Tobacco + Cannabis Outlook

FiscalNote Markets

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SHORT DISCLOSURES This presentation is not intended to provide the basis for an investment recommendation. See final page for full disclosures.
Tobacco + Cannabis Outlook

Tobacco: U.S. Federal Policy
- General Political Trends
- Federal Regulations – Glossary of Key Terms
- FDA Product Applications (PMTAs, MRTPs)
- National Nicotine Cap Policy
- Flavor Policy: Banning Menthol & Other Flavors Nationally
- Tax Policy for Tobacco Products
- Investigations
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  - Federal E-Cig / JUUL Labs Investigations

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- Spotlight: California
- State E-Cig Taxes

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- FTC Lawsuit Against Altria (MO) & JUUL Labs
- State AG Lawsuits Against JUUL Labs
- JUUL Labs MDL (Combined Class Action & Personal Injury Lawsuits Against JUUL)

Cannabis Policy
- Political Environment & Likely Federal Policy
Tobacco
Political Environment & Federal Policy

Events and What We’re Watching
Key Events

- **August 17-20** – Democratic National Convention
- **August 24-27** – Republican National Convention
- **September 9** – PMTA submission deadline for e-cigarette manufacturers
- **September 11** – One-year anniversary of Trump’s Oval Office “flavor ban” announcement
- **September 29** – First Presidential Debate, held in Indiana
- **October 7** – Vice Presidential Debate, held in Utah
- **October 15** – Second Presidential Debate, held in Michigan
- **October 22** – Final Presidential Debate, held in Tennessee
- **November 3** – Election Day

After the Election
- **January 20, 2021** – Inauguration day for the President
- **April 30, 2021** – The end of the “first 100 days,” the symbolic milestone by which a future President Biden would seek to deliver on high stakes campaign pledges
General Political Trends

• In the 11 months since the Sep 11, 2019 announcement by President Trump that he would be imminently issuing an e-cigarette flavor ban, the general political panic caused by EVALI has somewhat dissipated, but COVID-19 fears and lingering EVALI-driven confusion and fear remain.

• Health groups and many states are coalescing around a recommendation that’s difficult for most individuals to rebut – stop inhaling anything into your lungs during this global health pandemic born of a respiratory illness.

• These recommendations tend to not offer a distinction between combusted and non-combusted products, further reinforcing the view that e-cigs are just as, if not more, dangerous to users than cigs, and even that flavored e-cigarettes pose unique and direct health risks to users.
General Political Trends

A recent study published in the *Journal of Adolescent Health* titled “Association Between Youth Smoking, Electronic Cigarette Use, and Coronavirus Disease 2019” found that individuals aged 13-24 are between 5.05x and 6.97x more likely to test positive for COVID-19 if they have ever used e-cigarettes, or dual used e-cigarettes + combustible cigarettes, respectively.

The study did not find a statistically-significant relationship between cigarette-only use and prevalence of COVID-19 in this age group.

The associated headlines particularly focused on youth e-cig use only further stoke the flames already driving policy changes, and we therefore continue to expect a confluence of COVID-19 and EVALI political trends will create ongoing risks for not only e-cigarettes but cigarettes as well.
What Would President Biden Do?

• We continue to see the following risks to tobacco policy in the event Biden wins the White House

  • We think a Biden FDA is likely to begin working anew on nicotine cap regulations for cigarettes and possibly could also reopen menthol regulations too; and

  • We meanwhile expect Congress, particularly if Democrats control both Chambers, will revisit legislation approved in February 2020 by the House to ban all flavors of all tobacco products including menthol cigs, create a federal tax on e-cigs, and possibly even increase the per pack cigarette tax in light of deficit politics and other health concerns.
## FDA Regulations - Glossary

### Premarket Tobacco Application (PMTA)
- Manufacturers that wish to sell tobacco products in the U.S. must get approval from FDA’s Center for Tobacco Products (CTP)
- For new products, this pathway is called the premarket tobacco application (PMTA) pathway
- FDA is prohibited by statute from sharing details on pending PMTAs under its review
- FDA has only approved 3 PMTAs in its 11-year history of regulating tobacco products

### Modified Risk Tobacco Product (MRTP)
- Manufacturers of products that already have FDA approval for sale in the U.S. may also wish to get additional approval from FDA to market their product as relatively less harmful than another tobacco product(s) via the MRTP pathway
- FDA is required by statute to publish information on pending MRTP applications before the agency, including all materials from related Tobacco Product Scientific Advisory Committee meetings.
- FDA has only approved 2 MRTPs in its 11-year history of regulating tobacco products

### Tobacco Product Scientific Advisory Committee (TPSAC)
- The TPSAC does not have an active policymaking role at FDA but rather is an advisory panel which makes recommendations to CTP
- Importantly, TPSAC advises on MRTP applications
- TPSAC does not advise on PMTA applications
FDA Project Applications – E-Cig PMTAs

Our Take

• All e-cig manufacturers must submit PMTAs to FDA by Sep 9.

