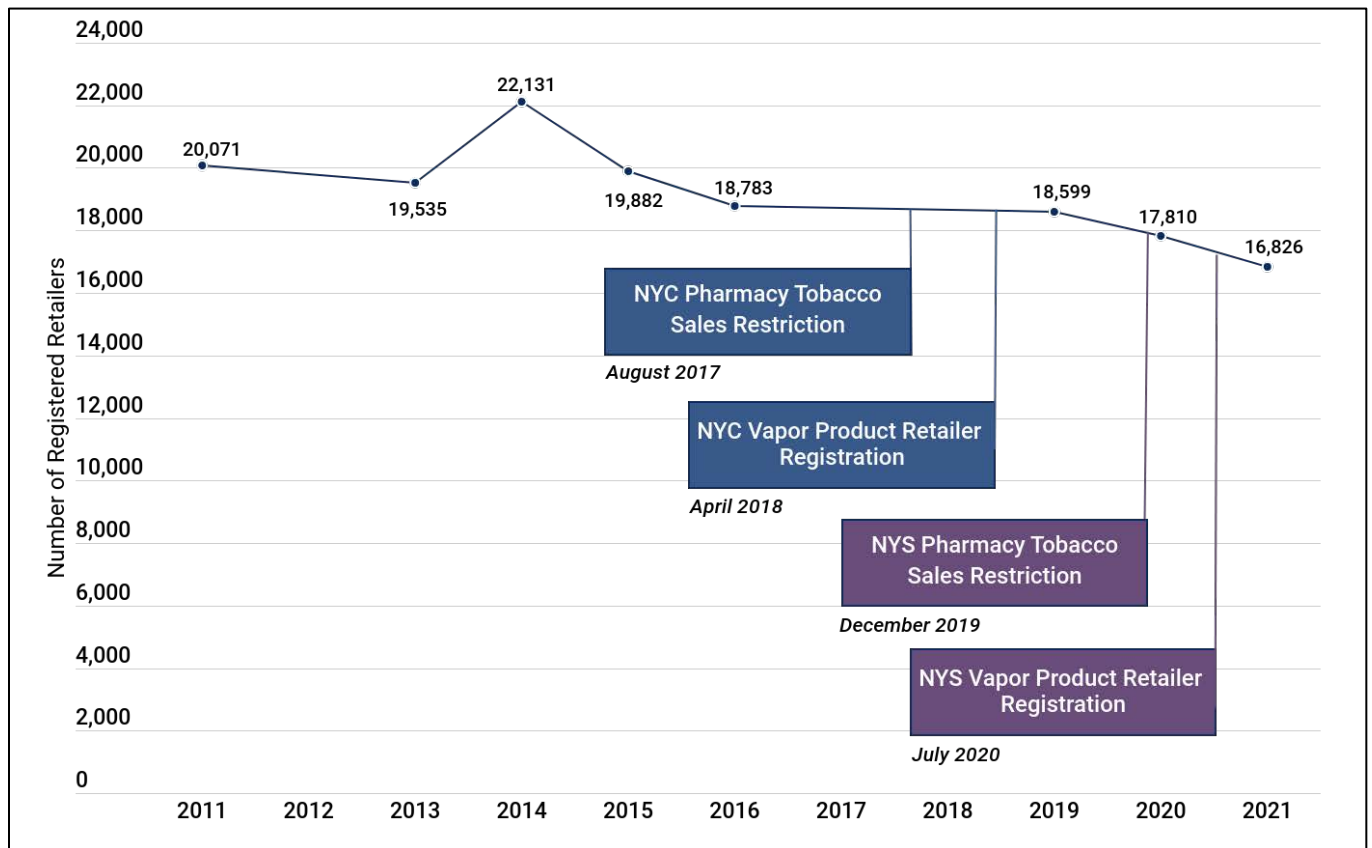
Policy implementation involves communication, compliance monitoring, and enforcement. In this section, we share some highlights regarding the ways in which the recent statewide tobacco control policies have been implemented and data relevant to these policies going into place.

The New York State Department of Health (NYSDOH) and the New York State Department of Tax and Finance (DTF) are responsible for the oversight and implementation of the suite of New York statewide policies implemented in 2019 and 2020. The COVID-19 pandemic, which led to significant closures and disruptions beginning in spring 2020, inevitably affected public health policy education and enforcement efforts. Data regarding inspections were not available for inclusion in this report. We provide highlights regarding the number of tobacco and vaping product retailers, estimates of vaping tax revenue collected, and information from a state investigation about retailer compliance.

Although the most recent publicly available list of licensed tobacco and vaping product retailers does not distinguish whether a retailer sells tobacco products, vaping products, or both, the decline in licensed tobacco and/or vaping product retailers in recent years indicates that fewer retailers are selling these products in New York State (Figure 2). Some of the reduction in the number of licensed retailers may be related to the 2020 pharmacy tobacco sales restriction, which banned the sale of tobacco and vaping products in pharmacies statewide (following a tobacco-free pharmacy policy in New York City in 2017); as a result, pharmacies would not renew their licenses. Pandemic-related store closures are likely also reflected in changes to the number of New York retailers over time. In 2021, there were

almost 17,000 retailers in the state registered to sell tobacco and/or vaping products. Even though vape shops and other retailers that sell vaping products needed to obtain licenses to sell their products, we did not see an increase in the number of retailers in New York following this requirement.

Figure 2. Number of Registered New York Tobacco and Vaping product Retailers, 2011-2021



Data Source: Active Tobacco and Vaping product Vendor List, <https://health.data.ny.gov/Health/Active-Retail-Tobacco-and-Vapor-Product-Vendors/9ma3-vsuk>

