

# Combating Illicit Substances: DOJ Enforcement of Unauthorized E-Cigarettes

GAO-26-107991

Q&amp;A Report to the Ranking Member, Committee on the Judiciary, United States Senate

March 12, 2026

## Why This Matters

Large numbers of unauthorized electronic cigarette (e-cigarette) products and devices continue to be for sale in the U.S., jeopardizing the health of Americans nationally. The Centers for Disease Control and Prevention (CDC) estimated more than 6,000 e-cigarette products were available in the U.S. as of June 2024 (the most recent data available). Most of these products have not been authorized for sale in the U.S. by the Food and Drug Administration (FDA), which reviews such products against health standards. As of December 2025, FDA had authorized 39 e-cigarette products.

The Department of Justice (DOJ) is authorized to pursue various enforcement actions, such as civil judicial actions, to stop the manufacture, distribution, and sale of unauthorized e-cigarettes under the laws it enforces. Many of these actions can be taken in coordination with FDA.

We were asked to review DOJ and FDA efforts to combat unauthorized e-cigarettes. This report provides information about DOJ's efforts to take enforcement actions against retailers, distributors, and manufacturers of unauthorized e-cigarettes. It is part of GAO's body of work examining federal oversight of tobacco products, including FDA's oversight of e-cigarettes; FDA's authorization process for new e-cigarette products; and tobacco taxes and opportunities for increased revenue, which include e-cigarettes.

## Key Takeaways

- DOJ has taken 88 civil and criminal enforcement actions related to e-cigarettes under the Federal Food, Drug, and Cosmetic Act; the Prevent All Cigarette Trafficking Act of 2009; and other criminal law.<sup>1</sup> DOJ took these actions from fiscal year 2022—which is generally when DOJ began taking enforcement actions related to e-cigarettes—through fiscal year 2025. The key DOJ entities involved in taking these actions were the Civil Division; the U.S. Attorneys' Offices; and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).
- In February 2025, the Attorney General directed ATF to shift resources from its alcohol and tobacco enforcement programs to address other departmental priorities, such as immigration and human trafficking. ATF officials stated in May 2025 that the agency will administer its statutory responsibilities consistent with the administration's priorities.
- The most frequently used DOJ enforcement actions were (1) placements on DOJ's list of unregistered or noncompliant e-cigarette delivery sellers (50 of 88) and (2) statutory injunction proceedings to stop violations of the law (20 of 88).
- Given the relatively small number of e-cigarette enforcement actions DOJ identified—and which our analysis confirmed—DOJ officials said they have not needed to assess the resources required for their respective efforts.

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## Which e-cigarette products may be subject to DOJ enforcement action?

Any unauthorized e-cigarettes on the market may be subject to DOJ enforcement action.<sup>2</sup> FDA authorizes tobacco products (including e-cigarettes) to be sold or distributed in the U.S. As of December 2025, FDA had authorized 39 tobacco- and menthol-flavored e-cigarette products. According to FDA officials, any other e-cigarette being sold and distributed is unauthorized and, therefore, illegal and could be subject to DOJ enforcement.<sup>3</sup>

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## What enforcement authorities do DOJ entities have to address unauthorized e-cigarettes?

DOJ has civil and criminal enforcement authorities to take actions against unauthorized e-cigarette manufacturers, distributors, and retailers. These authorities arise under two key statutes:

- **The Federal Food, Drug, and Cosmetic Act** prohibits the distribution of e-cigarette products that are adulterated or misbranded in interstate commerce.<sup>4</sup> DOJ began taking enforcement actions against unauthorized e-cigarette manufacturers, retailers, and distributors under this law in fiscal year 2023.<sup>5</sup>
- **The Prevent All Cigarette Trafficking Act of 2009**, which, since 2021, has prohibited the sale and delivery of e-cigarettes that fail to comply with excise tax, shipping, and age verification requirements, among others.<sup>6</sup> DOJ began taking e-cigarette-related enforcement actions under this law in fiscal year 2023.

In addition, DOJ may pursue prosecutions against unauthorized e-cigarette manufacturers, distributors, and retailers under other criminal law, as appropriate. For example, DOJ may take enforcement actions under criminal laws related to conspiracy, wire fraud, and trafficking in counterfeit goods that may apply to a particular case involving unauthorized e-cigarettes.<sup>7</sup>

### Civil enforcement authorities

DOJ may pursue civil enforcement actions related to unauthorized e-cigarettes, including:

- **Statutory injunction proceedings.** DOJ has the authority to seek injunctions in federal court under the Federal Food, Drug, and Cosmetic Act and the Prevent All Cigarette Trafficking Act of 2009.<sup>8</sup> A statutory injunction proceeding seeks to stop violations of the law, such as the sale of unauthorized e-cigarettes, by halting the flow of these products in interstate commerce and addressing the conditions that allowed the violations to occur. In these cases, a court may permanently prohibit an entity from, for instance, selling the product, or the parties may resolve the matter on their own.
- **Civil forfeiture actions.** DOJ has the authority to initiate civil forfeiture actions in federal court under the Federal Food, Drug, and Cosmetic Act.<sup>9</sup> Under this process, DOJ seeks to seize and forfeit property, including unauthorized e-cigarettes, which are adulterated and misbranded and should therefore be removed from the market.
- **Civil penalty actions.** DOJ has the authority to initiate civil penalty proceedings in federal court and to seek civil penalties administratively under the Prevent All Cigarette Trafficking Act of 2009.<sup>10</sup> These actions seek to impose civil penalties for violations of that statute.
- **Placement on list of unregistered or noncompliant e-cigarette delivery sellers.** Under the Prevent All Cigarette Trafficking Act of 2009, DOJ is required to maintain a list of e-cigarette delivery sellers that have not registered with the Attorney General, as required, or that are otherwise not in compliance with the act.<sup>11</sup> Persons are considered e-cigarette delivery sellers

if they make remote sales (e.g., online sales of e-cigarettes) to consumers. We discuss how the list is used to promote enforcement of this act later in the report.