• So long as companies submit PMTAs, they may keep their products on the market for 12 additional months, which we understand to be through September 2021.

• We expect that many of the smaller vape shops and vape manufacturers will struggle to pull together adequate applications in time, despite some recent efforts to encourage they bundle like-applications together.

• While we don’t think FDA will immediately enforce what’s likely to be a large amount of noncompliance across many smaller companies, we think the agency will soon after Sep 9 start sending warning letters to vape shops and vape manufacturers to immediately cease U.S. sales of their products or else risk greater penalties.

Events to Watch

• Past Events
  • May 12 – Prior PMTA deadline, delayed due to COVID-19 social distancing

• Upcoming Dates
  • Sep 9 – PMTA deadline for e-cig manufacturers; only e-cig companies that submit PMTAs can legally continue to sell their covered products in the U.S. after this date
  • Sep 9, 2021 – Date on which the 12-month grace period for FDA review ends, and companies face exposure to having their products pulled from the market even if they’re still awaiting FDA’s PMTA determination
FDA Project Applications – JUUL

Our Take

• Our understanding continues to be that the device submitted to FDA for PMTA approval incorporates new technology that communicates via Bluetooth with a mobile app to only unlock devices if users are verified (and of age).

• Because this will represent a new product not yet sold in the U.S., we think it gives FDA the political breathing room to approve JUUL’s application in spite of the overwhelming negative press and public opinion that hit a fever pitch in late-2019.

• Still at risk due to the politics: We continue to think the Menthol-flavored pod at the higher (5%) nicotine strength may ultimately be rejected by FDA not for scientific but for purely political reasons.

Events to Watch

• Recent Events
  • Jul 30 – JUUL Labs announced it had submitted PMTAs for a suite of products: the JUUL Device, and four pods (across two flavors – Virginia Tobacco and Menthol – and at two nicotine concentrations – 5% and 3%)

• Upcoming Dates
  • Dec 2020 to Feb 2021 – Our estimated window in which we expect FDA to formally accept JUUL’s PMTA application for so-called “substantive review”
  • Jul 2021 to Oct 2021 – Our estimated window in which we expect FDA to deliver its PMTA decision to JUUL
# FDA Product Application Tracker

<table>
<thead>
<tr>
<th>Company</th>
<th>Brand of Products</th>
<th>Product Category</th>
<th>Application</th>
<th>Submission Date</th>
<th>TPSAC Hearing Date(s)</th>
<th>Status</th>
<th>FN Markets Projection for Next Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Swedish Match (SWMA:SS)</strong></td>
<td>General Snus</td>
<td>Smokeless</td>
<td>PMTA</td>
<td>Mar 2015</td>
<td>N/A</td>
<td>Approved Nov 2015</td>
<td>Done</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Smokeless</td>
<td>MRTP</td>
<td>Aug 2014</td>
<td>Apr 9-10, 2016, Feb 6-7, 2019</td>
<td>Approved Oct 2019 (after first not receiving approval in Dec 2016)</td>
<td>Done</td>
</tr>
<tr>
<td><strong>Philip Morris International (PM)</strong></td>
<td>IQOS</td>
<td>Cigarette</td>
<td>PMTA</td>
<td>May 2017</td>
<td>N/A</td>
<td>Approved April 2019</td>
<td>Done</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cigarette</td>
<td>MRTP</td>
<td>May 2017</td>
<td>Jan 24-25, 2018</td>
<td>Partially Approved Jul 2020 (exposure modification approved; risk modification denied)</td>
<td>Done</td>
</tr>
<tr>
<td><strong>Altria Group (MO)</strong></td>
<td>Copenhagen Snuff on!</td>
<td>Smokeless</td>
<td>MRTP</td>
<td>Sep 2018</td>
<td>Feb 7, 2019</td>
<td>Pending</td>
<td>Decision likely by 1Q21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Smokeless</td>
<td>PMTA</td>
<td>May 2020</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 4Q21</td>
</tr>
<tr>
<td><strong>British American Tobacco (BAT)</strong></td>
<td>Vuse Solo</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>Oct 2019</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 1Q21</td>
</tr>
<tr>
<td><strong>British American Tobacco (BAT)</strong></td>
<td>Vuse Vibe</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>Apr 2020</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 4Q21</td>
</tr>
<tr>
<td><strong>British American Tobacco (BAT)</strong></td>
<td>Vuse Ciro</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>Apr 2020</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 4Q21</td>
</tr>
<tr>
<td><strong>Japan Tobacco (2914:JP)</strong></td>
<td>Logic</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>Aug 2019</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 1Q21</td>
</tr>
<tr>
<td><strong>22nd Century Group (XXII)</strong></td>
<td>VLN Cigarettes</td>
<td>Cigarette</td>
<td>PMTA</td>
<td>Dec 2018</td>
<td>N/A</td>
<td>Approved Dec 2019</td>
<td>Done</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cigarette</td>
<td>MRTP</td>
<td>Jul 2019</td>
<td>Feb 14, 2020</td>
<td>Pending</td>
<td>Decision likely by 3Q21</td>
</tr>
<tr>
<td><strong>NJOY</strong></td>
<td>Ace</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>Mar 2020</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 2021</td>
</tr>
<tr>
<td></td>
<td>Daily</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>Mar 2020</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval likely by 2021</td>
</tr>
<tr>
<td><strong>JUUL Labs</strong></td>
<td>JUUL</td>
<td>E-Cigarette</td>
<td>PMTA</td>
<td>July 2020</td>
<td>N/A</td>
<td>Pending</td>
<td>Approval or partial approval likely by 4Q21</td>
</tr>
</tbody>
</table>