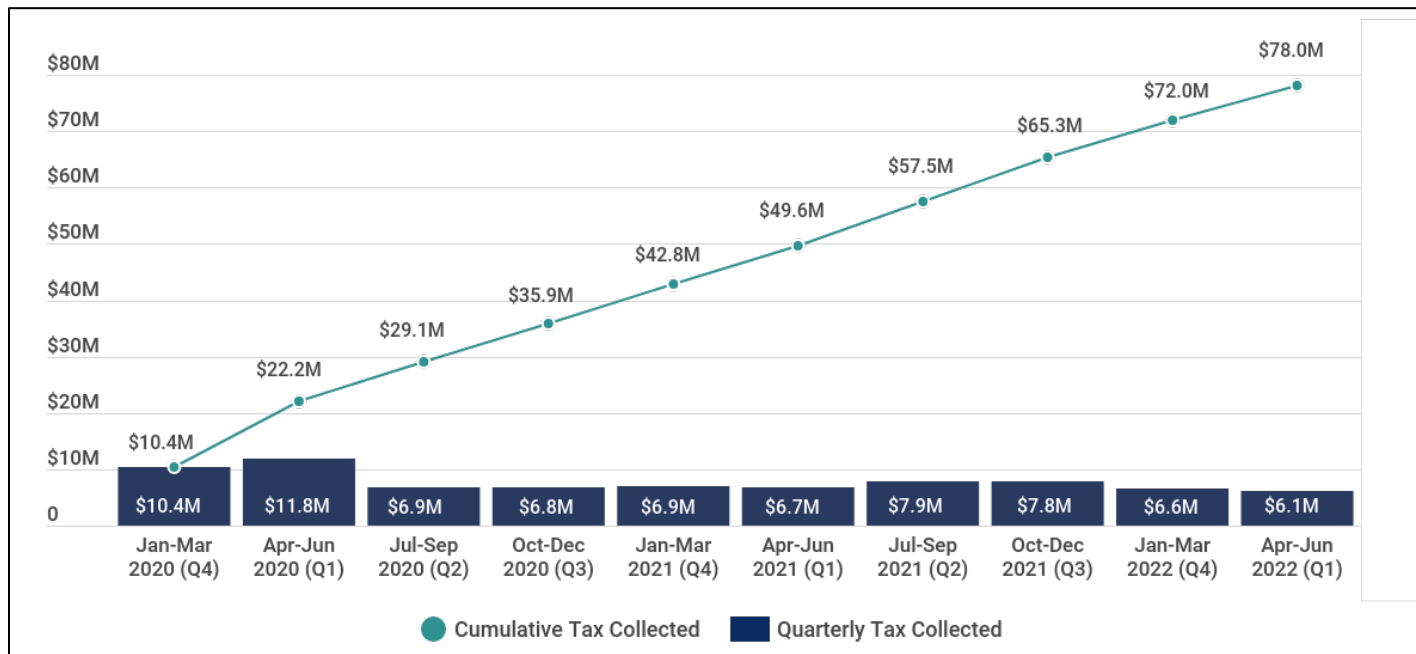
Note: NY retailer registration lists were not available for 2012, 2017, or 2018.

The New York policy that established a 20% sales tax on vaping products went into effect on December 1, 2019. The vaping product tax has generated approximately \$78 million dollars in the first two and a half years, according to DTF reports.

The first two quarters of tax collection (January 2020 to June 2020) had higher revenues (\$10 to \$11 million) than subsequent

quarters, through June 2022. This coincides with the implementation of the flavored vaping product sales restriction (and the tobacco-free pharmacy policy). Quarterly estimates of vaping product sales taxes collected since June 2020 have been consistently between \$6 million and \$7 million (Figure 3).

Figure 3. Vaping product Tax Collected by New York per Fiscal Quarter, January 2020- June 2022



Note: Data aggregated from New York Department of Tax and Finance monthly tax collection reports, https://www.tax.ny.gov/research/collections/monthly_tax_collections.htm

In December 2020, the New York State Office of the Attorney General reported that they had investigated 108 tobacco retailers to assess their compliance with the state’s flavored vaping product restriction and the minimum legal sales age law. The investigation found that 47 of the 108 retailers investigated were in violation (New York Attorney General, 2020). The attorney general’s office ordered these retailers to stop selling flavored vaping products.

Overall, the policies that went into effect in late 2019 and 2020 addressed multiple facets of the retail environment. The state’s

existing infrastructure for tobacco-related policy activities provided a foundation for implementation of the new policies, although the pandemic likely affected the business environment and enforcement efforts.

Outcomes

New York tobacco control policies have the potential to lead to changes in tobacco product availability, access, appeal, and use. It is important to document the extent to which intended outcomes are observed and to identify any unintended consequences that may be related to the policies. In this section, we share findings regarding retail sales of tobacco products and estimates of tobacco product use, as well as highlights from focus group conversations that provide detail and richness as we interpret the sales and survey data.

Changes in Tobacco Product Sales

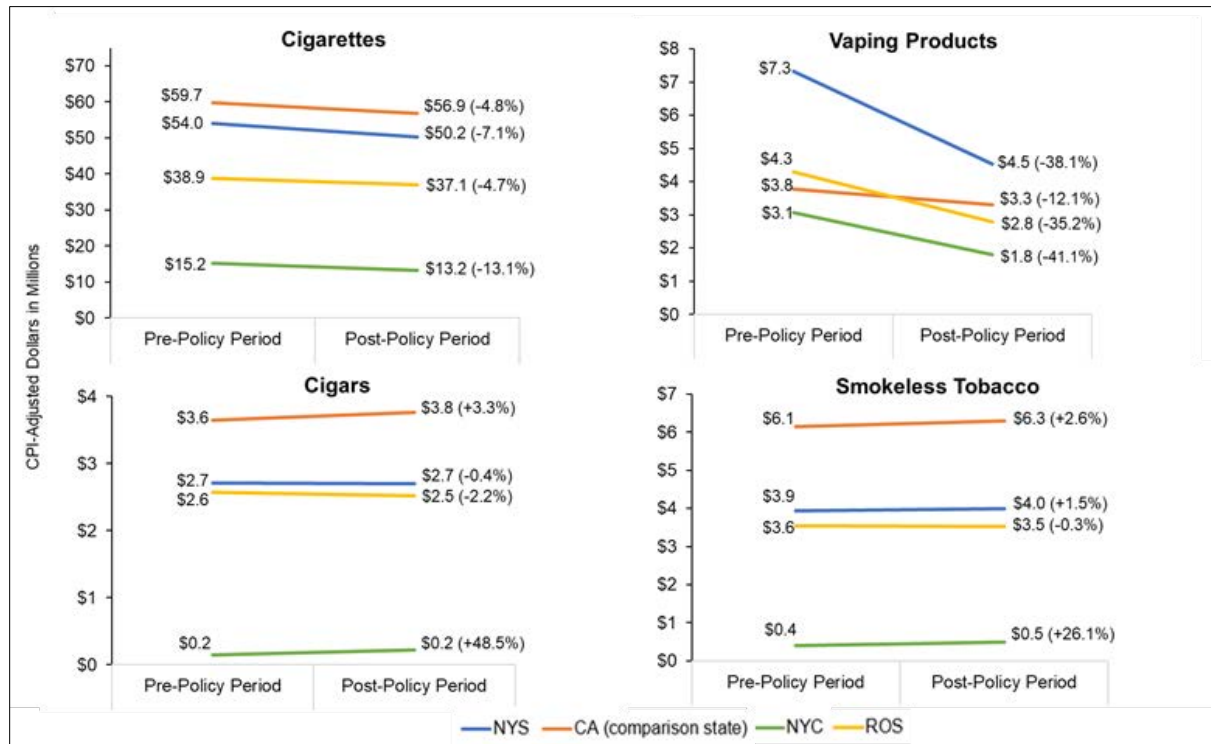
New York's statewide tobacco control policies are intended to affect product availability in the retail marketplace, which should have an impact on consumption of tobacco products, including vaping products. Sales data collected through retail scanner sales measures are a proxy for population-level consumption (Day et al., 2017). One recent study found vaping product sales decreased in New York following the flavored vaping product sales restriction, with reductions in flavored vaping product sales and increases in tobacco-flavored vaping product sales (Ali et al., 2022). We conducted some retail sales analyses to explore changes in product sales from pre-policy to post-policy periods.