### Criminal enforcement authorities

DOJ may pursue criminal enforcement actions related to unauthorized e-cigarettes. Specifically, DOJ has the ability to prosecute criminal cases related to e-cigarettes under the Federal Food, Drug, and Cosmetic Act, the Prevent All Cigarette Trafficking Act of 2009, and other criminal laws as appropriate.<sup>12</sup> For example, DOJ may file charges against e-cigarette retailers, manufacturers, or distributors who intentionally traffic in counterfeit goods to sell and distribute on the U.S. market.<sup>13</sup>

As part of a criminal prosecution, DOJ may seek to seize and forfeit property, including e-cigarettes. In exercising this authority, DOJ seeks to punish and deter criminal activity and recover assets that may be used to compensate victims, among other goals. Figure 1 shows examples of unauthorized e-cigarettes seized by DOJ.

Figure 1: Examples of Unauthorized E-Cigarette Products Seized by the Department of Justice



Source: U.S. Marshals Service. | GAO-26-107991

### Which key DOJ entities are involved in enforcing laws against unauthorized e-cigarettes?

Three key DOJ entities have, or have recently had, responsibilities and roles related to enforcing applicable laws regarding unauthorized e-cigarettes: the Civil Division, the U.S. Attorneys' Offices, and ATF.

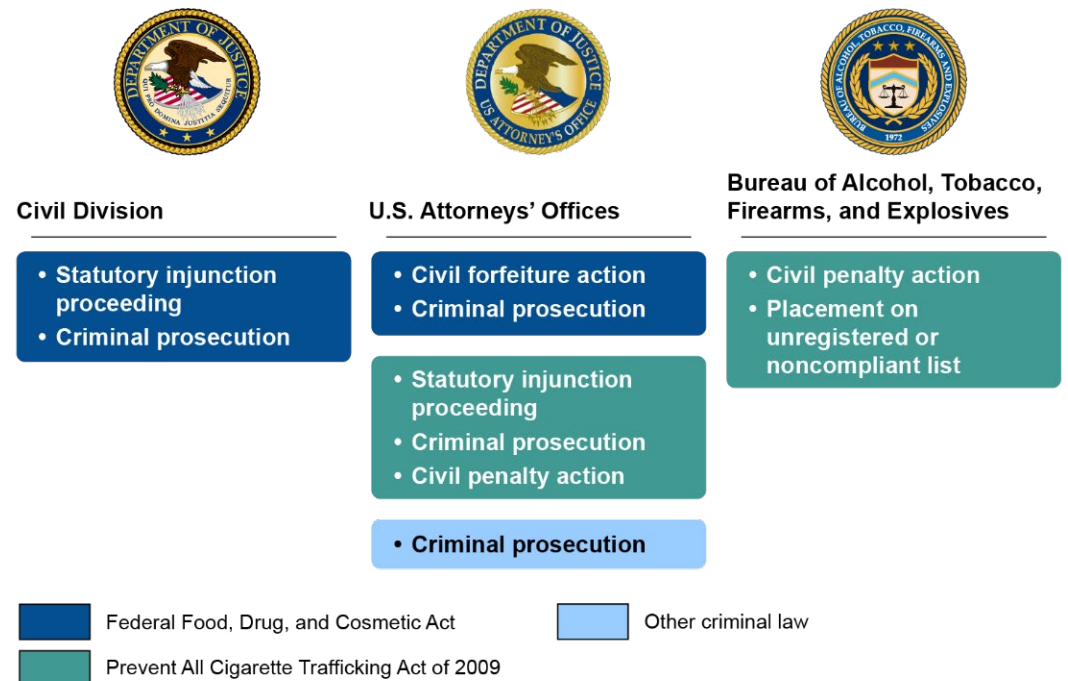
- **Civil Division.** The Civil Division leads DOJ's efforts to enforce laws that protect Americans' health, safety, and economic security, including those pertaining to e-cigarettes. Until mid-September 2025, the Consumer Protection Branch within the Civil Division was responsible for all civil and criminal judicial matters arising under the Federal Food, Drug, and Cosmetic

Act related to unauthorized e-cigarettes. In this role, the branch partnered with agencies across the federal government, including FDA, that are responsible for consumer health and safety. These agencies provided the branch referrals for enforcement actions under applicable federal laws, including the Federal Food, Drug, and Cosmetic Act, related to e-cigarettes.<sup>14</sup> In mid-September 2025, as a result of a DOJ reorganization, a new branch within the Civil Division—the Enforcement and Affirmative Litigation Branch—replaced the Consumer Protection Branch as the branch generally responsible, along with U.S. Attorneys’ Offices, for civil enforcement actions related to unauthorized e-cigarettes.<sup>15</sup> According to Civil Division officials, criminal enforcement actions related to unauthorized e-cigarettes generally would now be handled by the Criminal Division’s Fraud Section and U.S. Attorneys’ Offices.<sup>16</sup>

