April 16, 2019

Reversing the Youth Tobacco Epidemic Act of 2019

SECTION-BY-SECTION

COMMITTEE ON ENERGY & COMMERCE

Title I – Food and Drug Administration

Sec. 101 – Cigarette Graphic Health Warnings

This section requires the Food and Drug Administration (FDA) to finalize rulemaking to implement graphic health warnings for cigarette packages within 12 months.

The Family Smoking and Tobacco Control Act (Tobacco Control Act) required graphic health warnings to be added to cigarette packages and in cigarette advertisements. However, ongoing litigation has delayed finalizing this provision. Studies around the world have shown that graphic health warnings are an effective way to inform consumers about the health risks of smoking, as well as a mechanism to prevent children and other nonsmokers from beginning to smoke.

Sec. 102 – Advertising and sales parity for all deemed tobacco products

This section extends FDA's 2010 final rule on the sale, distribution, and use of cigarettes and smokeless tobacco to all deemed tobacco products, including e-cigarettes. This provision ensures manufacturers of newly deemed tobacco products are held to the same advertising and sales requirements currently applied to traditional cigarettes. This includes prohibiting the distribution of non-tobacco merchandise that bears a tobacco product brand name or logo; prohibiting brand sponsorship of athletic, music, or other concert events by tobacco product manufacturers; prohibiting offering free gifts in consideration of purchasing a tobacco product; and prohibiting advertising or labeling of tobacco products in nontraditional mediums without first notifying FDA. FDA is required to promulgate a final rule amending these regulations that will take effect two years after the date of enactment.

Sec. 103 – Reducing child and adolescent nicotine addiction

(a) Applicability to All Tobacco Products
This section codifies into the Federal Food, Drug, and Cosmetic Act FDA's authority over all tobacco products, pursuant to the 2016 final deeming rule.

Pursuant to the Tobacco Control Act, cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco were immediately covered by FDA's tobacco product authorities upon enactment. However, all other tobacco products were deemed under FDA's authority by regulation. This provision codifies the final regulation to statutorily extend FDA's "tobacco product" authorities to all tobacco products in the Federal Food, Drug, and Cosmetic Act.

(b) Minimum Age Restrictions
This section raises the minimum age for purchasing tobacco products to 21 and makes it unlawful for any retailer to sell a tobacco product to any person younger than 21 years of age. The provision does not preempt the authority of a state or locality to increase age restrictions for the purchase of tobacco products beyond age 21. This section shall go into effect 180 days after the date of enactment.

(c) Prohibition Against Remote Retail Sales
This section directs FDA to issue final regulations that prohibit non-face-to-face sales of all tobacco products, including e-cigarettes and e-cigarette accessories.

Given the lack of sufficient protections to prevent youth access to tobacco products online and the inability to ensure the same level of face-to-face identification and age verification with remote sales, this provision is intended to enhance protections against underage youth sales.

(d) Prohibiting Flavoring of Tobacco Products
This section prohibits all characterizing flavors of tobacco products, including menthol. This provision includes a narrow pathway for the use of characterizing flavors that decrease smoking should FDA determine that a flavor would be appropriate for the protection of public health.

Sec. 104 – Fees applicable to all tobacco products

This section provides FDA with explicit authority to collect user fees from all classes of tobacco products, including newly deemed products such as e-cigarettes. It also increases the total amount of fees collected by $100 million. This proposal was included in the President's fiscal year (FY) 2020 budget.

Sec. 105 – Regulation of products containing synthetic nicotine

This section directs FDA to issue an interim final rule within one year and a final rule within two years on the regulation of products containing synthetic nicotine or nicotine that is not made or derived from tobacco.

Title II – Federal Trade Commission

Sec. 201 – Advertising of tobacco products

(a) Advertising of Electronic Nicotine Delivery Systems
This section makes it unlawful to market, advertise, or promote any e-cigarette products to individuals under the age of 21 or to market, advertise, promote, or endorse any e-cigarette product without clearly disclosing that the communication is an advertisement. This section would give the Federal Trade Commission (FTC) the authority to issue rules under notice-and-comment rulemaking to implement these prohibitions. It would also allow FTC to seek civil penalties for violations of statute, and it would allow state authorities to enforce the law.

(b) Report to Congress on Tobacco Product Advertising
This section requires FTC to issue a report to Congress within two years, and annually thereafter, on the domestic sales, advertising, and promotional activity of cigarette, cigar, smokeless tobacco, and e-cigarette manufacturers.