

13-05

## STATEMENT OF POLICY

### Regulation of Smokeless and Emerging Tobacco Products

#### Policy

The National Association of County and City Health Officials (NACCHO) urges the Food and Drug Administration (FDA) to enact more stringent regulations related to the manufacturing, distribution, advertising, and marketing of smokeless and emerging tobacco products (e.g., hookah, snus, dissolvables, and other nicotine delivery devices) and to conduct research on the health impact of smokeless and emerging tobacco products. Until then, NACCHO encourages local health departments to support state and local legislation that modifies existing law to include new and emerging tobacco products while safeguarding provisions of existing laws.

NACCHO encourages local health departments to support state and local legislation that does any of the following:

- Uses broad definitions to include all smokeless tobacco products in new tobacco control legislation.
- Raises the excise tax on smokeless tobacco products to a level equivalent to that of cigarettes and other conventional tobacco products.
- Prohibits the sale of smokeless tobacco and emerging products to minors.
- Prohibits the sale and marketing of smokeless tobacco products containing flavors that may appeal to minors.
- Prohibits the sale of dissolvable tobacco products not regulated by the FDA.
- Bans the distribution of free samples of smokeless tobacco products, even in “qualified adult-only facilities.”
- Imposes strict control on the sampling of emerging tobacco products.

NACCHO also encourages local health departments to do the following:

- Oppose legislation that exempts smokeless tobacco products from current tobacco control regulations.
- Enforce state and local laws that aim to regulate the sales and marketing of smokeless tobacco products.
- Work with tobacco control coalitions to educate the public on the negative health consequences of smokeless tobacco products.

#### Justification

On June 22, 2009, President Obama signed into law the Family Smoking Prevention and Tobacco Control Act (TCA), giving the FDA authority to regulate the manufacturing, distribution, sale, advertising, and marketing of tobacco products. It also preserves state and local governmental authority to regulate tobacco sales and distribution in their jurisdictions.<sup>1</sup> Under



TCA, the tobacco industry is required to disclose information on ingredients and constituents in smokeless tobacco products, and gain FDA approval for any changes to products.<sup>2</sup> The FDA also has the authority to conduct pre-market reviews of all new tobacco products.<sup>3</sup> The law contains strict provisions regarding the manufacture, sale, distribution, advertising, and marketing of smokeless tobacco products that aim to reduce access to these products by youth. For example, the law prohibits smokeless tobacco products from being sold by impersonal modes of sale, such as in vending machines or self-service display; limits most free distribution of smokeless tobacco products; prohibits tobacco brand name sponsorship of any athletic, musical, or other social or cultural event; and prohibits the sale of clothing and other items with smokeless tobacco brands or logos.<sup>4</sup> Even though these new restrictions are essential to reducing the prevalence of smokeless tobacco use, many of the provisions contain exemptions that severely limit their effectiveness.<sup>5</sup> For example, free distribution of smokeless tobacco products is allowed through mail-order and in adult-only facilities, such as bars or adult-only areas at public venues, festivals or events.<sup>6</sup> Additionally, many state and local tobacco control laws fail to include smokeless tobacco products, allowing these products to be marketed and distributed with minimal regulation.<sup>7</sup>

In the United States, the two main types of smokeless tobacco products are chewing tobacco and snuff.<sup>8</sup> Several emerging smokeless tobacco products have been gaining popularity in the United States, including snus and dissolvable tobacco products.<sup>9</sup> Snus is a tobacco product, originally developed in Sweden, consisting of flavored, moist snuff packaged in a small pouch that is placed between the cheek and gum.<sup>10</sup> Unlike chewing tobacco and snuff, snus does not produce excess saliva, thereby making it a spitless product.<sup>11</sup> Dissolvable tobacco products, or dissolvables, consist of powdered tobacco, flavoring, and nicotine and come in different user-friendly forms and brands. For example, Camel Orbs are pellets that look like Tic-Tacs; Camel Strips resemble dissolvable breath strips; and Camel Sticks look like toothpicks.<sup>12</sup> The characteristic spitless property of these products is creating new pathways for tobacco use and addiction among youth populations, as they are able to be used discreetly in schools and in homes.<sup>13</sup>