- **U.S. Attorneys’ Offices.** U.S. Attorneys’ Offices are responsible for prosecuting federal crimes and representing the U.S. in criminal and civil matters in their respective geographic jurisdictions. U.S. Attorneys can initiate civil cases on behalf of FDA and ATF and prosecute criminal cases related to unauthorized e-cigarettes. There are 94 U.S. Attorneys’ Offices throughout the U.S. and related territories. In general, U.S. Attorneys’ Offices receive information about potential criminal actions, including those related to the sale or distribution of unauthorized e-cigarettes, from state, local, and federal investigative agencies, such as ATF, according to DOJ officials.
- **ATF.** ATF’s tobacco-related mission is to identify and dismantle criminal enterprises that traffic illicit, unregulated products, such as e-cigarettes, in interstate commerce and to seize and deny their access to assets and funds. The Attorney General delegated responsibility to ATF for enforcing the provisions related to e-cigarettes in the Prevent All Cigarette Trafficking Act of 2009, including those regarding civil penalties and maintaining a list of delivery sellers that do not comply with the act. ATF may take enforcement action based on the results of its own investigations, or based on information it receives from state, tribal, or local governments; tobacco industry representatives; and from federal partners. Based on this information, ATF may add an entity to its list of unregistered or noncompliant delivery sellers. Pursuant to its delegated responsibilities related to the Prevent All Cigarette Trafficking Act of 2009, ATF is to distribute this list to various officials and entities, such as state attorneys general, common carriers, and the U.S. Postal Service.<sup>17</sup> Anyone who receives the unregistered or noncompliant list is generally prohibited from delivering e-cigarette products or devices for an entity on the list.

Figure 2 illustrates the e-cigarette-related enforcement actions that DOJ’s Civil Division, U.S. Attorneys’ Offices, and ATF are authorized to take under applicable laws, as identified in this section.<sup>18</sup>

**Figure 2: Key Department of Justice Entities and Examples of Available Enforcement Actions to Combat Unauthorized E-Cigarettes Under Applicable Laws**



Source: GAO analysis of Department of Justice information and applicable laws; Agency seals. | GAO-26-107991

Note: Before mid-September 2025, the Civil Division also had the authority to bring criminal enforcement actions under the Prevent All Cigarette Trafficking Act of 2009 and other statutes to combat unauthorized e-cigarettes. There may be additional enforcement actions that DOJ can take under these laws. Other DOJ entities also may be involved in enforcement actions. In particular, the U.S. Marshals Service manages assets targeted for forfeiture by the Department of Justice and other federal departments by agreement, including unauthorized e-cigarettes confiscated through federal enforcement actions. It is responsible for responding to investigative entities' requests to either seize property or dispose of it on their behalf.

### How has DOJ's Civil Division prioritized e-cigarette referrals from FDA for enforcement?

Officials from DOJ's Civil Division stated there is no formal written process guiding how it should prioritize e-cigarette referrals among the other referrals it receives. Instead, the officials stated that the decision to initiate e-cigarette enforcement actions under the Federal Food, Drug, and Cosmetic Act is based on several factors, such as the administration's priorities, available resources, and subject matter knowledge. For example, when the Civil Division receives an e-cigarette-related referral, it assesses whether there is sufficient evidence to pursue a case. This involves working with FDA attorneys and experts to review the evidence provided by FDA and researching federal statutes, case law, and department policies, according to DOJ officials.

### To what extent do ATF's priorities include e-cigarette enforcement?

As of February 2025, ATF's priorities, as identified by the Attorney General, did not include e-cigarette enforcement. In a February 2025 memorandum, the Attorney General identified DOJ's investigative and charging priorities, which include addressing immigration, human trafficking and smuggling, and cartels. The memorandum did not identify tobacco as a priority, and it directed ATF to shift resources from its alcohol and tobacco enforcement programs to these identified priorities.<sup>19</sup>

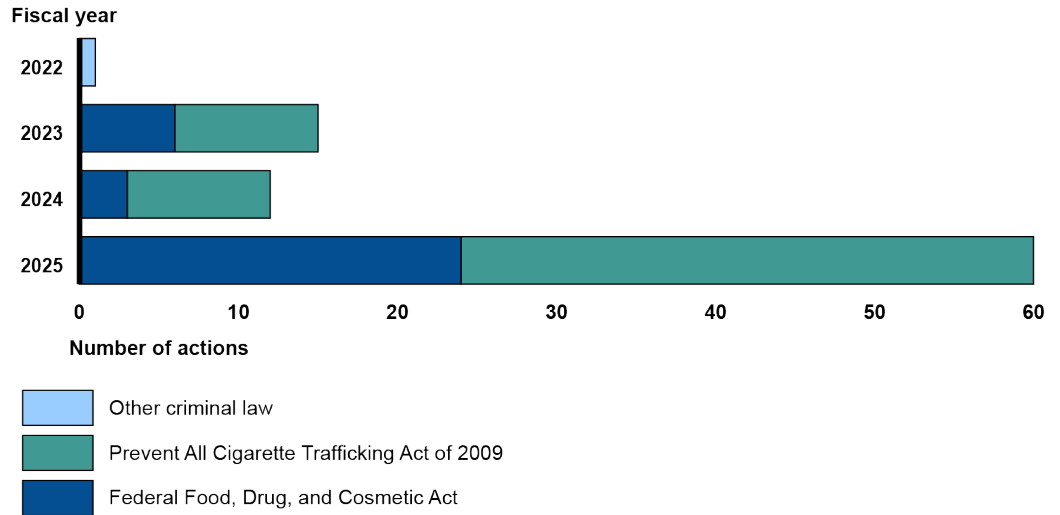
ATF officials stated the agency will administer its statutory responsibilities consistent with the administration's current priorities. ATF has discretion in exercising its delegated tobacco-related enforcement authority under the Prevent All Cigarette Trafficking Act of 2009, and as a result is not required to take any particular enforcement action related to e-cigarettes under that statute.