Sources: FDA, WSJ, XXII, BAT, CSP Daily News, JUUL Labs FiscalNote Markets
Our Take

- If Joe Biden wins the White House, we think there’s likely to be a continued if not renewed interest by a Biden FDA to limit the amount of nicotine allowed in cigarettes to non-addictive levels driven by COVID-19 and youth use fears.

- We therefore would expect a Biden FDA to issue a notice of proposed rulemaking (NPRM) that advances the current draft nicotine cap regulation at some point in 2021 and potentially within the first 100 days of a Biden Administration, which would kick off in our view a likely two to three year clock before final regulation would hit.

Events to Watch

- Past Events
  - Jul 2017 – Then-FDA Commissioner Scott Gottlieb announced the agency under his leadership would introduce regulations to limit the allowable amount of nicotine in cigarettes to “minimally addictive or non-addictive” levels
  - Mar 2018 – FDA issued a nicotine cap advance notice of proposed rulemaking (ANPRM)

- Upcoming Dates
  - Nov 3 – Election Day
  - Apr 30, 2021 – If Biden wins, end of the “First 100 Days” of his Administration during which we think it’s likely FDA could revive the currently-stalled nicotine cap regulation with an NRPM
  - 1Q2023 – Earliest time by which we think a final nicotine cap regulation could be finalized under the most aggressive scenario
Menthol Cigs & All Non-Tobacco Flavors

Our Take

• FDA Regulations
  • In the event Joe Biden wins the White House, we think it’s likely his FDA will defer to Congress when it comes to regulating menthol cigs. Nevertheless, this is one area we are watching as we think COVID-19 politics increase chances (to low from very low) that FDA action could occur.

• Congress
  • If Dems win the Senate majority we’d expect Congress to resume consideration of legislation approved by the House in Feb 2020 (H.R. 2339, the Reversing the Youth Tobacco Epidemic Act) that would ban all flavors of all tobacco products including menthol cigs, among a host of other policies.
  • Compelled by state action in 2020 we think if Congress turns to tobacco control in 2021 then banning flavored products including menthol cigs is among the most likely provisions to be included.

Events to Watch

• Past Events
  • Feb 6 – FDA enacted guidance requiring manufacturers pull all flavors of “cartridge-based” e-cigs other than tobacco- or menthol-flavored products; companies cannot bring these products back onto the market unless and until they receive PMTA approval
  • Feb 28 – House approved H.R. 2339, the Reversing the Youth Tobacco Epidemic Act, by a vote of 213-195

• Upcoming Dates
  • Sep 9 – PMTA deadline for e-cigs
  • Nov 3 – Election Day
  • Apr 30, 2021 – If Biden wins, end of the “First 100 Days” of his Administration during which we would expect a Democratically-controlled Congress to begin at least showing signs of interest in advancing tobacco control policy (such as holding hearings) if it’s going to be an agenda item for 2021
Taxation

Our Take

• The House in Feb 2020 approved H.R. 2339, the Reversing the Youth Tobacco Epidemic Act, that among other things included a federal tax on e-cigs “equal to the dollar amount” currently levied on cigarettes of $1.01 per pack (the bill gives no further detail on how to calculate the tax for e-cig products).