Tobacco Product Sales by Product Type

We assessed how sales of tobacco products changed from before the recent statewide policies to the period following these policies. We calculated average weekly dollar sales of cigarettes, vaping products, cigars, and smokeless tobacco products for New

York State and the comparison state of California, as well as estimates for New York City and the rest of the state of New York. We assessed average weekly dollar sales for an 11-month period preceding the policies (December 8, 2018 through November 2, 2019) and for an 11-month post-policy period (July 4, 2020 through May 29, 2021) (Figure 4). Dollar sales of vaping products in New York declined 38% from the pre-policy period to the post-policy period, a much steeper decrease than the change in the comparison state of California. Average dollar sales of cigarettes, cigars, and smokeless tobacco were more stable during the study period than vaping product sales (see Figure 3). Although there were also voluntary industry changes, a proliferation of disposable vaping products in the market, and federal regulatory changes that could have impacted the vaping product sales changes, the steeper decline in New York than in California indicates that the New York change might be associated with New York's flavored vaping product sales restriction.

Figure 4. Average weekly dollar sales from 11-month pre-policy period to 11-month post-policy period, NYS, CA, NYC, ROS



Note: NYS=New York State; CA=California; NYC=New York City; ROS=Rest of State

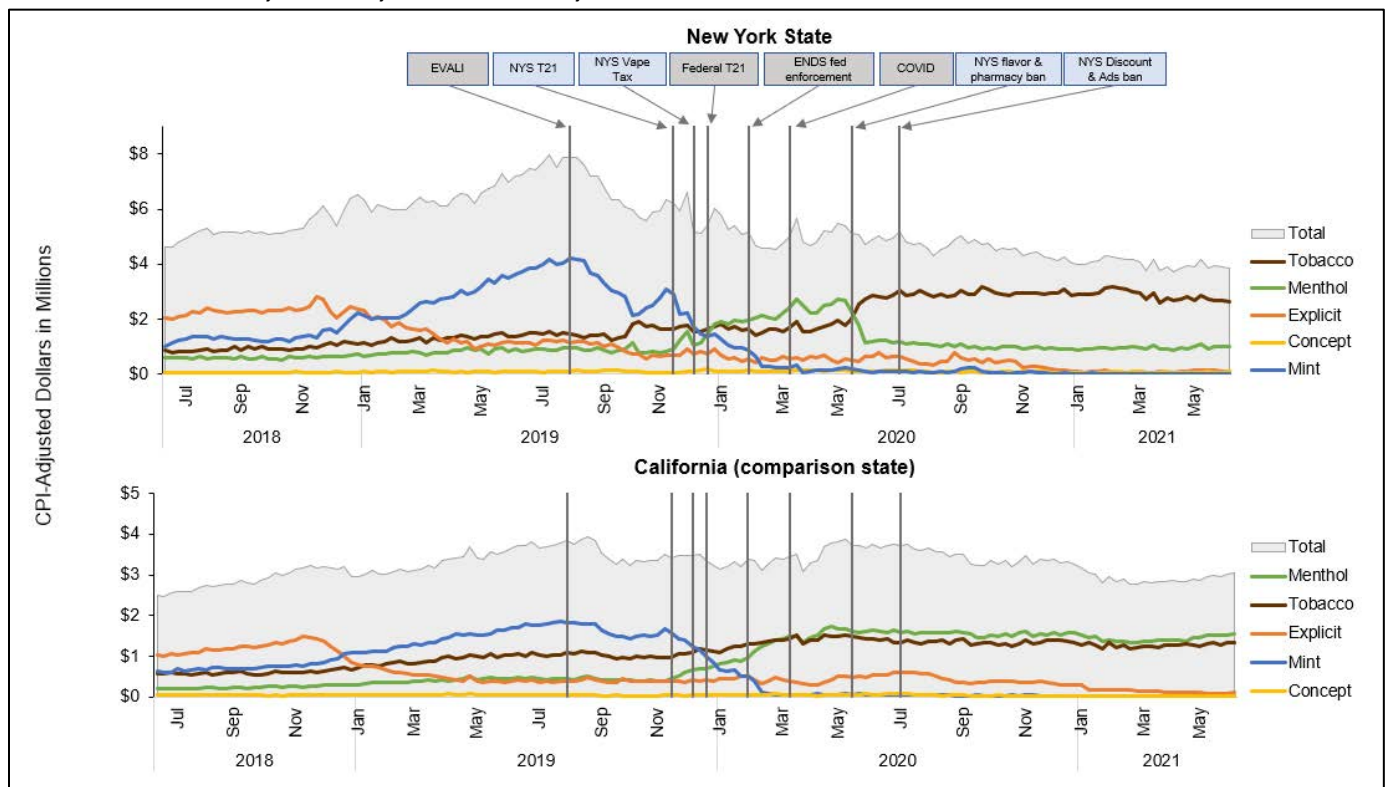
Vaping product Sales by Flavor Category

In addition to assessing changes in sales of vaping products overall, we conducted an analysis of sales of vaping products by flavor category in New York and California (Figure 5). After New York’s flavored vaping product sales restriction went into effect in May 2020, we found a notable drop in menthol vaping product dollar sales, and tobacco-flavored vaping products became the most commonly sold vaping flavor in New York. This trend appears to be distinct from California, where menthol flavor sales continued to be more common than tobacco-flavored vaping products. This suggests that New York’s statewide policy restricting the sale of flavored vaping products appears to have been associated with a shift in vaping product flavors sold in the state. Difference-in-difference analyses confirmed that tobacco/unflavored vaping product sales increased significantly

more in New York relative to California, and flavored vaping product sales (combining menthol, explicit, concept, and mint flavors) decreased significantly more in New York relative to California (Brown et al., 2022).