As of January 2026, ATF officials stated that it continued to maintain DOJ’s list of e-cigarette delivery sellers that have not registered as required with the Attorney General, or that are otherwise not in compliance with the Prevent All Cigarette Trafficking Act of 2009.

**How many e-cigarette-related enforcement actions has DOJ taken since fiscal year 2022?**

DOJ has taken 88 civil and criminal e-cigarette-related enforcement actions from fiscal year 2022 through fiscal year 2025. As shown in figure 3, DOJ entities have taken 33 actions under the Federal Food, Drug, and Cosmetic Act; 54 actions under the Prevent All Cigarette Trafficking Act of 2009; and one action under other criminal law.<sup>20</sup>

**Figure 3: Number of E-Cigarette-Related Enforcement Actions Taken by Department of Justice Entities, Fiscal Years 2022–2025, by Law**



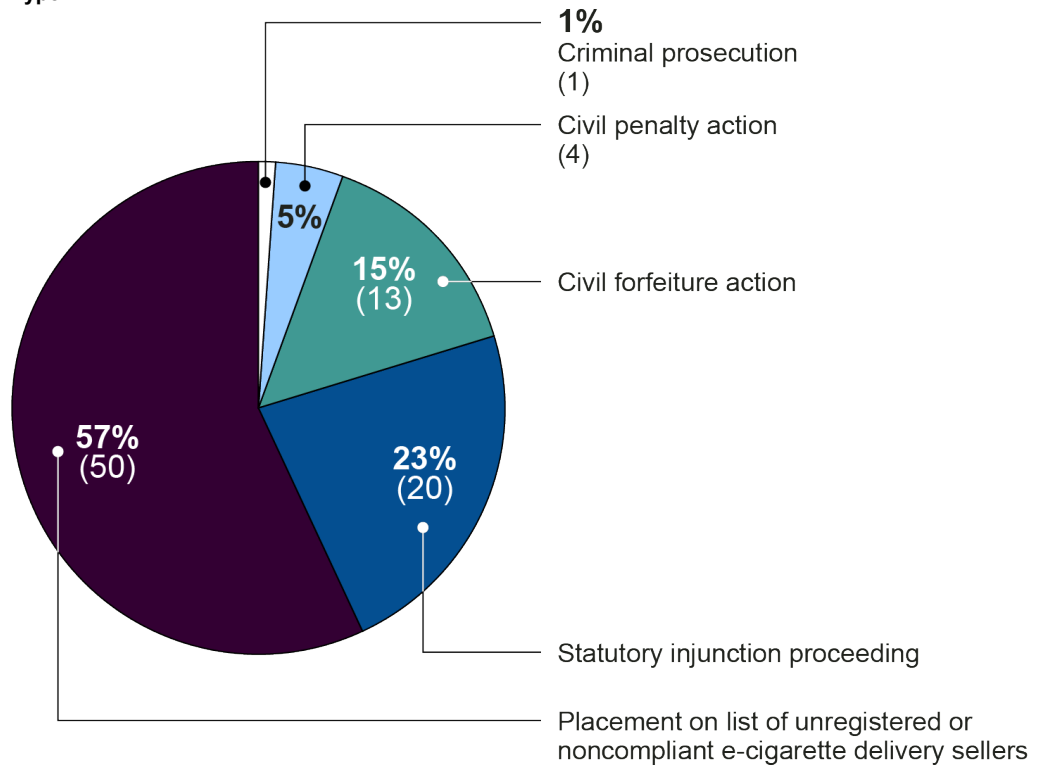
Source: GAO analysis of Department of Justice data. | GAO-26-107991

Note: The enforcement actions shown are a criminal prosecution, statutory injunction proceedings, civil forfeiture actions, civil penalty actions, and placements on the list of unregistered or noncompliant e-cigarette delivery sellers. Enforcement actions under the Prevent All Cigarette Trafficking Act of 2009 that resulted in placement on the list of unregistered or noncompliant e-cigarette delivery sellers (50 actions) were taken in the fiscal year in which the entity was placed on the list. All other identified enforcement actions were taken in the fiscal year in which the action was initiated.

DOJ took the largest number of enforcement actions in fiscal year 2025 (60 actions). For that fiscal year, more than half of these actions were taken under the Prevent All Cigarette Trafficking Act of 2009 (36 of 60). An ATF official said that the increase in actions under the act in fiscal year 2025 was primarily driven by an increase in states nominating entities for inclusion on the list of unregistered or noncompliant e-cigarette delivery sellers. Specifically, ATF placed 35 entities on the list in fiscal year 2025, compared with eight in fiscal year 2024, seven in fiscal year 2023, and none in fiscal year 2022. While the number of actions taken under the Federal Food, Drug, and Cosmetic Act also increased in fiscal year 2025 compared with prior fiscal years, DOJ officials did not provide a reason for this increase.