• In 2021 after months of deficit spending, if an e-cig tax is on the table we wouldn’t be surprised if Congress also passed an increase to the per-pack cig tax as well.

Events to Watch

• Past Events
  • Feb 28 – House approved H.R. 2339, the Reversing the Youth Tobacco Epidemic Act, by a vote of 213-195

• Upcoming Dates
  • Nov 3 – Election Day
  • 1H2021 – Fiscal policy / stimulus likely to move through Congress under any Presidential scenario, presenting a potential vehicle for cig and/or e-cig tax increases
  • Apr 30, 2021 – If Biden wins, end of the “First 100 Days” of his Administration during which we would expect a Democratically-controlled Congress to begin at least showing signs of interest in advancing tobacco control policy (such as holding hearings) if it’s going to be an agenda item for 2021
USITC Investigation into IQOS

Background

- The U.S. International Trade Commission (USITC) is investigating Reynolds’ (BATS:LN) allegation that IQOS imports by Altria (MO) and Philip Morris International (PM) violate U.S. patent law.
- Reynolds requests USITC immediately and permanently block all imports of IQOS products into the U.S., constituting a full ban. Reynolds argues that public health would not be harmed if IQOS were to be effectively banned for sale in the U.S. because other reduced risk tobacco products exist on the market.
- MO and PM’s counter-argument rests on the rationale that removal of IQOS from the U.S. market would create a harm to public health since there is no comparable product approved for sale by FDA.
- Reynolds for its part has said in public filings that “it is a rare case where public interest considerations will outweigh a patent holder’s rights.” But that’s exactly what we now think will happen, as IQOS is one of only two products to have ever received permission to be advertised with modified risk / modified exposure marketing language. And it remains the only heat-not-burn product formally approved by FDA for sale in the U.S. as well.
- As such we now think the most likely outcome is for this decision to end in a settlement. Note that the companies involved in this dispute are also suing one another over related patent issues in two federal courts (see details on the next slide). We expect a final settlement would likely attempt to resolve the entire suite of patent disputes.

Our Take

Base Case: FDA’s decision to award MRTP approval to PM for sales of IQOS in the U.S. under modified exposure claims we think undermines Reynolds’ argument that removal of IQOS could be easily substituted by like-products on the market. We think this, combined with the threat of massive costs of years-long litigation, could compel both sides to a settlement table to work out mutually agreeable terms to drop both complaints that probably lean more favorably in the PM / MO direction.

Less Likely Case: USITC finds in favor of Reynolds’ complaint, with MO + PM appealing the finding and creating a protracted litigation overhang to the IQOS product. Any settlement under this case we expect would on net lean more favorably in Reynolds’ direction. The most unpredictable element in our view – so long as Reynolds can prove patent infringement, the company is not obligated to demonstrate injury in order for the USITC to find a 337 violation and issue severe remedial actions against MO and PM. This was previously our base case, but given FDA’s (albeit limited) MRTP approval for IQOS we think Reynolds’ argument now faces a steeper hurdle.

Least Likely Case: USITC bans MO + PM indefinitely from importing IQOS into the U.S., and the companies cannot get the ban delayed while they appeal the decision. Further, the USITC could determine that PM + MO owe Reynolds some level of remedial payment as well.
USITC Investigation into IQOS

Events to Watch

- **Sept 17 at 9am ET** – Markman hearing (pretrial hearing specific to patent claims)
- **Jan 22, 2021 at 9am ET** – Final pre-hearing conference
- **Jan 25, 2021** – Evidentiary hearing begins
- **Jan 29, 2021** – Deadline by which to conclude the evidentiary hearing
- **May 14, 2021** – Deadline for final initial determination
- **Sep 15, 2021** – Deadline to complete the entire investigation

Additional case details

- **USITC Docket Number**: 3447
- **USITC Investigation Number**: 337-TA-1199
- **Complainants**: RAI Strategic Holdings, Inc., R.J. Reynolds Vapor Company, and R.J. Reynolds Tobacco Company (all BATS:LN subsidiaries)
- **Respondents**: MO parent and subsidiaries Altria Client Services LLC, Altria Group, Inc., and Philip Morris USA, Inc.; and PM parent and subsidiary Philip Morris International Inc. and Philip Morris Products S.A.
- **Related lawsuits**: The companies involved in the dispute are also all officially suing one another over related patent issues in two federal courts.
  - Reynolds suit against Altria for patent infringement in the District Court for the Eastern District of Virginia (Docket # 1:20-cv-00393)
  - Altria suit against Reynolds for patent infringement in the District Court for the Middle District of North Carolina (Docket # 1:20-cv-00472)
## Other Federal Investigations

