

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

<https://www.wsj.com/articles/the-fdas-anti-nicotine-myopia-juul-cigarettes-smoking-cancer-tobacco-industry-11657053368>

OPINION | BUSINESS WORLD

The FDA's Anti-Nicotine Myopia

Legal parsing plus ideology has the agency reenacting the folly of Prohibition.



By

Holman W. Jenkins, Jr. [Follow](#)

July 5, 2022 6:14 pm ET



Juul vape cartridges for sale in Atlanta, Sept. 26, 2019.

PHOTO: ELIJAH NOUVELAGE/REUTERS

Smoking causes cancer and nicotine improves mood. So guess which the Food and Drug Administration will seek to ban under a sweeping new initiative?

An ambitious rulemaking announced in recent days looks to ratchet down progressively the nicotine in cigarettes, likely causing smokers at least in the beginning to light up more often and puff harder to get the desired nicotine hit. If this weren't weird enough, in the same week, based on the inability of its manufacturer to prove a negative (an absence of any harm), the FDA moved to drive from the market the most popular consumer product that allows people to consume nicotine without the side effects of smoking, namely Juul brand electronic cigarettes.

Nicotine doesn't cause cancer, it pays to remember as the agency sets out on what may prove a colossal policy error. Officially regarded as a drug, nicotine may be addictive like cocaine or heroin, and produce withdrawal symptoms in many who try to quit. But unlike other controlled substances, it's anodyne in its effects. Nicotine doesn't intoxicate. It doesn't addle judgment. It's mildly stimulating and calming at the same time, relieves anxiety and sadness, improves memory and motor performance in the short term, and may have benefits for Alzheimer's, Parkinson's, Tourette's and ulcerative colitis.

Partly the problem here is the law under which the FDA operates. The 2009 Family Smoking Prevention and Tobacco Control Act expressly prohibits the agency from eliminating tobacco products from the market, but may or may not authorize its nicotine-removing initiative.

Partly the problem is an ideological unwillingness to distinguish the benefits of nicotine from the harms of smoking. Decades have made a cliché out of the specialist observation that people “smoke for the nicotine and die from the tar.” In 2015, Scientific American quoted one of the world's leading smoking-cessation researchers pleading for the need to “de-demonize nicotine.”

READ MORE BUSINESS WORLD

[Hunter Biden and the Press: Who's the Real Degenerate?](#) July 1, 2022

[West Is Lazy on Russia's Blockade of Ukraine](#) June 28, 2022

[Never Enough Government, Says the SEC](#) June 24, 2022

[Panic Over Gasoline Prices Only Serves Putin](#) June 21, 2022

[Voters Elected the Jan. 6 Donald Trump](#) June 17, 2022

The FDA is headed in the opposite direction. Maybe, after thousands of years of people seeking out and consuming nicotine, they will stop because the agency says so. In public policy, examining costs and benefits fully and frankly is usually advisable to avoid unpleasant surprises. Left out of the FDA's assessment are the benefits people get from using nicotine. Left out is the possible gift to organized crime of trying to ban it.

A different approach is imaginable, one that would meet a reasonable definition of sanity, i.e., acceptance of reality. Outlaw the unreasonably dangerous nicotine delivery device

known as cigarettes. Tolerate those that supply the demanded nicotine without gratuitously harmful side effects.

There's also a third way of looking at matters. The federal and state governments and politically connected trial lawyers have become the primary beneficiaries of smoking ever since the 1998 master settlement agreement drawn up by the tobacco industry and 46 states seeking damages for the health-related costs of smoking.

In the years since, these beneficiaries have not managed to suck e-cigarettes and vaping under the rubric of their cartel, eroding their financial take. The FDA considers itself uninfluenced by these incentives, but the 2009 law it follows was lobbied through Congress by interests with a stake in continued smoking. The larger political context in which the agency operates also continues to be shaped by their influence.

Its plan to ban nicotine, as every commentator has noted, will mobilize opposition and take a decade or more to fight through the courts, with no guarantee of success or that future administrations will be as keen to prioritize nicotine prohibition.

Its attack on Juul, on the other hand, might not even be all that upsetting to the brand's 35% owner, the cigarette giant Altria, since deprived Juul users may just reach for Altria's market-leading Marlboro brand to maintain their habit.

The National Association of Attorneys General has itself been receiving upward of \$150 million a year to administer the settlement; as the group stresses, these funds will continue "*in perpetuity*, so long as cigarettes are sold in the United States." A spreadsheet on the group's website tracks how much each state has garnered through April 2022, for a grand total of \$152,856,477,210.76.

There is nothing wrong with the FDA's theory, backed by experimental evidence, that people will eventually stop smoking cigarettes if the cigarettes contain no nicotine. Contrary to some reporting, this conclusion is not undercut by the admission of some study participants that they broke discipline and occasionally snuck a full-strength cigarette. Quite the opposite, their cheating underlines the flaw in the government's plan: People may stop wanting cigarette brands from which the FDA has removed the nicotine. That doesn't mean they will stop wanting or finding ways to get nicotine.

Appeared in the July 6, 2022, print edition.

Copyright © 2022 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.