In addition, as shown in figure 4 the majority of actions were either (1) placements on the list of unregistered or noncompliant e-cigarette delivery sellers (50 of 88) or (2) statutory injunction proceedings to stop violations of the law (20 of 88).

**Figure 4: E-Cigarette Enforcement Actions Taken by Department of Justice, Fiscal Year 2022–2025, by Type**



Source: GAO analysis of Department of Justice data. | GAO-26-107991

Note: Percentages do not sum to 100 percent due to rounding.

See appendix I for more detailed information on the DOJ enforcement actions included in our analysis.

### How has DOJ assessed the resources needed for its e-cigarette enforcement efforts?

DOJ officials said they have not assessed the resources required for their respective e-cigarette enforcement efforts because, generally, the number of such cases is too small to support a meaningful assessment. In addition, other factors, such as the Attorney General’s memorandum redirecting ATF resources to priorities other than tobacco enforcement, could further limit the resources needed to support e-cigarette enforcement. Specifically,

- Officials from DOJ’s Civil Division told us they had not experienced any resource challenges supporting e-cigarette enforcement cases. Given the small number of e-cigarette cases that FDA has referred to it, relative to cases involving other areas, officials said they had not needed to conduct an assessment. However, because the Civil Division depends on FDA for some of its e-cigarette referrals, any change in the level of resources FDA commits to making referrals could impact the resources the division requires for e-cigarette enforcement.

In March 2025, the Department of Health and Human Services initiated a department-wide reorganization, including of FDA.<sup>21</sup> At that time, FDA officials stated that they did not know how these changes might impact existing resources, such as attorneys who refer e-cigarette matters to DOJ, until the reorganization is complete. As of December 2025, officials stated that they continued to send e-cigarette referrals to DOJ for review.

- ATF officials stated their agents are generalists and can be assigned to support any tobacco case, including those that are e-cigarette-related. As such, officials said the agency generally assigns agents to tobacco cases as

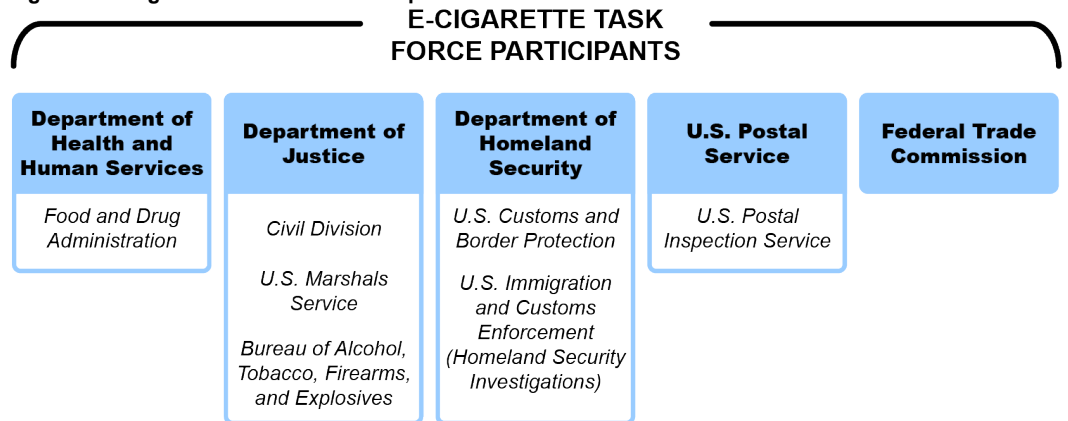
needed. Therefore, prior to the February 2025 Attorney General memorandum directing the shift in ATF resources from alcohol and tobacco enforcement, they had not taken steps to assess the resources needed to enforce the Prevent All Cigarette Trafficking Act of 2009. As previously discussed, ATF placed more entities on the list of unregistered or noncompliant e-cigarette delivery sellers in fiscal year 2025 than in any prior fiscal year. According to one ATF official, the agency had one program analyst who was able to readily oversee all activities related to the list for fiscal year 2025. Therefore, the official did not believe a resource assessment was needed.

- Officials from the Executive Office for U.S. Attorneys said that the U.S. Attorneys’ Offices have handled few e-cigarette enforcement cases since fiscal year 2022. Specifically, based on our analysis and information provided by the Executive Office for U.S. Attorneys and the Civil Division, we identified 24 e-cigarette-enforcement cases filed by U.S. Attorneys’ Offices, either on their own or jointly with the Civil Division, since fiscal year 2022. Given the small number of cases overall, Executive Office officials said that they were not aware of any of the 94 U.S. Attorneys’ Offices conducting an assessment of resources needed for e-cigarette enforcement.

**What is the interagency e-cigarette task force, and what is DOJ’s role?**

The interagency e-cigarette task force brings together multiple law enforcement partners to coordinate and streamline federal efforts to prevent the illegal distribution and sale of unauthorized e-cigarettes. Established by DOJ and FDA in June 2024, DOJ’s specific role is to lead the task force along with FDA. As shown in figure 5, several federal departments and agencies participate in the interagency task force.