<table>
<thead>
<tr>
<th>Agency</th>
<th>Investigation Launch Date</th>
<th>Description + FN Markets View</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Trade Commission</td>
<td>Oct 2019</td>
<td>This investigation into JUUL Labs, R.J. Reynolds Vapor Company (BATS:LN), Fontem (IMB:LN), Logic (2914:JP), Nu Mark LLC (MO), and NJOY we think likely turns into new restrictions around e-cig marketing in an effort to make ads less appealing to youth, including limiting or outright prohibiting direct marketing via social media platforms and prohibiting the use of social media influencers – which should mostly correspond with trends in self-regulation the companies have taken over recent years.</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>~1H2019</td>
<td>A separate FTC investigation into JUUL Labs we expect could ultimately result in a fine for the company. In terms of the size – something akin to the FTC’s recent settlement with Equifax of ~$500 million over the Fall 2017 data breach (another politically-charged scandal) could be a ballpark figure that Commissioners seek to replicate.</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>Sep 2019</td>
<td>We know the least about a criminal investigation by federal prosecutors into JUUL Labs. This investigation represents the largest single source of policy / litigation risk for the company in our view. But it is unclear / unknowable when we will learn about next steps in this process.</td>
</tr>
</tbody>
</table>
Tobacco
State & Local Policy
Events and What We’re Watching
State Policy Overview

Our Take

• We continue to think a number of states will pass comprehensive tobacco policies in 2020.

• Our projections for 2020 have been that at least five states total will pass comprehensive tobacco control policies before the end of the year to at a minimum ban all flavors of all e-cigs.

• We had previously thought some of these states could also ban menthol cigarettes and enact nicotine caps in e-cigarettes as well – which we continue to view as possible but now unlikely.

• Spotlight on New York:
  • One significant distinction among the four states to already enact a flavor ban is New York’s policy, which beginning May 18 banned sales of flavored e-cigs. The policy includes a carve out for products that receive premarket tobacco application (PMTA) approval from FDA.
  • This policy is not therefore an actual, long-term e-cig flavor ban. Instead it speeds up the inevitable, essentially, as by Sep 2021 manufacturers must receive PMTA approvals from FDA to sell any flavor of e-cigs anywhere in the U.S. And by Sep 9, 2020 manufacturers that have failed to submit PMTAs to FDA will need to immediately pull their products from the market.

Number of States We’re Watching in 2020 in Which Policy to Ban E-Cig Flavors Has Passed / Died / Is in Flux

<table>
<thead>
<tr>
<th>Status</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passed</td>
<td>4</td>
</tr>
<tr>
<td>Died</td>
<td>7</td>
</tr>
<tr>
<td>In flux</td>
<td>6</td>
</tr>
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Source: FiscalNote Markets
## Tobacco – State & Local Policy