After the New York sales restriction on flavored vaping products went into effect in May 2020, sales of flavored vaping products continued, although at a lower level. The continued sales of restricted products could be associated with any pandemic-related enforcement challenges.

Figure 5. Weekly Dollar Sales of Vaping Products by Flavor Category in New York and California, June 10, 2018 – June 5, 2021



Note: Explicit flavors are classified by use of the characterizing flavor name on the product or packaging. Concept flavors are classified by the use of non-characterizing descriptive names that do not identify the flavor on the product or packaging (e.g., Wild Rush, Jazz) (Gammon et al., 2019)

Youth and Young Adult Behavior

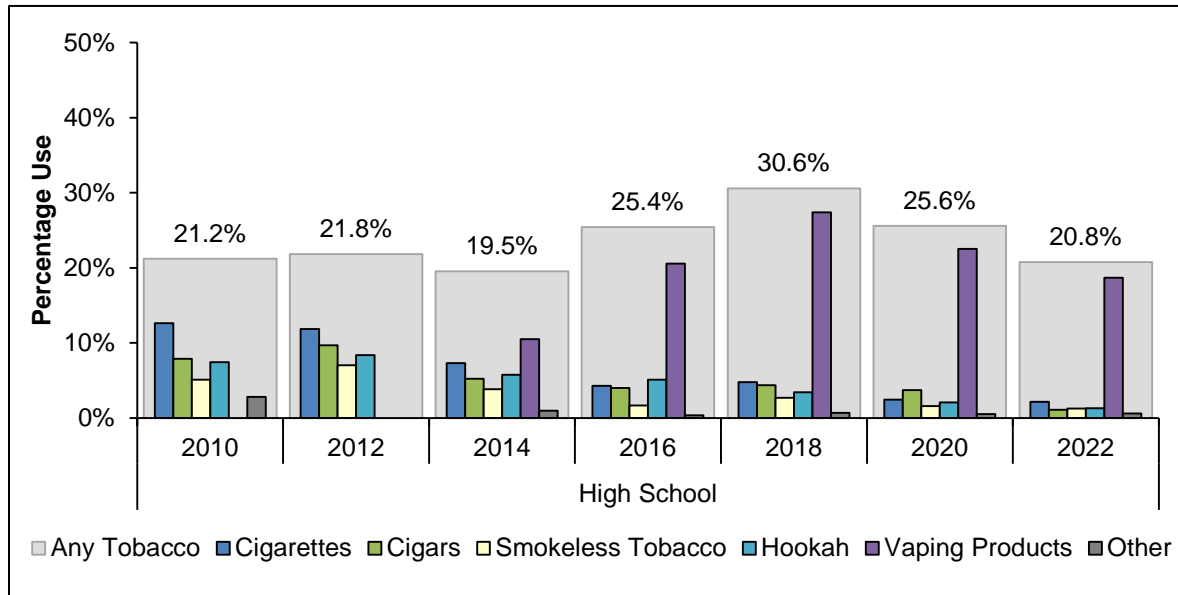
In this section of the report, we present findings related to tobacco and vaping product use trends for youth and adults in New York from surveys and focus groups conducted in 2021 and 2022. We explored youth and young adult tobacco and vaping product use, youth and young adult sources of cigarettes and vaping products, and youth reports of store clerks checking ID and refusing to sell vaping products.

We analyzed self-reported tobacco-related behaviors to understand how tobacco use changed in ways that may be associated with the New York statewide tobacco policies. The policies most relevant for these analyses are T21, which aimed to make obtaining tobacco products more difficult for youth, and the flavored vaping product sales restriction, which aimed to make vaping products less appealing to youth by decreasing access to flavored vaping products.

Overall Youth Tobacco Use

NY TCP set an objective of decreasing high school student use of any tobacco product to 19.7% by 2024. Youth use of tobacco products has decreased in recent years and is approaching the target level. Among New York high school students, overall current (past 30-day) use of any tobacco product was 20.8% in 2022 (Figure 6). More youth report current use of vaping products than any other type of tobacco product.

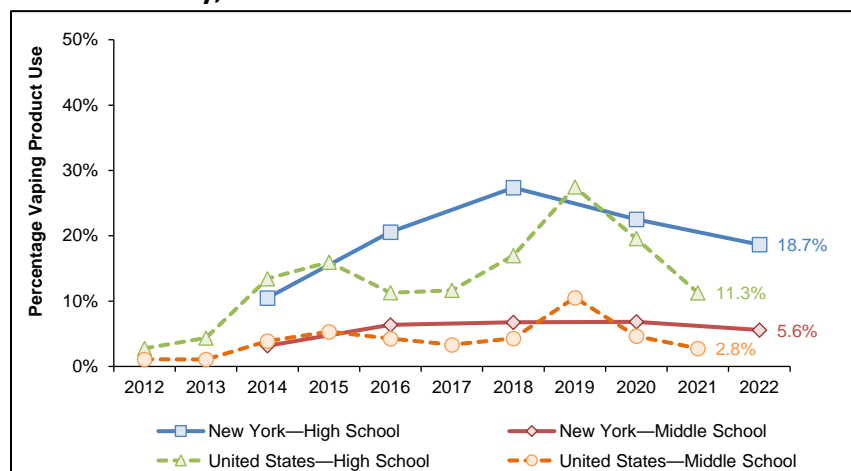
Figure 6. Percentage of New York High School Students Reporting Current Use of Any Tobacco Product, New York Youth Tobacco Survey, 2010–2022



Youth Vaping Prevalence

New York high school student vaping prevalence was 18.7% in 2022, compared with 22.5% in 2020 and 27.4% at its peak in 2018 (Figure 7). Among New York middle school students, vaping prevalence has remained close to 6% since 2016.

Figure 7. Percentage of Middle Students and High School Students Who Currently Vape in New York and Nationally, New York Youth Tobacco Survey, 2014–2022, and National Youth Tobacco Survey, 2012–2021



Note: There is a statistically significant upward trend among middle school students in the United States and high school students in New York and in the United States.

