



May 4, 2016

The Honorable William Thad Cochran  
 Chairman  
 Committee on Appropriations  
 United States Senate  
 Washington, D.C. 20510

The Honorable Barbara Mikulski  
 Ranking Member  
 Committee on Appropriations  
 United States House of Representatives  
 Washington, D.C. 20510

The Honorable Jerry Moran  
 Chairman  
 Subcommittee on Agriculture, Rural  
 Development, Food and Drug Administration,  
 and Related Agencies  
 Committee on Appropriations  
 United States Senate  
 Washington, D.C. 20510

The Honorable Jeff Merkley  
 Ranking Member  
 Subcommittee on Agriculture, Rural  
 Development, Food and Drug Administration,  
 and Related Agencies  
 Committee on Appropriations  
 United States Senate  
 Washington, D.C. 20510

Dear Chairman Cochran, Ranking Member Mikulski, Chairman Moran, and Ranking Member Merkley:

We are writing to express our strong opposition to two provisions in the House Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations bill for Fiscal Year 2017 that would significantly weaken the Food and Drug Administration's authority over several tobacco products including e-cigarettes and cigars. One provision seeks to completely exempt certain cigars from FDA regulation. The other exempts e-cigarettes, cigars, and other currently unregulated tobacco

products from an important product review requirement, taking away a powerful and efficient tool to protect children from the candy- and fruit-flavored e-cigarettes and cigars that have flooded the market in recent years. We urge you to reject these House provisions and continue the Senate's tradition of keeping its Appropriations bill clean of riders that limit FDA's ability to protect children and public health from tobacco.

The need for FDA oversight of these products could not be clearer. On April 14 the Centers for Disease Control and Prevention released the 2015 National Youth Tobacco Survey, which highlighted that the alarming increase in youth use of electronic cigarettes continues. From 2011 to 2015, there was a more than ten-fold increase in current e-cigarette use among high school students – from 1.5 percent to 16 percent. In addition, high school boys now smoke cigars at a slightly higher rate than cigarettes – 11.5 percent for cigars and 10.7 percent for cigarettes. With three million middle and high school students using e-cigarettes and 1.4 million using cigars, the oversight of these products should not be weakened.

Section 749 of the House bill would block FDA from using funds to “finalize, implement, administer, or enforce” a pending rule that asserts authority over cigars, e-cigarettes, and certain other tobacco products unless that rule excludes “large and premium cigars” from FDA oversight. No tobacco product should be exempt from science-based FDA oversight. The health risks of cigars include several types of cancer, as well as heart and lung disease. In addition, the rider defines “large and premium cigars” so broadly that it could also exempt some cheap, machine-made, flavored cigars that are widely used by children. This exemption creates a loophole that invites tobacco companies to modify their products to qualify for this exemption – a loophole that tobacco companies will surely exploit to keep targeting children.

The House Appropriations Committee also adopted an amendment that changes the so-called “grandfather date” in order to exempt e-cigarettes, cigars, and other currently unregulated tobacco products from an important product review requirement. Under current law, manufacturers are required to provide information to the FDA so that the agency can assess the risks to public health of new tobacco products, which are defined as products introduced to the market after February 15, 2007. Changing this date would exempt e-cigarettes, cigars and other products now on the market from this FDA review and would significantly weaken FDA's ability to take prompt action to protect children from thousands of fruit- and candy-flavored e-cigarettes and cigars, including products in flavors such as cotton candy, gummy bear and fruit punch that clearly appeal to kids.

Supporters of the “grandfather date” rider have portrayed it as a compromise that modernizes the Tobacco Control Act, but it is no such thing. This rider allows a new generation of tobacco products to be grandfathered in and relieves manufacturers of the responsibility to demonstrate that these products are not detrimental to public health.

Assessing the risks to public health of different types of tobacco products and determining how they are regulated is best determined using a science-based approach by FDA. Tobacco use remains the leading preventable cause of death in the United States and is responsible for an estimated \$170 billion in

health care costs each year. We urge the Senate to reject any provisions to make it more difficult for FDA to address this public health problem.

Sincerely,

Academy of General Dentistry  
Action on Smoking and Health  
American Academy of Family Physicians  
American Academy of Otolaryngology—Head  
and Neck Surgery  
American Academy of Pediatrics  
American Association for Cancer Research  
American Association for Dental Research  
American Association for Respiratory Care  
American Cancer Society Cancer Action  
Network  
American College of Cardiology  
American College of Occupational and  
Environmental Medicine  
American College of Preventive Medicine  
American Congress of Obstetricians and  
Gynecologists  
American Heart Association  
American Lung Association  
American Medical Association  
American Psychological Association  
American Public Health Association  
American School Health Association  
American Society of Addiction Medicine  
American Society of Clinical Oncology  
American Thoracic Society  
Association of Maternal & Child Health  
Programs  
Association of Schools and Programs of Public  
Health

Association of State and Territorial Health  
Officials  
Association of Women's Health, Obstetric and  
Neonatal Nurses  
Big Cities Health Coalition  
Campaign for Tobacco-Free Kids  
ClearWay Minnesota  
Community Anti-Drug Coalitions of America  
COPD Foundation  
Eta Sigma Gamma - National Health Education  
Honorary  
International Association for the Study of Lung  
Cancer  
Lung Cancer Alliance  
March of Dimes  
National African American Tobacco Prevention  
Network  
National Association of County & City Health  
Officials  
National Association of Pediatric Nurse  
Practitioners  
National Hispanic Medical Association  
National Network of Public Health Institutes  
National Physicians Alliance  
Oncology Nursing Society  
Prevention Institute  
Society for Public Health Education  
Society for Research on Nicotine & Tobacco  
The Society of State Leaders of Health and  
Physical Education  
Trust for America's Health

CC: United State Senate Committee on Appropriations Members