### State Policy Tracker

<table>
<thead>
<tr>
<th>State</th>
<th>Policy status</th>
<th>Is the State Legislature currently meeting?</th>
<th>2020 session planned adjournment date</th>
<th>Policy we’re watching – description</th>
<th>Policy basics</th>
<th>Party control breakdown</th>
<th>Has the state sued JUUL (proxy for reach of Campaign for Tobacco Free Kids)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cal.</td>
<td>In flux</td>
<td>Yes</td>
<td>Nov 30</td>
<td>SB 793 would ban all flavors of all forms of e-cigs and ban menthol cigs. At the municipal level, San Francisco banned sales of all e-cigs, and LA County banned sales of all flavors of tobacco products including menthol cigs.</td>
<td>✓ ✓ X</td>
<td>Governor: D Senate: D House: D</td>
<td>✓</td>
</tr>
<tr>
<td>Pa.</td>
<td>In flux</td>
<td>Yes</td>
<td>No end date</td>
<td>PA Rep. Eddie Day Pashinski (D) introduced in Oct 2019 legislation to ban all flavors of e-cigs but tobacco. At the municipal level, Philadelphia banned sales of flavored e-cigs in stores open to minors.</td>
<td>✓ X X</td>
<td>Governor: D Senate: R House: R</td>
<td>✓</td>
</tr>
<tr>
<td>Minn.</td>
<td>In flux</td>
<td>Yes</td>
<td>Special session end date Aug ’19</td>
<td>MN House Democrats introduced legislation in Oct 2019 to ban all flavors of e-cigs but tobacco, and to ban menthol cigs.</td>
<td>✓ ✓ X</td>
<td>Governor: D Senate: R House: D</td>
<td>✓</td>
</tr>
<tr>
<td>Mont.</td>
<td>In flux</td>
<td>No</td>
<td>Not in session in 2020</td>
<td>On Jun 16, 2020 the MT Dept. of Public Health and Human Services issued a proposed rule to ban flavored e-cigarettes.</td>
<td>✓ X X</td>
<td>Governor: D Senate: R House: R</td>
<td>X</td>
</tr>
<tr>
<td>ILL</td>
<td>In flux</td>
<td>Yes</td>
<td>Nov 17</td>
<td>Rep Grant Wehrli (R) introduced legislation (HB 3887) to ban all flavors of all tobacco products, which we interpret to mean menthol cigs as well as flavored e-cigs.</td>
<td>✓ ✓ X</td>
<td>Governor: D Senate: D House: D</td>
<td>✓</td>
</tr>
<tr>
<td>Hawaii</td>
<td>In flux</td>
<td>Yes</td>
<td>No end date</td>
<td>The flavor ban bill to watch in Hawaii is HB 2457 which continues to ping pong back and forth between the House and Senate. The latest version approved by the Senate on Jul 6 would exempt menthol-flavored products from the ban.</td>
<td>✓ X X</td>
<td>Governor: D Senate: D House: D</td>
<td>✓</td>
</tr>
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</table>

### Sources:
# State Policy Tracker

## Tobacco – State & Local Policy

<table>
<thead>
<tr>
<th>State</th>
<th>Policy status</th>
<th>Policy description</th>
<th>E-cig flavor ban</th>
<th>Menthol cig ban</th>
<th>Nicotine cap</th>
<th>Party control breakdown</th>
<th>Has the state sued JUUL Labs? (proxy for recent CTFK coordination)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mass.</td>
<td>Passed</td>
<td>Banned sales of flavored e-cigs other than tobacco, with sales of tobacco-flavored e-cigs restricted to adult-only establishments. Menthol cigarette sales banned beginning June 1, 2020.</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
<td>Governor: R Senate: D House: D</td>
<td>✓</td>
</tr>
<tr>
<td>N.Y.</td>
<td>Passed</td>
<td>Banned sales of flavored e-cigs other than tobacco, effective May 18, 2020, unless the product is approved for sale by the FDA (via the premarketing tobacco application or PMTA process). Banned online sales of closed e-cigs / e-liquids (although not devices). Banned all tobacco products in pharmacies.</td>
<td>✓+</td>
<td>X</td>
<td>X</td>
<td>Governor: D Senate: D House: D</td>
<td>✓</td>
</tr>
<tr>
<td>R.I.</td>
<td>Passed</td>
<td>Banned sales of flavored e-cigs other than tobacco, effective April 1, 2020.</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>Governor: D Senate: D House: D</td>
<td>X</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>State</th>
<th>Policy status</th>
<th>Is the State Legislature currently meeting?</th>
<th>Policy we’re watching – description</th>
<th>E-cig flavor ban</th>
<th>Menthol cig ban</th>
<th>Nicotine cap</th>
<th>Party control breakdown</th>
<th>Has the state sued JUUL (proxy for reach of Campaign for Tobacco Free Kids)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wash. State</td>
<td>Did not pass</td>
<td>Adjourned for the year</td>
<td>Gov. Jay Inslee (D) instituted a 120-day emergency ban of flavored e-cigs from Oct 9, 2019 to Feb 6, 2020 but the ban was never made permanent by the legislature.</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>Governor: D Senate: D House: D</td>
<td>✗</td>
</tr>
<tr>
<td>New Mex.</td>
<td>Did not pass</td>
<td>Adjourned for the year</td>
<td>NM State Senator Linda Lopez (D) introduced legislation to ban all flavors of e-cigs other than tobacco.</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>Governor: D Senate: D House: D</td>
<td>✓</td>
</tr>
<tr>
<td>Md.</td>
<td>Did not pass</td>
<td>Adjourned for the year</td>
<td>The MD House Economic Matters Committee held a hearing Feb 6 on a proposed e-cig flavor ban.</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>Governor: R Senate: D House: D</td>
<td>✗</td>
</tr>
<tr>
<td>Del.</td>
<td>Did not pass</td>
<td>Adjourned for the year</td>
<td>State lawmakers announced in Sept 2019 they would draft legislation aimed at banning all flavors of e-cigs except tobacco in 2020.</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>Governor: D Senate: D House: D</td>
<td>✗</td>
</tr>
<tr>
<td>Col.</td>
<td>Did not pass</td>
<td>Adjourned for the year</td>
<td>CO House Bill 1319 as amended would ban sales of all flavored tobacco products including menthol cigs from locations with all-age access. Age-restricted locations could continue to sell flavored products.</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>Governor: D Senate: D House: D</td>
<td>✗</td>
</tr>
</tbody>
</table>