Figure 5: E-Cigarette Task Force Participants



Source: GAO summary of Department of Justice and Food and Drug Administration information. | GAO-26-107991

The various DOJ entities on the task force provide input relevant to their respective roles, which we discussed earlier in this report. Department of Homeland Security (DHS) entities support the task force through investigations, interceptions, and seizures of unauthorized e-cigarettes at U.S. borders. In addition, the U.S. Postal Inspection Service supports the task force through investigations of unauthorized e-cigarettes distributed through the mail system, and the Federal Trade Commission provides expertise on e-cigarette markets and enforcing prohibitions on false and misleading advertising related to e-cigarette products.<sup>22</sup>

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## What are the interagency task force goals and how has DOJ contributed to the task force?

According to DOJ officials, the goals of the task force include (1) serving as a hub for information sharing among task force members and other federal law enforcement partners and (2) enhancing coordination of enforcement actions to address the illegal distribution and sale of e-cigarettes.<sup>23</sup> DOJ officials stated that its specific role is to facilitate communication among task force members.

The task force played a role in achieving joint actions. For example:

- An October 2024 joint action resulted in the seizure of 3 million e-cigarette products that originated in China with an estimated retail value of \$76 million.<sup>24</sup>
- A February 2025 joint action resulted in the seizure of 2 million units of e-cigarette products in Chicago with an estimated retail value of \$33.8 million.<sup>25</sup>
- A September 2025 joint action resulted in the seizure of more than 2 million illicit vaping products taken from distributors and retailers across 7 different states.

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## Agency Comments

We provided the Department of Justice and the Department of Health and Human Services, of which the Food and Drug Administration is a component agency, a draft of this report for review and comment. Both departments provided technical comments, which we incorporated as appropriate.

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## How GAO Did This Study

To understand DOJ's role in e-cigarette-related enforcement, we reviewed DOJ's relevant authorities to take enforcement actions against unauthorized e-cigarette retailers, distributors, and manufacturers as articulated within applicable criminal laws and the following primary applicable statutes:

- Federal Food, Drug, and Cosmetic Act; and
- Prevent All Cigarette Trafficking Act of 2009.

We focused on DOJ e-cigarette-related enforcement actions taken from fiscal year 2022, which is generally when DOJ began taking enforcement actions related to e-cigarettes, through the end of fiscal year 2025.

To identify the types and numbers of DOJ e-cigarette-related enforcement actions and the DOJ division or office filing them, we analyzed DOJ enforcement data. For enforcement actions related to the Federal Food, Drug, and Cosmetic Act, we verified the information in case documents from the Public Access to Court Electronic Records system and DOJ's CaseView data system, as appropriate, and questioned knowledgeable agency officials about the tracking of enforcement activities. For the enforcement action related to other criminal law, we verified the information in case documents from the Public Access to Court Electronic Records system. For enforcement actions related to the Prevent All Cigarette Trafficking Act of 2009, we reviewed data that ATF compiled on these actions. We spoke with a knowledgeable ATF official about how the data are collected and maintained and determined that the data were sufficiently reliable for the purposes of providing an overview of DOJ enforcement actions.

To identify the dates in which statutory injunction proceedings, civil forfeiture actions, civil penalty actions, and criminal prosecutions were taken by DOJ under the applicable laws, we used the fiscal year in which each enforcement action was initiated. For these specific actions, the initiation of the enforcement action is the key date. For civil penalty actions taken by ATF, we included actions that resulted in civil settlement agreements. For those enforcement actions involving placement on DOJ's list of unregistered and noncompliant e-cigarette delivery

sellers, we used the fiscal year in which the person was placed on the list as the key date.

In addition, we interviewed officials responsible for managing and overseeing these e-cigarette enforcement actions from DOJ's Civil Division and ATF to better understand the varying enforcement actions and how they are taken. We also interviewed an official with the Executive Office for U.S. Attorneys to better understand how U.S. Attorneys' Offices support e-cigarette enforcement actions.

To describe FDA's process for referring e-cigarette matters to DOJ, we reviewed key DOJ and FDA documents outlining the process and interviewed responsible officials to understand how DOJ received and prioritized incoming referrals. We also obtained and reviewed information from ATF on the types of enforcement actions it takes based on information it received from various government and industry entities related to potential e-cigarette-related violations of the Prevent All Cigarette Trafficking Act of 2009.

To summarize the goals and activities of the interagency task force on combating unauthorized e-cigarettes, we reviewed and obtained task force agendas and met with DOJ and FDA officials.

For background purposes, we reviewed data collected by the National Youth Tobacco Survey, a school-based survey administered by CDC and FDA. The survey provides national benchmark data on tobacco use behaviors and related risk factors among youth in the United States.

We conducted this work from December 2024 to March 2026 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## List of Addressees

The Honorable Richard J. Durbin  
Ranking Member  
Committee on the Judiciary  
United States Senate

We are sending copies of this report to the appropriate congressional committees, the Attorney General, the Secretary of Health and Human Services, and other interested parties. In addition, the report is available at no charge, on the GAO website at <https://www.gao.gov>.

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## Appendix I

### DOJ Enforcement Actions Involving E- Cigarettes Fiscal Years 2022–2025

#### DOJ enforcement actions under the Federal Food, Drug, and Cosmetic Act

The Civil Division sought injunctions in 20 civil cases under the Federal Food, Drug, and Cosmetic Act. These cases were filed against entities and individuals that allegedly manufactured, sold, and distributed e-cigarette products that were adulterated and misbranded. The products were deemed to be adulterated and misbranded because they were not authorized by FDA through its review process.