Youth and Young Adult Use of Flavored Vaping Products

Among middle and high school youth in New York who reported current vaping in 2022, 97.3% reported that they vaped flavors. This translates to 12.4% of New York middle and high school students using flavored vaping products. Although the percentage of New York youth who vape is decreasing, most of those who vape report using flavors.

Similarly, among our survey of New York youth and young adults who vape (ages 15-24), most reported using flavored vaping products in the past month (which was after the flavored vaping product sales restriction). In 2021, the vape flavors used during the past 30 days were most commonly fruit, mint, and menthol (Table 3). Only 16.2% of these youth and young adult vapers reporting using a tobacco-flavored or unflavored vaping product in the past 30 days. In addition, in some focus group discussions with youth and young adults who vaped, participants reported that flavored vaping product use was common among their age groups. One young adult participant mentioned, *“I haven't seen anyone who vapes without flavors.”*

Table 3. Percentage of New York Youth and Young Adult Vapers Reporting Flavors They Vaped in the Past 30 Days, Youth and Young Adult Vaping Survey, 2021

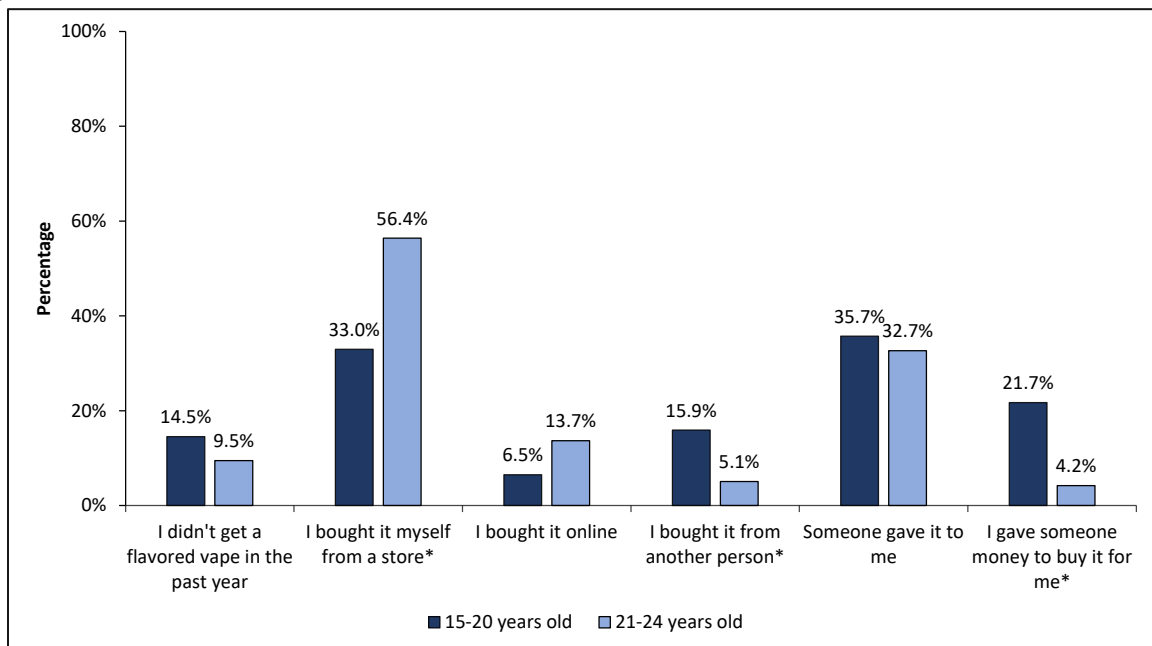
Flavor	Percentage
Fruit	70.7%
Mint	42.1%
Menthol	22.2%
Tobacco-flavored or unflavored	16.2%
Chocolate, candy, desserts, or other sweets	14.7%
Non-alcoholic drink (such as coffee or soda)	7.0%
Alcoholic drink (such as wine or margarita)	2.8%

Percentages add to more than 100% because respondents could select all that apply.

Youth and Young Adult Reports of Purchasing Flavored Vaping Products

Under the policies enacted in 2020, flavored vaping products should not be sold in New York retail stores or sold online to be delivered to New York residents (aside from registered retailers). We asked youth and young adult vapers via surveys and focus groups where they obtain flavored vaping products. We found that 56.4% of 21- to 24-year-old vapers in New York and 33.0% of vapers aged 15-20 in our 2021 online survey reported purchasing a flavored vaping product in a retail store (Figure 8). In-store purchases were less common among those not of the minimum legal age to purchase tobacco products. Social sources were common among youth and young adults who vape. One-third said someone gave them a flavored vape; among vapers aged 15-20, buying flavored vapes from another person and giving someone money to buy them were also fairly common (see Figure 8).

Figure 8. Source of Flavored Device and Flavored E-liquids in the Past 12 Months among Vapers who Got an E-liquid (n = 416), by Age Group, Youth and Young Adult Online Vaping Survey, 2021



*Statistically significant difference between age groups ($p < 0.05$)

RTI conducted a focus group study in 2021 with New York youth and young adults who had vaped in the past 12 months, and we asked about where people get flavored vaping products.

