

FDA tobacco crackdown draws fire from right

By Nathaniel Weixel – Nov 17, 2018



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The Trump administration is under fire from GOP lawmakers and conservative groups over its proposed crackdown on e-cigarettes and menthol tobacco products.

The Food and Drug Administration (FDA) on Thursday proposed sweeping new restrictions on the sale of e-cigarettes in an effort to cut down on teenage vaping. The agency also said it would seek to ban menthol-flavored traditional cigarettes and flavored cigars.

It was a bold regulatory move from FDA Commissioner Scott Gottlieb that broadly earned praise from Democrats and public health advocates.

“If adopted, these two proposals will have a greater impact in reducing tobacco use by youth and the African-American community than any regulatory measure ever undertaken by the federal government,” said Matthew Myers, president of the Campaign for Tobacco-Free Kids.

But GOP lawmakers and conservatives were dismayed at the scope of the proposals, which they saw as heavy-handed regulation.

“I am concerned the FDA’s proposed actions could limit adult Americans’ access to e-cigarette products that help them quit a more dangerous habit. I am also concerned about regulatory overreach,” said Sen. Ron Johnson (R-Wis.).

"It is troubling ... that an administration that pledges to put America first is targeting legal, American-made products instead of focusing its attention on states that flout federal drug laws," Sen. Richard Burr(R-N.C.) said in a statement.

"I hope the administration will choose a better way to protect our children," Burr added.

The Trump administration has prided itself on its efforts to roll back regulations and help businesses. And in Gottlieb, the administration has an FDA chief with prominent conservative credentials.

Gottlieb was at the American Enterprise Institute prior to being tapped to lead FDA, and previously served in the agency under former President George W. Bush.

But that history hasn't tempered the criticism from GOP conservatives.

Marc Scheineson, an attorney and former associate commissioner at FDA under former President George H.W. Bush, said Gottlieb needed to trust businesses more.

"By not trusting any company, ascribing to them sinister motives, that's raising eyebrows and is being perceived as unfair and potentially un-Republican," said Scheineson, who also lobbies for a flavored cigar company.

The FDA has been grappling with a massive spike in teen vaping, and it's caused Gottlieb to change his stance on e-cigarettes in recent months.

Last spring, the agency loosened regulations on the products. Gottlieb said he wanted to promote the innovation of products that could help adults quit smoking traditional cigarettes. Vaping advocates say that their products can help people quit smoking traditional cigarettes.

But as vaping among teenagers has skyrocketed, Gottlieb is clamping down on the industry.

He launched a major push to stop e-cigarette sales to minors, accusing manufacturers and retailers of contributing to an "epidemic" of use among kids and teenagers.

The culmination of the agency's efforts came when FDA said it would essentially restrict the sales of most flavored e-cigarettes — popular among young people — to age-limited, in-person locations.

Vaping increased 78 percent among high schoolers and 48 percent among middle schoolers since last year, according to federal data.

"These data shock my conscience," Gottlieb said when he announced the restrictions. "These increases must stop."

The menthol ban will need to proceed through the federal rulemaking process, which could take years, but Gottlieb was adamant it was necessary.

"There's no evidence to suggest that menthol-flavored cigarettes may play a role in harm reduction for adult smokers," he said in a statement.

Still, some Republicans accused the agency of government overreach they said echoed the Obama administration.

"Gottlieb feels strongly about Juul products and their use by underage kids, and that's very laudable," said Scheineson, who now runs the food and drug practice at Alston & Bird, referring to the nation's dominant e-cigarette maker.

"What's surprised a lot of folks is that he grabbed that clear public health concern and has carried it across all tobacco products in proposing to ban flavors and products. Even Barack Obama in eight years and [with] a Democratic FDA commissioner didn't propose that," Scheineson added.

Patrick Hedger, policy director at FreedomWorks, a conservative and libertarian advocacy group, said the agency's actions are running counter to the goals of the rest of the Trump administration.

"FDA is using its regulatory authority to try and achieve a perfect outcome rather than a realistic one at a time when the rest of the Trump administration is doing the exact opposite," Hedger said.

"While we should all be concerned with the significant public health impact of smoking, the FDA is continuing to suffer from the nirvana fallacy, a problem that long plagued the administrative state prior to the Trump administration," he added.

Daren Bakst, a senior research fellow at the Heritage Foundation, said FDA was imposing too many restrictions on adult smokers who want to use e-cigarettes as a way to quit smoking.

"We don't want the government, or anyone else to get in the way of these products," Bakst said. "The market has developed important innovations that give hope to people who have a hard time stopping smoking. [This] policy is not something I would point to as being free market oriented."

But public health advocates have come to Gottlieb's defense.

Samir Soneji, an associate professor at the Dartmouth Institute for Health Policy and Clinical Practice, said adult smokers aren't attracted to the flavors the FDA is singling out, and that tobacco alternatives are much more effective at helping people quit smoking, without harming teenagers.

"If the vaping industry is serious, there's no reason for Juul to sell watermelon, mint or fruit medley," he said. "because it attracts kids and we're starting to learn it doesn't appeal to adult smokers."

Soneji sees the FDA's efforts as important to preventing youth smoking.

"No child has ever abused Nicorette gum," Soneji said. "It's just a common battle cry from the e-cigarette industry that we're harming adult smokers."

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