



Urge the FDA to Regulate All Tobacco Products

On September 6, 2013, the Tobacco Control Legal Consortium, joined by a coalition of state and local public health organizations and their national membership organizations, filed a Citizen Petition urging the U.S. Food and Drug Administration (FDA) to regulate e-cigarettes, cigars, “little cigars,” hookah and all other tobacco products that are unregulated by the federal government.

The FDA has had the authority to regulate tobacco products since 2009, when Congress passed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). This historic law regulates cigarettes, cigarette tobacco, smokeless tobacco and roll-your-own tobacco but leaves all other tobacco products unregulated unless the FDA takes action. Although the FDA has repeatedly pledged over the past four years to regulate other products, such as cigars and e-cigarettes, the FDA has failed to act.

The catastrophic toll that cigarettes have taken on public health has been the target of state and local governments for decades. However, with cigarettes the subject of stringent regulation and often higher taxes, other tobacco products have become an increasingly popular way to create and sustain nicotine addiction. Federal regulation is not keeping up with the changing marketplace and the tobacco industry continues to exploit regulatory loopholes. The three largest cigarette manufacturers are now also manufacturing non-combustible — and unregulated — tobacco products that can be used legally in many smoke-free environments. Some of these unregulated products are even sold under the same brand names as the most popular cigarette brands.

The FDA’s failure to regulate all tobacco products threatens to undermine the public health gains of the last two decades. In the past, effective smoke-free laws and taxes on cigarettes prompted many smokers to quit as it became more and more inconvenient to buy cigarettes and smoke in public. With the recent proliferation of new tobacco products, smokers are able to maintain their nicotine addiction with products manufactured by the same companies that manufacture their cigarettes. Smokers can smoke when smoking is permitted, but use other products when smoking is prohibited. In addition to diminishing the incentive to quit, the concurrent use of two or more tobacco products poses unique risks for disease and addiction.

A growing body of evidence shows that non-traditional tobacco products such as flavored cigars and flavored smokeless tobacco are becoming a significant avenue for initiation of tobacco use among youth. Children are attracted to the sweet flavored offerings — which are often sold and

used like cigarettes — and often do not realize that the products are harmful and addictive. While flavored cigarettes (other than menthol) are now prohibited, flavored cigars and cigarette-like “little cigars” are commonplace, inexpensive and becoming the product of choice for many young people.

The danger posed by flavored tobacco products is prompting some communities to regulate the sale of those products, but community leaders face an uphill battle as the tobacco industry employs aggressive lobbying and litigation tactics to fight local restrictions. In addition, relying on local efforts to restrict youth access to other tobacco products will result in a patchwork approach, reducing the public health benefit.

The most effective way to protect public health is for the FDA to assert its jurisdiction over all tobacco products and regulate them as it regulates cigarettes.

As with all FDA dockets related to the regulation of tobacco, Consortium attorneys are available to help you develop your comments.

In developing your comment to the petition, consider providing information on some of the following topics:

- Local data that shows the public health harm or the prevalence of use of unregulated products like little cigars, e-cigarettes and hookah.
- Local data that shows the public health harm or the prevalence of dual and poly use of tobacco products, including unregulated products.
- Information regarding the effect of unregulated products on your community, such as their effect on initiation and cessation.
- Information regarding how unregulated products are being marketed and advertised in your community and information regarding how they are actually used in your community.
- Information about the successes and failures of state and local regulation of unregulated products like cigars, e-cigarettes and hookah and the lessons that the FDA could learn from state and local governments.
- Suggestions for the ways that the FDA could effectively regulate products that it asserts jurisdiction over in the future.
- If your jurisdiction has adopted any local restrictions on other tobacco products, information about the effect of the restriction on tobacco initiation, use and cessation in your community.