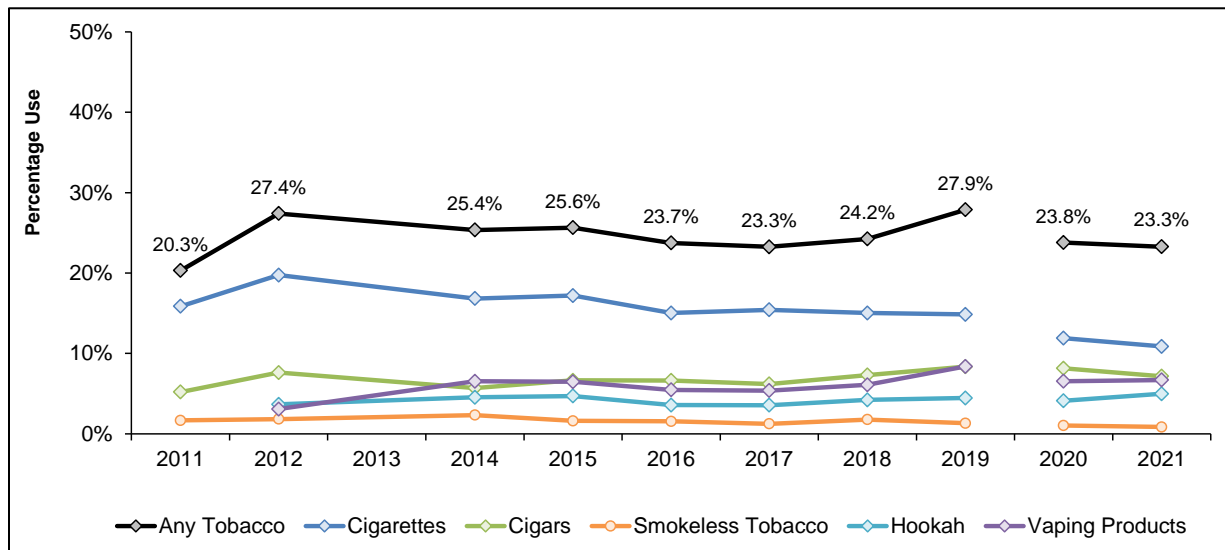
Participants said it has become more difficult to buy flavored vapes in stores. For example, one young adult vaping product user said, *“I know that it’s been harder to get flavored juices in New York...they changed it so you can’t buy them.”* However, youth and young adults in these focus groups noted that it is still relatively easy to get flavored vapes; they reported that products are available in stores, online, and through social sources.

Some participants noted that flavored vaping products in stores were often hidden from display, but still accessible after the flavored vaping product sales restriction went into place. As one participant between the ages of 18 and 21 said, *“My experience about the tobacco-flavored one are usually on the shelves because they’re legal, I believe. And then, if you want to get the flavored one, you have to talk to them.”*

Adult Behavior

This section presents adult tobacco-related behaviors relevant to recent tobacco control policies. Some young adult behaviors were presented in the prior section; this section shows estimates for adults aged 18 and older and estimates for young adults compared with adults aged 25 and older. Nearly one-quarter of New York adults (23.3%) reported use of any tobacco product in 2021 (Figure 9). In contrast to tobacco product use among youth, cigarette smoking is the most common form of tobacco use among adults. The next most common products used are cigars and vaping products, followed by hookah. Smokeless tobacco use remains very low among New York adults.

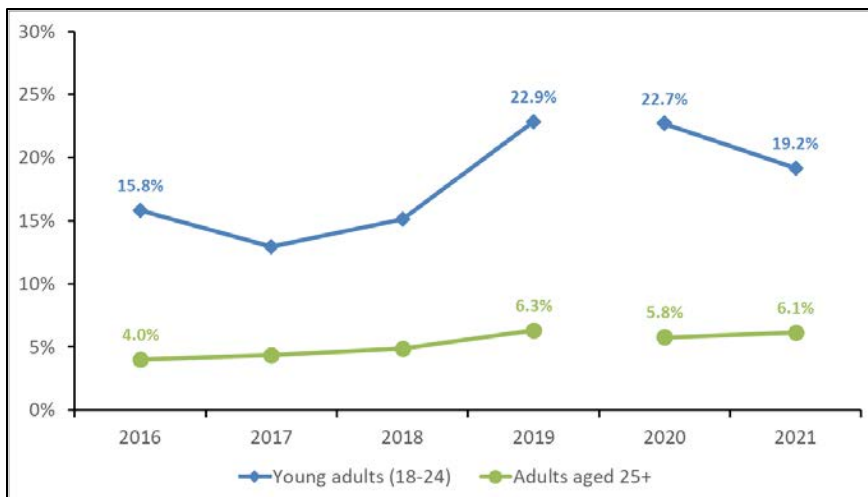
Figure 9. Percentage of NY Adults Who Use Any Tobacco Product, New York Adult Tobacco Survey, 2011-2021



Note: We show a break in the trend between 2019 and 2020 due to methodological changes in 2020 data collection to improve precision and accuracy of estimates.

Vaping product use has been consistently higher among young adults than adults aged 25 and older in New York (Figure 10). Young adult vaping product use was 19.2% in 2021, compared with 6.1% among adults aged 25 and older. Overall, use of vaping products was 6.7% among New York adults aged 18 and older in 2021 and 7.3% nationally (data not shown). Although the prevalence of vaping product use among New York young adults remains high, it appears to be decreasing.

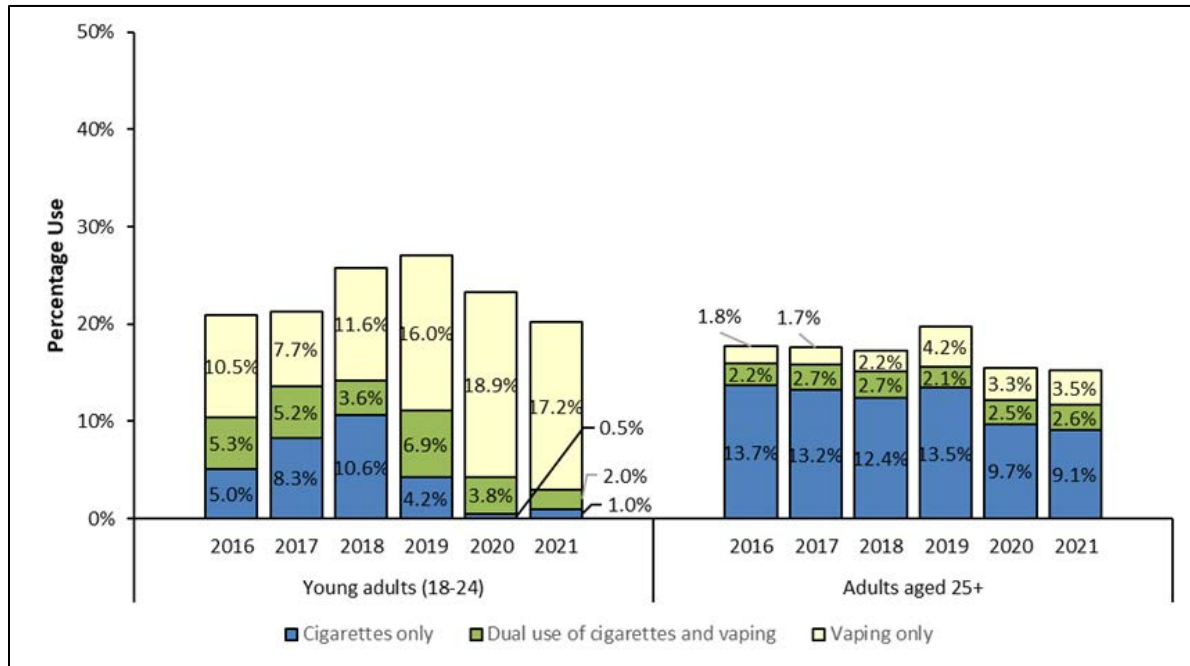
Figure 10. Percentage of Young Adults (18-24) and Adults (aged 25+) Who Currently Vape, New York Adult Tobacco Survey, 2016–2021



Note: We show a break in the trend between 2019 and 2020 due to methodological changes in 2020 data collection to improve precision and accuracy of estimates.

