For Immediate Release
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The FDA Must Strengthen the Proposed “Deeming” Regulation

On Friday, the Tobacco Control Legal Consortium urged the Food and Drug Administration to act more boldly to regulate all tobacco products, including e-cigarettes and cigars. In formal comments on the FDA’s “deeming” regulation asserting authority over new categories of tobacco products, the Consortium endorsed the FDA’s action as a positive step, but criticized the proposal for failing to adequately address the health hazards of the newly-regulated tobacco products, including e-cigarettes.

The Consortium’s message has not changed since it petitioned the FDA over a year ago to regulate all tobacco products as rigorously as it regulates cigarettes. The FDA’s power is clear and the science is compelling; all that remains is for the agency to act. The assertion of federal authority is a necessary first step, but achieves little by itself. The agency is in a race with a dynamic and deadly industry; it must move more decisively or risk irrelevance in the quickly changing marketplace.

With its comments, which were joined by the Tobacco Technical Assistance Consortium and Boston Public Health Commission, the Consortium submitted three thousand pages of scientific information, highlighting the evidence demanding bolder action. As this evidence and the Consortium’s comments show, the FDA must do more to reduce youth access to tobacco and protect public health, including:

- Prohibit all flavors – including menthol – in all tobacco products, including e-cigarettes;
- Restrict advertising and promotional activities that are seen by youth;
- Mandate strong, accurate warning labels that effectively communicate risk;
- Prohibit self-service access to products;
- Establish minimum pack-sizes for cheap tobacco products; and
- Require child-resistant packaging for liquid nicotine.

The Consortium also strongly agrees with U.S. Representatives Henry Waxman, Frank Pallone, Jr., and Diana DeGette, who called on the FDA to use its broad premarket review authority over newly-covered tobacco products to immediately curtail youth-focused marketing. As a principal architect of the Tobacco Control Act, Congressman Waxman is uniquely situated to point the agency toward the type of effective and timely regulation intended by Congress, and the agency should heed his guidance and honor the intent of the law.