



The FDA's Slow Motion Ban of E-Cigarettes

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Last year at my blog [Overlawyered](#) I [wrote about](#) one of the rare instances in which a widely watched health indicator was headed rapidly in a favorable direction:

Actual cigarette smoking among teens, the kind that requires inhaling carcinogenic products of combustion, is down a startling 25 percent in one year and nearly 42 percent since 2011. The reason is the rapid substitution of vaping or e-cigarettes, which hold singular promise as a harm-reduction measure for those drawn to the nicotine habit. Great news, right?

Well, not great news if you're the present leadership of the federal Centers for Disease Control (CDC), whose director Thomas Frieden has railed against vaping, or the federal Food and Drug Administration, which has now published regulations likely to [wipe out most or all of the vaping option](#) in what [Jacob Sullum describes](#) as a "slow-motion ban."

Under the new rules, even products currently sold on the market will have to be withdrawn unless their makers, mostly small companies, care to venture on an FDA approval process that can cost \$1 million and up per item. Any resulting applications will result in permission to sell only if the agency decides the product is a net safety improvement on current offerings. And that permission will be at best chancy because the FDA, following Frieden's lead but in contrast with the views of [many others](#) in the public health field, refuses to acknowledge vaping as a safer alternative to tobacco smoking, even though large numbers of smokers turn to vaping with exactly that goal in mind. [Jared Meyer at Economics21](#) says the new FDA regulations "will kill" as users deprived of vaping options turn back to tobacco or simply never make the switch.

Meanwhile, [Trevor Burrus at Cato explains how](#) big tobacco companies, which have found in vaping a nimble competitor they have up to now managed neither to beat nor dominate, now stand to profit as the new rules regulate it out of existence. The same applies to the state governments that are financially dependent on conventional cigarette sales under the cartel-like arrangements of the 1998 tobacco settlement.

So there you have it: government and Big Tobacco revenues get shored up, while millions of consumers lose access to products they want and in some cases credit with saving their lives. And thousands of small businesses, both in retail and manufacturing sectors, face ruin [some coverage of that: [York, Pa. Daily Record](#), [WKOW](#), [USA Today](#)]

If Congress chooses, it can do something about this. [An amendment](#) approved by the House Appropriations Committee last month would grandfather in products now available, applying the prohibitive rules only to products introduced in the future. Whether Washington acts on this sensible idea will depend in part on whether it is listening to the voices of ex-smokers and young

consumers around the country who feel competent to run their own lives and make their own choices.

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