Smokeless tobacco consumption in the United States is a significant concern, especially among adolescent populations. According to the 2012 National Survey on Drug Use and Health, smokeless tobacco use prevalence was 5.5% in young adults (ages 18-25) and 2.1% in adolescents (ages 12-17),<sup>14</sup> which has likely increased due to the growing popularity of emerging products.<sup>15</sup> Tobacco manufacturers have been refocusing their efforts towards promoting and distributing smokeless tobacco products.<sup>16</sup> In 2011, manufacturers spent \$451.7 million on smokeless tobacco advertising and promotion, up from \$444.2 million in 2010.<sup>17</sup>

Most smokeless tobacco products contain low levels of nicotine and the carcinogenic nicotine-derived nitrosamine ketone (NNK) and pose a lower relative risk to the individual user compared to cigarettes.<sup>18</sup> However, the CDC states that smokeless tobacco is not a safe alternative to smoking cigarettes.<sup>19</sup> Smokeless tobacco users are at an increased risk of developing cancers of the mouth, esophagus, pharynx, larynx, stomach, and pancreas.<sup>20</sup> Smokeless tobacco is also associated with dental problems including gum recession, gingivitis, tooth decay, and bone loss around the teeth.<sup>21</sup> A report by the FDA's Tobacco Products Scientific Advisory Committee

(TPSAC) concluded that more research is needed to determine the full extent of health effects caused by smokeless tobacco products.<sup>22</sup>

Patterns of dual use suggest that smokeless tobacco products are not being used in place of cigarettes, but in addition to them. A 2012 study demonstrated a 30% dual use rate (the use of cigarettes in conjunction with one or more other tobacco products) among current tobacco users.<sup>23</sup> It also showed that 64% of individuals who use other tobacco products smoke cigarettes concurrently.<sup>24</sup> The 2009 Behavior Risk Surveillance System survey determined that the percentage of boys that smoked at least half a pack of cigarettes a day was five times higher for smokeless users than for non-users.<sup>25</sup> While Tobacco Products Scientific Advisory Committee concluded that exclusive use of dissolvables would greatly reduce the risk of smoking-caused disease compared with regular use of cigarettes, recent studies suggest that cigarette smokers do not find dissolvables to be sufficient as an alternative to cigarette smoking.<sup>26</sup>

Strengthening state and local policies will help to better regulate smokeless tobacco by filling in the gaps in existing tobacco control legislation, particularly in the following areas:

*Taxation:* Many state laws either only list specific tobacco products or define tobacco products as “those that can be smoked or chewed.” This exclusion of dissolvables and snus may allow these products to be sold to minors or to be taxed at a much lower rate than cigarettes.<sup>27</sup> Current data shows that state tax rates of smokeless tobacco products are substantially lower than that of cigarettes. For example, in Indiana, a package of 15 Camel Orbs, a type of dissolvable pellets, sold for less than three dollars, which included a 24% excise tax. A pack of premium brand cigarettes were taxed at \$0.995 per pack and sold for five dollars.<sup>28</sup> Many states have also adopted a weight-based tax rate policy, causing low-weight products such as smokeless tobacco products to be severely under-taxed.<sup>29</sup> Several states have taken steps to ensure the inclusion of smokeless tobacco products in state tobacco control laws. The State of Minnesota passed the Tobacco Modernization and Compliance Act of 2010, which changed the definition of “tobacco products” in its tax code to include any tobacco product that is “intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.”<sup>30</sup>

*Flavoring:* Under the Tobacco Control Act, the use of characterizing flavors in cigarettes is now prohibited, with the exception of tobacco and menthol.<sup>31</sup> However, the law does not prohibit characterizing flavors in smokeless tobacco products, allowing these products to be sold in a wide variety of flavors that attract both adults and adolescents, such as mint, fruit, candy, and alcohol flavors.<sup>32</sup> Both New York City and Providence, RI have successfully regulated the sale of flavored smokeless tobacco products. New York City enacted a law which prohibits the sale of tobacco products with a characterizing flavor other than menthol, mint, or wintergreen, except in certain “tobacco bars.”<sup>33</sup>