In each case, the U.S. alleged that defendants had received at least one warning letter from FDA citing previous violations of the act related to e-cigarette products but continued to engage in conduct that violated the act. In some cases, the U.S. alleged that defendants indicated they intended to stop selling and distributing the unauthorized products, but FDA later discovered they continued to do so. The courts overseeing several of these cases prohibited the defendants from manufacturing, distributing, selling, and/or offering for sale any new tobacco product, unless they met certain conditions. For example, the defendants would first need to obtain authorization from FDA for that product. Some courts also ordered the defendants to destroy their unauthorized products.

The Civil Division and U.S. Attorneys' Offices also collectively initiated 13 civil forfeiture actions under the Federal Food, Drug, and Cosmetic Act. In September 2025, DOJ stated that it had seized more than 2.1 million illicit vaping products from five distributors and six retailers across seven states in connection with many of these actions. Earlier, in April 2024, the U.S. Attorney's Office for the Central District of California initiated a civil forfeiture action under the act against various e-cigarette products. In connection with this civil case, the U.S. Marshals seized over 45,000 unauthorized e-cigarettes, with a value of approximately \$703,000, from a California warehouse. The seizure marked the first time FDA and DOJ coordinated with the U.S. Marshals Service to enforce laws related to tobacco products, according to FDA.

#### DOJ enforcement actions under the Prevent All Cigarette Trafficking Act of 2009

Four of DOJ's enforcement actions under the Prevent All Cigarette Trafficking Act of 2009 were civil penalty actions that resulted in about \$2.1 million in settlements. In the remaining 50 actions, ATF placed the entities on DOJ's list of unregistered or noncompliant e-cigarette delivery sellers.

#### DOJ enforcement action under other criminal law

In October 2021, the U.S. Attorney's Office for the Northern District of Texas worked with the Civil Division's Consumer Protection Branch to prosecute an e-cigarette-related criminal case against a Texas vape shop owner under a criminal law that prohibits trafficking in counterfeit goods.<sup>26</sup> The defendant pled guilty, admitting that he regularly communicated with Chinese manufacturers about the production and sale of counterfeit vaping products. He also admitted to importing and selling imitation vaping devices, among other things. The defendant was sentenced to five years' probation.

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## Appendix II

### Previous GAO Work

- **GAO-19-619R:** This report details import information for e-cigarettes, including customs value, tariff revenue, countries of origin, and ports of entry.
- **GAO-20-34:** This report examines how FDA calculates tobacco user fees from tobacco manufacturers and importers, which are used to fund FDA's

tobacco regulation activities. GAO recommended that FDA consult with the Tobacco Tax and Trade Bureau to obtain quality data used to collect the correct amount of user fees. FDA concurred with the recommendation and finalized and signed a written agreement documenting the data and information needed from the Tobacco Tax and Trade Bureau for FDA to perform its annual reconciliation process. FDA's action meets the intent of our recommendation.

- **GAO-20-610SP:** This spotlight describes the potential challenges with increased popularity of e-cigarettes, including the possibility of increased nicotine addiction among younger users.

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## Endnotes

<sup>1</sup>The other criminal law is 18 U.S.C. § 2320.

<sup>2</sup>E-cigarettes, vapes, vaporizers, vape pens, e-cigars, and e-pipes are types of electronic nicotine delivery systems. E-cigarettes use an e-liquid containing nicotine that is heated and inhaled. In addition to nicotine, these products may include other flavorings, propylene glycol and vegetable glycerin, and other ingredients.

<sup>3</sup>Even e-cigarettes authorized by FDA must comply with certain requirements, such as those related to age verification for e-cigarettes sold online. Also, e-cigarette products that are authorized by FDA for sale as a tobacco cessation product or any other therapeutic purpose may still be subject to enforcement by ATF if they are not marketed and sold solely for one of those purposes. 15 U.S.C. § 375(7)(B)(i), (C).

<sup>4</sup>According to FDA, new tobacco products, including e-cigarettes, on the market without the required FDA premarket authorization are adulterated and misbranded under the Federal Food, Drug, and Cosmetic Act and are subject to enforcement.

<sup>5</sup>DOJ's involvement in taking e-cigarette-related enforcement actions under the Federal Food, Drug, and Cosmetic Act began after FDA issued a final rule in 2016 that extended FDA's authority over tobacco products to include e-cigarettes and required e-cigarette companies to obtain FDA authorization before selling and distributing e-cigarettes. See 81 Fed. Reg. 28,974 (May 10, 2016) (codified in relevant part at 21 C.F.R. § 1100.1 (2024)). Certain tobacco products were immediately covered by FDA's tobacco product authorities with the enactment of the Family Smoking Prevention and Tobacco Control Act in 2009. Pub. L. No. 111-31, § 101(b)(3), 123 Stat. 1776, 1786-87 (codified in relevant part at 21 U.S.C. § 387a). For other tobacco products not explicitly listed, the act authorized FDA to issue regulations deeming them to be subject to such authorities.

<sup>6</sup>Preventing Online Sales of E-Cigarettes to Children Act, Pub. L. No. 116-260, div. FF, tit. VI, § 602(a)(1)(A)(iii), 134 Stat. 3136, 3136 (2020) (expanding scope of Prevent All Cigarette Trafficking Act of 2009 to cover e-cigarettes). The Prevent All Cigarette Trafficking Act of 2009 also includes other prohibitions.

