AMENDMENT TO AGRICULTURE AND RURAL DEVELOPMENT APPROPRIATIONS BILL

OFFERED BY MR. COLE OF OKLAHOMA AND MR. BISHOP OF GEORGIA

[FY 2017 Appropriations]

At the end of the bill (before the spending reduction account), insert the following:

SEC. ____. (a) None of the funds appropriated or otherwise made available by this Act or any other Act with respect to any fiscal year may, for each tobacco product which the Secretary of Health and Human Services by regulation under section 901(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a(b)) deems to be subject to chapter IX of such Act, be used to treat—

(1) any reference in sections 905(j) or 910(a) of such Act (21 U.S.C. 387e(j), 387j(a)) to February 15, 2007, as other than a reference to the effective date of the regulation under which the tobacco product is deemed to be subject to the requirements of such chapter pursuant to section 901(b) of such Act (21 U.S.C. 387a(b)); and

(2) any reference in such sections to 21 months after the date of enactment of the Family Smoking
Prevention and Tobacco Control Act as other than
a reference to 21 months after the effective date of
such deeming regulation.

(b)(1) Notwithstanding any other provision of law,
not later than 12 months after the date on which vapor
products are deemed to be subject to the Federal Food,
Drug, and Cosmetic Act pursuant to section 901(b) of
that Act (21 U.S.C. 387a), the Secretary of Health and
Human Services shall issue a notice of proposed rule-
making to establish a product standard for vapor product
batteries pursuant to section 907 of that Act (21 U.S.C.
387g).

(2) Notwithstanding any other provision of law, not
later than 24 months after the date on which vapor prod-
ucts are deemed to be subject to the Federal Food, Drug,
and Cosmetic Act pursuant to section 901(b) of that Act
(21 U.S.C. 387a), the Secretary of Health and Human
Services shall promulgate a final tobacco product standard
for vapor product batteries pursuant to section 907 of that
Act (21 U.S.C. 387g).

(c) A vapor product shall be deemed to be misbranded
under section 903(a) of the Federal Food, Drug, and Cos-
metic Act (21 U.S.C. 387e(a)) if the advertising with re-
spect to the vapor product is disseminated by a manufac-
turer, distributor, or retailer of the product in a news-
paper, magazine, periodical, or other publication (including any publication of periodic or limited distribution) other than an adult publication.

(d)(1) A retailer may only sell any vapor product in a direct face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine).

(2) This subsection shall not apply with respect to sales of vapor products conducted through—

(A) mail-order; or

(B) a vending machine or self-service display if, with respect to the facility in which such vending machine or display is located, the retailer of such products ensures that no person under 18 years of age would be present or be permitted to enter.

(3) A violation of this section is deemed to constitute a violation of the Federal Food, Drug, and Cosmetic Act relating to a tobacco product for purposes of section 303(f)(9) of such Act (21 U.S.C. 333(f)(9)).

(e)(1) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to require that the labeling of vapor products contain—

(A) the phrase “Keep Out of Reach of Children”;

(B) the phrase “Underage Sale Prohibited”; and
(C) an accurate statement of the nicotine content of
the vapor product.

(2) A vapor product whose label is in violation of the
regulations required by paragraph (1) is deemed to be mis-
branded under section 903 of the Federal Food, Drug,

(f)(1) Every person who owns or operates an estab-
lishment in any State engaged in the retail sale of a vapor
product shall register that establishment with the Sec-
retary of Health and Human Services within the later of
60 days after the date of enactment of this Act, or 30
days after first engaging in such retail sale.

(2) The requirements of this subsection do not apply
with respect to any establishment subject to an active reg-
istration under—

(A) any State law relating to tobacco products; or

(B) section 905 of the Federal Food, Drug, and Cos-

(3) The Secretary shall make available for inspection,
to any person so requesting, any registration filed under
this section.

(g) In this section:

(1) The term “adult publication” means a newspaper,
magazine, periodical, or other publication—
(A) whose readers younger than 18 years of age
constitute 15 percent or less of the total readership
as measured by competent and reliable survey evi-
dence; and

(B) that is read by fewer than 2 million persons
younger than 18 years of age as measured by com-
petent and reliable survey evidence.

(2) The terms “label” and “labeling” have the mean-
ings given to such terms in section 201 of the Federal

(3) The term “tobacco product” has the meaning
given to such term in section 201 of the Federal Food,

(4) The term “vapor product”—

(A) means any non-combustible product that
employs a heating element, power source, electronic
circuit, or other electronic, chemical, or mechanical
means, regardless of shape or size, to produce vapor
from nicotine in a solution or other form;

(B) includes any electronic cigarette, electronic
cigar, electronic cigarillo, electronic pipe, or similar
product or device, and any vapor cartridge or other
container of nicotine in a solution or other form; and

(C) does not include any product regulated as
a drug or device by the Food and Drug Administra-