Tobacco product use among young adults ages 18-24 differs from tobacco product use among adults aged 25 and older. In recent years, more young adults have reported vaping than cigarette smoking or dual use of cigarettes and vapes (Figure 11). Adults aged 25 and older more often reported cigarette smoking than vaping or dual use.

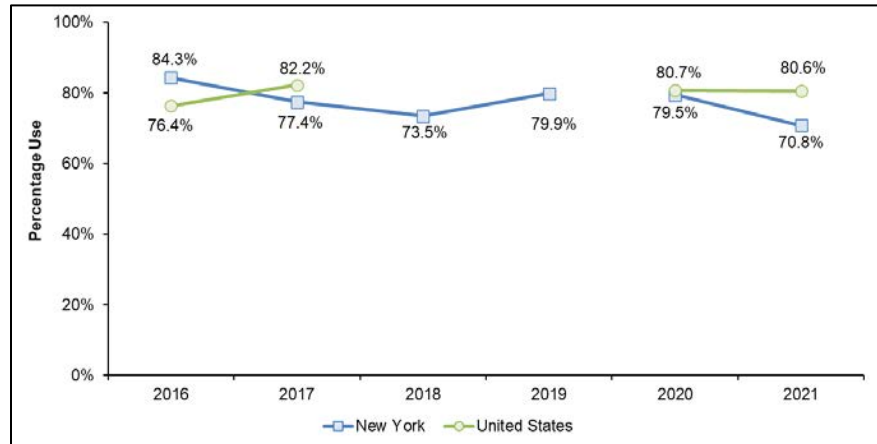
Figure 11. Percentage of Young Adults (18-24) and Adults (Aged 25+) Who Use Cigarettes Only, Vaping products Only, Or Both, New York Adult Tobacco Survey, 2016–2021



Adult Use of Flavored Vaping products

The flavored vaping product sales restriction has the potential to reduce youth vaping product access, appeal, and use; understanding how adult behaviors change provides a more comprehensive view of tobacco use trends over time. Prior to the flavored vaping product sales restriction (in 2019), 79.9% of New York adult vapers reported using flavored vaping products; in 2021, 70.8% of New York adult vapers said that they vaped flavors (Figure 12). The percentage of adult vapers who used flavored vaping products in 2021 is not statistically significantly different from the 2020 estimate of 79.5%. In focus groups conducted with New York adults who use tobacco and have low household income, participants who used flavored vaping products said that they were still able to access them in retail stores despite the flavored vaping product sales restriction and also mentioned purchased flavored vaping products online, on Native American reservations, and in other states.

Figure 12. Percentage of Adult Vapers in New York and the United States Who Used Flavored Vaping products, New York Adult Tobacco Survey and New York National Adult Tobacco Survey, 2016-2021



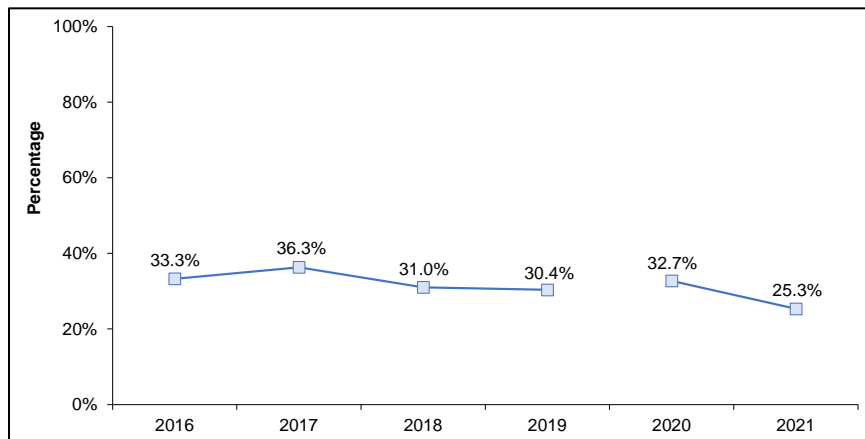
Note: We show a break in the trend between 2019 and 2020 due to methodological changes in 2020 data collection to improve precision and accuracy of estimates.

New York Tobacco Users Reports of Discounts and Prices for Tobacco Products, Including Vaping products

In July 2020, New York passed a statewide policy that banned coupons, promotions, and other discount methods that would reduce the price of tobacco products, including vaping products. This policy should result in New York tobacco retailers not offering or accepting coupons, discounts, or promotions for tobacco products, and price-sensitive consumers might be less likely to purchase tobacco products.

In 2021, one quarter (25.3%) of adult smokers reported using an in-store promotional offer or discount to purchase cigarettes (Figure 13). Although this estimate is below 30% for the first time since 2016, the difference from 2020 to 2021 is not statistically significant.

Figure 13. Proportion of NY adults who use tobacco that report using in-store promotions or discounts to purchase cigarettes in the past 30 days, NY ATS 2016-2021



Note: We show a break in the trend between 2019 and 2020 due to methodological changes in 2020 data collection to improve precision and accuracy of estimates.

In focus group conversations during 2021 with New York adults who use tobacco products and have low income, we asked about how they get tobacco products and whether they use coupons or other methods to get less expensive products. Most focus group participants noted that coupons had become very difficult to find, if they could be found at all. A few participants mentioned receiving coupons in cigarette packs or in emails, but most said coupons had disappeared. One participant said, *“Newport coupons are hard to come across. They used to come across good. You used to be able to get them.”* Participants in these focus groups noted prices had gone up for cigarettes over the past year, with prices ranging from \$10 to \$15. One participant in New York City noted, *“when I first got here [to] Brooklyn the packs were \$10 or \$11. But now, I’m in Manhattan, they’re like \$15.”* However, focus group participants did not notice any changes in prices of vaping products they purchased over the past year. One participant stated, *“the [prices for] cigarettes are high...but [the vaping products] I usually buy are always the same price.”*

“I guess it's just a little cheaper because it's probably off the books, under-the-table cigarettes...”

