



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 27, 2020
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2339 – Reversing the Youth Tobacco Epidemic Act of 2019

(Rep. Pallone, D-NJ, and 126 cosponsors)

The Administration opposes H.R. 2339. The Administration is encouraged by legislative efforts to protect American youth from the harms of addiction and unsafe tobacco products, and it also acknowledges that H.R. 2339 exempts premium cigars, which have comparatively lower youth usage rates, from certain regulatory burdens. Unfortunately, however, this bill contains provisions that are unsupported by the available evidence regarding harm reduction and American tobacco use habits and another provision that raises constitutional concerns. Accordingly, the Administration cannot support H.R. 2339 in its current form.

The Administration cannot support H.R. 2339's counterproductive efforts to restrict access to products that may provide a less harmful alternative to millions of adults who smoke combustible cigarettes. This includes the bill's prohibition of menthol e-liquids, which available evidence indicates are used relatively rarely by youth. It also includes the bill's approach to remote retail sales. At this time, problems surrounding such sales should be addressed through the application of age verification technologies rather than, as this bill would do, prohibiting such sales entirely.

The Administration is also concerned about the constitutionality of a provision in the bill that prohibits certain advertising practices with respect to electronic nicotine delivery system (ENDS) products. The bill would prohibit marketing and advertising that "appeals to an individual under 21 years of age." This standard may not satisfy the stringent vagueness test applied to regulations of speech under the Constitution's Due Process Clause.

The Administration is committed to protecting the Nation's youth from the harms of tobacco and has already taken several steps to do so. This includes signing legislation to raise the minimum age of sale for tobacco products to 21. In January 2020, moreover, the Administration issued guidance to prioritize enforcement against the unauthorized marketing of certain ENDS products to youth. And the Food and Drug Administration (FDA) is conducting regular surveillance of—and, when appropriate, taking enforcement measures against—websites, social media, and other publications that advertise regulated tobacco products.

The bill takes the wrong approach to tobacco regulation. Rather than continuing to focus on the FDA's Center for Tobacco Products, Congress should implement President Trump's Budget proposal to create a new, more directly accountable agency within the Department of Health and Human Services to focus on tobacco regulation. This new agency would be led

by a Senate-confirmed Director and would have greater capacity to respond to the growing complexity of tobacco products and respond effectively to tobacco-related public health concerns.

If presented to the President in its current form, the President's senior advisors would recommend that he veto the bill.

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