We continue to think it’s more likely than not the CA State Legislature will be successful in passing some variation of a flavor ban in 2020.

**Base case – full flavor ban:** As California’s flavor ban bill, SB 793, continues to progress without material amendments, it’s becoming more likely in our view that a full flavor ban in CA is the most likely policy outcome, creating permanent headwinds for menthol cigarettes, the e-cig industry, and other smokeless products including the nascent market for nicotine pouch products like Swedish Match’s (SWMA:SS) Zyn and Altria’s (MO) on!

**Less likely – flavor ban w/ PMTA exemptions:** An emergency cord that could be pulled (but prospects for which we think are dimming), would be to amend the bill to look similar to what we saw move in New York to give exemptions to products that receive PMTA approval by FDA. This outcome would simply accelerate existing barriers to entry in the CA market for manufacturers that cannot afford in either time or capital (or both) to navigate the burdensome PMTA process, creating tailwinds over the mid- to longer-term for incumbent players with pending PMTAs in queue already at FDA.

**Least likely – No legislation:** We think a scenario where this bill dies entirely (its fate in 2019) is the least likely due to the broader political environment around youth use that’s been compelling action against e-cigs and flavored products.

**Next process step:** The California State Assembly Committee on Appropriations will vote on SB 793 on **Tuesday, August 18 at 1pm ET**
State E-Cig Taxes

Our Take

• On June 26, Georgia became the 27th state by our count to institute new e-cigarette excise taxes, up from only nine states at the start of 2018.

• This continues to de-risk e-cig tax policy for federal policymakers who more and more are representing districts that already see some form of tax collected on e-cig products.

• We continue to expect tobacco control efforts at the state and local levels will compel action at the federal level by Congress as soon as 2021 after the Presidential elections, particularly in the event Democrats win majorities in both Chambers of Congress and Joe Biden wins the White House.

Number of States With Excise Taxes on Vape Products by Year

Source: Tax Foundation, FiscalNote Markets
Tobacco E-Cigarette Litigation

Events and What We’re Watching
FTC Lawsuit Against MO & JUUL

Our Take
On April 1, FTC announced that five-out-of-five Commissioners voted to file an administrative complaint against Altria (MO) and JUUL Labs for violating antitrust laws.

- **Our base case**: We continue to expect Altria and JUUL will likely litigate successfully.

- **Less likely is the best case**: Less likely we expect is the best-case outcome, which we view as Altria losing the opportunity to convert its existing non-voting shares in JUUL Labs to voting shares and 7 or losing the chance to pick three JUUL Labs board seats – both of which remain contingent on antitrust clearance.

- **Least likely is the worst case**: Forced unwinding of the deal plus a $100M fine for each JUUL Labs and Altria.

Events to Watch

Recent Events
- **Aug 4** – The FTC administrative law judge (ALJ) hearing the case issued a scheduling order with all upcoming dates

Upcoming Dates
- **Aug to Feb** – Pretrial information gathering (depositions, creating witness lists, etc.)
- **Feb 1, 2021** – Close of discovery
- **Feb-Apr 2021** – Pretrial information and argument preparation
- **Apr 9, 2021** – Final prehearing conference
- **Apr 13, 2021** – ALJ commences the hearing at 10am ET
Lawsuits filed by attorneys general (AGs) in New York, California, Minnesota, the District of Columbia, Pennsylvania, Massachusetts, New Mexico, and Hawaii appear very clearly to be coordinated by the Campaign for Tobacco-Free Kids (CTFK).

That coordination indicates it was highly likely additional states would follow, as CTFK has a robust network of state and local grassroots lobbying efforts and is a trusted advocate among nearly all state public health administrations in their promulgation of tobacco control policies.