Most participants in the focus groups with adults who use tobacco and have low income mentioned obtaining cheaper prices on cigarettes by paying “behind the counter prices” at retail stores, purchasing tobacco products out of state, and traveling to Native American reservations to get cigarettes. Participants who went to Native American reservations reported purchasing cigarette packs for as low as \$1 or \$2, while “behind the counter” deals at bodegas or convenience stores could save participants as much as \$5 to \$7 dollars on a pack. One New York City participant said, *“For a pack of cigarettes...they usually [cost] \$14 to \$15...I guess it's just a little cheaper because it's probably off the books, under-the-table cigarettes, I don't know how to call it...but my bodega, they sell for \$10.”* Another individual said *“...I can get them for \$7 from this person that I know.”*

When we asked youth and young adult focus group participants who vape about any price changes they observed in vaping products from 2020 to 2021, they generally reported that they did not recall price changes. One New York City participant said, *“If there was a change, then it wasn't drastic enough for me to notice.”* Several participants mentioned disposable vaping products had become more popular, mainly due to JUUL's discontinuation of certain flavored vaping products. Focus group participants under 21 years old (the minimum legal age to purchase tobacco products including vaping products) tended to prefer disposable vapes due to their discreet size and low price.

Youth and young adult focus group participants who vaped said they did not believe that changes in vaping product taxes or prices would greatly impact vaping product use because they believed customers would be willing to pay the price or would find other methods of purchasing vaping products at a cheaper price. One participant commented that, *“nicotine, to begin with, is very*

*expensive. And if people want to drop that much money on it,
I don't think a few extra bucks is really going to change anything."*

Discussion

New York implemented new tobacco control policies in 2019 and 2020. Although New York has administrative and enforcement infrastructure for tobacco control activities, the COVID-19 pandemic disrupted the retail marketplace and likely also impacted policy enforcement efforts. Future education and enforcement could be buoyed if the revenue from the vaping product sales tax enacted in late 2019 was used for public health efforts, including youth vaping prevention. The vaping product tax revenue was higher in the quarters preceding New York's flavored vaping product sales restriction than in later quarters, indicating a drop in sales of vaping products; this drop coincided with the timing of the flavored vaping product sales restriction. Analysis of retail sales data confirmed that flavored vaping product sales have decreased more in New York than in a comparison state that does not have a statewide flavored vaping product sales restriction. We found a decrease in New York sales of flavored vaping products and total vaping products, and we saw an increase in tobacco-flavored vaping product sales after the flavor restriction.

Trends in youth vaping product use and youth total tobacco use are decreasing, although use of vaping products – including those that are flavored – continued among both youth and young adults. We found evidence of continued availability and use of flavored vaping products through analysis of sales data, population surveys, and focus group discussions. Most New York youth, young adults, and adults who vaped used flavors. New Yorkers who vape reported that it has gotten harder to obtain flavored vaping products and that retailers sometimes keep the flavored vaping products out of sight. In addition, the persistence

of youth and young adult access to tobacco products in spite of the T21 policy, including through store purchases and social sources, indicates that additional retail education and enforcement are needed.

Tobacco-related outcomes have changed in recent years, but there is still room for improvement. If tobacco control policy implementation and enforcement lead to continued reduced access and sales of flavored vaping products, we expect to see fewer young people beginning to use vaping products, which would result in further decreases in future youth vaping. Additional monitoring of vaping product use over time will help clarify long-term trends.

We offer several recommendations in relation to the tobacco control policies discussed in this report:

- Reinforce education and enforcement efforts to ensure that the recent tobacco control policies are implemented as intended. Improved retailer compliance should make tobacco products less appealing and accessible, particularly to youth.
- Close the loophole in the existing flavored vaping product sales restriction for vaping products with FDA marketing orders (which could allow flavored vaping products to be sold in New York if any of these are issued a marketing granted order).
- Consider new policies to restrict sales of all flavored tobacco products, including menthol cigarettes. Flavored tobacco products appeal to youth, and the ongoing marketing and promotion of menthol cigarettes by the tobacco industry to groups that have been historically disadvantaged exacerbates health disparities.
- Direct the vaping product sales tax revenue to tobacco control efforts. This revenue could be applied to NY TCP efforts such as health communication campaigns,

statewide and community interventions, and health systems efforts to promote cessation from tobacco use.

- Conduct additional monitoring and evaluation of the retail environment and behavioral outcomes, including retail store observations and population-based surveys of youth and adults.

References

- Ali FRM, Vallone D, Seaman EL, Cordova J, Diaz MC, Tynan MA, et al. Evaluation of Statewide Restrictions on Flavored e-Cigarette Sales in the US From 2014 to 2020. *JAMA Network Open*. 2022;5(2):e2147813-e. doi: 10.1001/jamanetworkopen.2021.47813.
- Brown EM, Rogers T, Spinks JG, Gammon D, Nonnemaker J, Farrelly MC. (2022). Changes in Sales of Vaping products and Cigarettes Associated with the New York State Flavored Vaping product Sales Restriction. [Unpublished manuscript]. RTI International.
- Day HR, Ambrose BK, Schroeder MJ, Corey CG. Point of Sale Scanner Data for Rapid Surveillance of the E-cigarette Market. *Tob Regul Sci*. 2017;3(3):325-32. Epub 2017/10/03. doi: 10.18001/TRS.3.3.8. PubMed PMID: 28966951; PubMed Central PMCID: PMC5613983.
- Gammon DG, Rogers T, Coats EM, Nonnemaker JM, Marynak KL, Kuiper NM, King BA. (2019). National and state patterns of concept-flavoured cigar sales, USA, 2012–2016. *Tobacco Control*, 28, 394-400.
- New York Attorney General's Office. (2020, December 4). Attorney General James Cracks Down on Shops Illegally Selling E-Cigarettes to Underage Users and Flavored Vaping products [Press Release]. <https://ag.ny.gov/press-release/2020/attorney-general-james-cracks-down-shops-illegally-selling-e-cigarettes-underage>
- Rogers T, Gammon DG, Coats EM, Nonnemaker JM, & Xu X. (2022). Changes in cigarillo availability following implementation of a local flavoured tobacco sales restriction. *Tobacco Control*, 31(6), 707-713.



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