

May 11, 2016

Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton, Ranking Member Pallone and Members of the Energy and Commerce Committee,

On behalf of the undersigned, we urge you to move quickly to pass legislation (H.R. 2058) that would move the "grandfather" date for Food and Drug Administration regulation of nicotine-delivery products from Feb. 15, 2007, to the date when the new rules take effect. If Congress fails to change the date, many products – including e-cigarettes and other vapor devices already being sold and used by consumers – will be required to pass a tremendously onerous and expensive authorization process in order to stay on the market. Now that the FDA has released its deeming regulations, which will be made final Aug. 8, 2016, time is of the essence to act to ensure that smokers can continue to have access to potentially lifesaving tobacco alternatives.

The FDA claims its regulations will reduce tobacco's public-health burden by decreasing rates of tobacco-related deaths and illnesses. In fact, the opposite is true. Medical experts have estimated that e-cigarettes are at least 95 percent less harmful than traditional tobacco cigarettes. E-cigarettes and similar products are helping millions of smokers make the switch to products that, while not perfectly safe, present only a tiny fraction of the risk of death and disease posed by tobacco cigarettes. A report by the United Kingdom's Royal College of Physicians concluded that encouraging smokers to switch to e-cigarettes would be likely to generate significant health gains and prevent almost all the societal harms from smoking. The FDA's regulatory approach privileges the deadliest forms of tobacco and erects costly barriers that may wipe out consumer access to less harmful alternatives. Without the change, the FDA's proposed rules won't reduce smoking; they will increase it. We'll also likely see a "vapor underground" for these products that will further deteriorate consumer safety.

To be clear, vapor products and e-cigarettes will be subject to the current regulations even if the deeming date is moved. The only change would be the approval process each product undergoes in order to stay on the regulated market. The FDA's final rule contains measures aimed at restricting youth access and attempting to increase consumer safety, including age restrictions, photo-identification requirements, labeling mandates and ingredient disclosures. The FDA can still put these regulations into place without forcing e-cigarettes to comply with the arbitrary February 2007 deeming date.



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Even though moving the date is not a long-term solution, it will preserve the current marketplace while the FDA develops a better regulatory scheme. The truth is that any cutoff date will favor existing product developers over future innovators.

There's a better, more commonsense way to regulate emerging smoking cessation technologies rather than using the same onerous and outdated restrictions applied to much more dangerous traditional tobacco products. We make progress in America when innovators give consumers better choices; not when government takes those options away.

Sincerely,

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Campaign for Liberty
Competitive Enterprise Institute
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Heartland Institute
Jeffersonian Project
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National Taxpayers Union
Taxpayers Protection Alliance

