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51 Health Groups Urge Administration to Defend and Enforce FDA Rule for E-Cigarettes, Cigars

Letter Raises Concern over Judicial and Regulatory Delays

WASHINGTON, D.C.—Fifty-one leading health groups today urged the current administration to defend and fully implement the 2016 Food and Drug Administration (FDA) rule establishing public health oversight of electronic cigarettes, cigars and other previously unregulated tobacco products, also known as the deeming rule.

In a [letter](#) to Health and Human Services (HHS) Secretary Tom Price, the groups expressed concern that the administration is taking steps to reconsider the rule, putting kids and public health at risk. Twice in recent months, on March 1 and May 1, 2017, the Department of Justice (DOJ) has delayed filing legal briefs defending the rule against tobacco industry challenges. In addition, the FDA on May 1 announced it was delaying enforcement of future deadlines set by the rule for three months to “allow new leadership at the FDA and the Department of Health and Human Services additional time to more fully consider issues raised by the final rule that are now the subject of multiple lawsuits in federal court.”

“The public health justification for regulation is as compelling now as it was a year ago, when the FDA issued the final deeming rule,” the health groups wrote. “There is, therefore, no basis for reconsideration of the rule or a failure to defend it strongly in court. Every day of delay in its full implementation subjects the public to the continuing public health threat of unregulated, highly addictive and dangerous tobacco products, many of which come in sweet or candy flavors which are designed and marketed to appeal to children.”

Tobacco companies have waged a multi-front attack on the FDA rule through legislative, regulatory and legal means. Congress rejected industry efforts to include provisions weakening the rule in the recently-approved spending bill for the rest of fiscal year 2017, but the industry is expected to continue its efforts in future spending bills. The industry has also filed several lawsuits challenging the rule.

Last August, the DOJ strongly defended the rule as essential to protecting public health in a case called *Nicopure Labs LLC v. FDA* that is pending in the U.S. District Court for the District of Columbia. The health groups’ letter cites the government’s key findings in issuing and defending the FDA rule.

The health groups expressed particular concern that e-cigarettes and cigars are marketed in a wide assortment of candy and fruit flavors that have helped fuel their popularity with kids. Youth use of e-cigarettes has skyrocketed in recent years, surpassing use of regular cigarettes, and more high school boys now smoke cigars than cigarettes.

A government study, published in the October 2015 issue of the Journal of the American Medical Association (JAMA), found that flavors play a key role in youth use of these products. According to the study, 85.3 percent of current e-cigarettes users aged 12-17 had used a flavored e-cigarette in the past month and 81.5 percent of current youth e-cigarette users said they used the products “because they come in flavors I like.” Similarly, 71.7 percent of current cigar smokers aged 12-17 had used a flavored cigar product in the last month, and 73.8 percent of current youth cigar smokers said they smoked cigars “because they come in flavors I like.”

“In light of the overwhelming record evidence compiled by the FDA, persuasively presented as to e-cigarettes by the DOJ in the *Nicopure Labs* case, there is no public health justification for the FDA to reconsider the deeming rule, or to postpone the implementation of its provisions,” the letter states.

Groups signing the letter include the Campaign for Tobacco-Free Kids, American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, American Thoracic Society, Tobacco Control Legal Consortium and Truth Initiative. The full list of signatories is as follows:

Action on Smoking & Health	American Psychological Association
American Academy of Family Physicians	American Public Health Association
American Academy of Oral and Maxillofacial Pathology	American School Health Association
American Academy of Pediatrics	American Society of Addiction Medicine
American Association for Cancer Research	American Society of Clinical Oncology
American Association for Dental Research	American Thoracic Society
American Association for Respiratory Care	Americans for Nonsmokers’ Rights
American Cancer Society Cancer Action Network	Asian Pacific Partners for Empowerment, Advocacy and Leadership
American College of Cardiology	Association of Women's Health, Obstetric & Neonatal Nurses
American College of Occupational and Environmental Medicine	Big Cities Health Coalition
American College of Physicians	Campaign for Tobacco-Free Kids
American College of Preventive Medicine	ClearWay Minnesota
American Congress of Obstetricians and Gynecologists	Community Anti-Drug Coalitions of America
American Dental Association	Eta Sigma Gamma - National Health Education Honorary
American Heart Association	March of Dimes
American Lung Association	National African American Tobacco Prevention Network
American Medical Association	

National Association of County and City Health
Officials
National Association of Pediatric Nurse
Practitioners
National Center for Health Research
National Hispanic Medical Association
National Network of Public Health Institutes
National Physicians Alliance
Oncology Nursing Society
Prevention Institute
Prevention Partners
Public Health Solutions

Society for Cardiovascular Angiography and
Interventions
Society for Public Health Education
Students Against Destructive Decisions
The Society of State Leaders of Health and
Physical Education
Tobacco Control Legal Consortium
Trust for America's Health
Truth Initiative
United Methodist Church- General Board of
Church and Society