We think this trend will continue, fueled by COVID-19 fears and links between the virus and vaping. As such, we’re watching states with Democratic administrations including New Jersey, Rhode Island, Delaware, Colorado, and Washington.
MDL Combined Lawsuits Against JUUL

- Class action and personal injury lawsuits against JUUL Labs were combined into a single, multidistrict litigation (MDL) docket in the U.S. District Court for Northern California. Judge William H. Orrick is presiding (docket #3:19-MD-2913-WHO).

- On May 29, JUUL requested that Judge Orrick stay a decision on the MDL based on the “doctrine of primary jurisdiction” until the FDA makes its PMTA determination. JUUL argues that, because plaintiffs allege the company’s products created a “public health crisis” and because FDA will determine in its PMTA whether JUUL products under review are “appropriate for the protection of the public health,” the Court should defer to FDA’s detailed and scientific evaluation. JUUL argues that the primary jurisdiction doctrine is “tailor-made for this case” since it applies when “technical and policy questions... are better addressed in the first instance by a regulator with expertise and comprehensive authority.”

- While we think a stay on the MDL is possible, we think delay to this decision is unlikely to materially change the outcome of the case. In the event Judge Orrick issues the stay it would essentially pause the case until FDA has issued its PMTA decisions for JUUL Labs.

- We think for political reasons that JUUL Labs is unlikely to receive PMTA approval for products already on the market. In fact, it was news in February 2020 that JUUL intends to submit PMTAs for a “new version” of its nicotine vape device (that has yet to be sold in the U.S.) that we first became bullish around prospects the company would receive FDA approval to sell any of its products in the United States.

- Our base case therefore is that JUUL Labs receives PMTA approval for “new versions” of its existing products, and that versions currently / previously on the market do not receive FDA authorization. Because the MDL is squarely focused on the current / old version of products, we are skeptical that even a delay to the MDL timeline for decision making until after the FDA issues its PMTAs will sway Judge Orrick and continue to therefore think this case presents significant legal risk to the company.
Cannabis
The Elections & Federal Policy
Events and What We’re Watching
Key Events

- **September 29** – First Presidential Debate, held in Indiana
- **October 7** – Vice Presidential Debate, held in Utah
- **October 15** – Second Presidential Debate, held in Michigan
- **October 22** – Final Presidential Debate, held in Tennessee
- **November 3** – Election Day

**After the Election**

- **January 20, 2021** – Inauguration day for the President
- **April 30, 2021** – The end of the “first 100 days,” the symbolic milestone by which a future President Biden would seek to deliver on high stakes campaign pledges
Cannabis Under Biden

• We think it is highly likely that if Biden becomes president he will not renege on his July 8 promise to decriminalize reschedule cannabis through executive actions.

• While many policy promises on the campaign trail require Congressional approval, this one does not and therefore we think should be viewed as a highly likely outcome under a Democratic White House.

• Our view was further-reinforced by Biden’s pick of Kamala Harris as his running mate. Harris is controversial mostly due to her history of working in law enforcement, so from a criminal justice standpoint coming out strongly in favor of cannabis decriminalization we think will assuage fears by on-the-fence, more progressive Democratic voters.
Cannabis Under Trump

- Cannabis policy has long been viewed by many through a racial equality lens, and the recent Black Lives Matter movement we see as reigniting focus on this among a host of other issues.

- Meanwhile, President Trump has made criminal justice reform policy a pillar of his Presidency. We see a likely scenario that events of Summer 2020 will continue to create a dissonance between the image the Trump White House wishes to portray (as criminal justice reformer) and the image increasingly held by the public and likely voters (as criminal justice inhibitor).

- We therefore think it is likely the President will need to take meaningful actions to demonstrate that he is the criminal justice reformer he has worked to be. Part of this can come in the form of further presidential pardons for those who have been wrongly incarcerated. But we also continue to think the White House could also commence unilateral action to reschedule cannabis through the executive process requiring the Dept of Health and Human Services and the Dept of Justice to evaluate and change via the rulemaking process the classification of cannabis under the Controlled Substances Act.

- Because this is a time-intensive process, it is unlikely in our view cannabis legalization would be completed at the federal level prior to the November 2020 elections. But initiating the process this year we think would set the stage for an ultimate decision by the Attorney General as soon as 2021 (whether under Trump or Biden) to legalize the substance federally.

President Trump signing two criminal justice reform bills, December 2018

Source: Time Magazine
Disclosures

I, Stefanie Miller, hereby certify that all of the views expressed in this presentation accurately reflect my personal views, which have not been influenced by considerations of the firm’s business or client relationships.

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