<sup>7</sup>See 18 U.S.C. § 371 (conspiracy); *id.* § 1343 (wire fraud); *id.* § 2320 (trafficking in counterfeit goods).

<sup>8</sup>28 U.S.C. §§ 516, 519; 21 U.S.C. § 332(a); 15 U.S.C. § 378(a).

<sup>9</sup>28 U.S.C. §§ 516, 519; 21 U.S.C. § 334.

<sup>10</sup>28 U.S.C. §§ 516, 519; 15 U.S.C. §§ 377(b), 378(b).

<sup>11</sup>15 U.S.C. § 376a(e).

<sup>12</sup>28 U.S.C. §§ 516, 519; see, e.g., 21 U.S.C. § 333; 15 U.S.C. § 377(a); 18 U.S.C. §§ 371, 1343, 1716E(e), 2320.

<sup>13</sup>See 18 U.S.C. § 2320.

<sup>14</sup>FDA conducts inspections and investigations to determine whether retailers, distributors, and manufacturers are complying with the Federal Food, Drug, and Cosmetic Act. When FDA

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determines that one of these entities is not in compliance, it may take certain actions, such as issuing warning letters, civil monetary penalties, and import refusals, or referring matters to DOJ's Civil Division for possible judicial enforcement action. A federal district court recently held that the provisions of 21 U.S.C. § 333(f)(9), which authorize civil monetary penalties for violation of tobacco product requirements, violate the Seventh Amendment to the U.S. Constitution, because they do not provide the right to a jury trial in connection with the possible imposition of those penalties. *Wulferic, LLC v. FDA*, Civil Action No. 4:24-cv-01183-O, 2025 U.S. Dist. LEXIS 148024, \*35 (N.D. Tex. Aug. 1, 2025).

<sup>15</sup>The Civil Division also defends against challenges to government programs and policies in consumer-related areas, including FDA actions. We did not categorize these defensive litigation matters as enforcement actions.

<sup>16</sup>Under a Department of Justice regulation, the Civil Division continues to have responsibility for all criminal litigation and grand jury proceedings arising under the Federal Food, Drug, and Cosmetic Act. 28 C.F.R. § 0.45(j).

<sup>17</sup>Common carriers may include entities such as the FedEx Corporation and the United Parcel Service.

<sup>18</sup>There may be additional enforcement actions that DOJ can take under these laws. In addition, according to officials from DOJ's Drug Enforcement Administration (DEA), the agency may conduct activities that could include unauthorized e-cigarettes. We did not include information about any DEA activities involving unauthorized e-cigarette enforcement in this report because agency officials told us this is not part of DEA's mission. Further, they said that any DEA activities involving unauthorized e-cigarettes would likely be part of investigations related to various controlled substances, such as opioids, which DEA has the authority to investigate. See Controlled Substances Act, Pub. L. No. 91-513, tit. II, 84 Stat. 1242 (1970) (codified as amended at 21 U.S.C. §§ 801– 904). According to DEA, it has the authority to investigate the growing, manufacturing, possession, or distribution of substances scheduled pursuant to 21 U.S.C. § 812.

<sup>19</sup>Department of Justice, Office of the Attorney General, *General Policy Regarding Charging, Plea Negotiations and Sentencing* (Washington, D.C.: Feb. 5, 2025).

<sup>20</sup>The other criminal law is 18 U.S.C. § 2320.

<sup>21</sup>See Department of Health and Human Services (HHS), *Fact Sheet: HHS' Transformation to Make America Healthy Again* (Washington, D.C.: Mar. 27, 2025), <https://www.hhs.gov/press-room/hhs-restructuring-doge-fact-sheet.html>. In September 2025, several states challenged HHS's March 2025 announcement on statutory and constitutional grounds. Amended Complaint, *New York v. Kennedy*, No. 25-cv-00196 (D.R.I. Sept. 5, 2025), ECF No. 94. The court issued a preliminary injunction on July 1, 2025, which was clarified and modified on August 12, 2025, enjoining HHS from implementing reductions in force and restructuring efforts at certain HHS components, including FDA's Center for Tobacco Products. At the time of our review, this litigation was ongoing.

<sup>22</sup>As of February 2026, we had ongoing work related to FDA's oversight of e-cigarettes that will include information on DHS's role in e-cigarette enforcement.

<sup>23</sup>In 2022, FDA requested that the Reagan-Udall Foundation conduct an evaluation for the Center for Tobacco Products to help FDA make changes to better carry out its mission to regulate tobacco products, including e-cigarettes. Specifically, the Foundation recommended that FDA establish an interagency task force to make enforcement of tobacco laws a government-wide priority, in particular to address the marketing of illegal tobacco products and the risks of youth use.

<sup>24</sup>U.S. Customs and Border Protection, under the direction of DHS, was the entity responsible for this seizure and it was not the subject of a formal DOJ enforcement action, according to DOJ officials. Therefore, it is not included in our discussion of pertinent DOJ enforcement actions in fiscal years 2022 through 2025.

<sup>25</sup>DOJ officials stated that FDA and U.S. Customs and Border Protection were the lead entities responsible for this seizure and that it was not the subject of a formal DOJ enforcement action. Therefore, it is not included in our discussion of pertinent DOJ enforcement actions in fiscal years 2022 through 2025.

<sup>26</sup>18 U.S.C. § 2320.