*Marketing/Distribution:* The Tobacco Control Act prohibits free sample of smokeless tobacco except in “qualified adult-only facilities,” which are commonly tents or booths set up at public gatherings such as sporting events or rodeos.<sup>34</sup> Although minors are prohibited from entering the tents, this provision is usually not strongly enforced, thereby giving minors free access to smokeless tobacco products.<sup>35</sup> About 20 states have already taken some initiative to prohibit the

distribution of free tobacco samples; however, many of these laws exclude smokeless tobacco products or contain exemptions that limit their effectiveness.<sup>36</sup>

New and emerging tobacco products are constantly being developed and promoted by the tobacco industry. Without adequate regulation and further research into their health effects, these products will continue to pose a great threat to public health.

## **References**

1. U.S. Food and Drug Administration. (2012). *Overview of the Family Smoking Prevention and Tobacco Control Act*. Retrieved Oct. 23, 2012, from <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/>.
2. Ibid.
3. Ibid.
4. U.S. Food and Drug Administration. (2012). *Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco*. Retrieved Oct. 25, 2012, from <http://www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/RegsRestrictingSale/default.htm>.
5. Tobacco Control Legal Consortium. (2011). *Novel Non-Cigarette Tobacco Products: An Overview of Regulatory Options*. Freiberg, M.: Author. Retrieved Oct. 29, 2012, from <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-novelotps-2011.pdf>.
6. Cigarettes and Smokeless Tobacco, 21 C.F.R. pt. 1140 (2013). Retrieved on April 7, 2014 from <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=1140&showFR=1&subpartNode=21:8.0.1.4.47.2>
7. Tobacco Control Legal Consortium. (2011). *Novel Non-Cigarette Tobacco Products: An Overview of Regulatory Options*. Frieberg, M.: Author. Retrieved October 29, 2012 from <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-novelotps-2011.pdf>
8. Legacy for Health. (2013). *Smokeless Tobacco Factsheet*. Retrieved April 7, 2014, from [http://legacyforhealth.org/content/download/581/6920/file/Fact\\_Sheet-Smokeless\\_Tobacco.pdf](http://legacyforhealth.org/content/download/581/6920/file/Fact_Sheet-Smokeless_Tobacco.pdf).
9. Ibid.
10. Ibid.
11. Ibid.
12. Campaign for Tobacco-Free Kids. (2012). *Smokeless Tobacco and Kids*. Retrieved Nov. 1, 2012, from <http://www.tobaccofreekids.org/research/factsheets/pdf/0003.pdf>.
13. Ibid.
14. Substance Abuse and Mental Health Services Administration, *Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013. Retrieved on April 7, 2014 from <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.htm#ch4.1>.
15. Campaign for Tobacco-Free Kids. (2012). *Smokeless Tobacco and Kids*. Retrieved Nov. 1, 2012, from <http://www.tobaccofreekids.org/research/factsheets/pdf/0003.pdf>.
16. United States Department of Health and Human Services. (2014). *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General. Chapter 13: Patterns of Tobacco Use Among U.S. Youth, Young Adults, and Adults*.
17. Federal Trade Commission. (2013). *Federal Trade Commission Smokeless Tobacco Report for 2011*. Accessed on April 16, 2014 from <http://www.ftc.gov/reports/federal-trade-commission-smokeless-tobacco-report-2011>
18. Levy, D. T., Mumford, E. A., Cummings, M. K., Gilpin, E. A., Giovino, G., Hyland, A., et al. (2004). The relative risks of low-nitrosamine smokeless tobacco product compared with smoking cigarettes: Estimates of a panel of experts. *Cancer Epidemiology, Biomarkers & Prevention*. Retrieved Nov. 1, 2012, from <http://cebp.aacrjournals.org/content/13/12/2035.full>.
19. Centers for Disease Control and Prevention. (2011). *Smoking & Smokeless Tobacco*. Retrieved Oct. 24, 2012, from [http://www.cdc.gov/tobacco/basic\\_information/smokeless/](http://www.cdc.gov/tobacco/basic_information/smokeless/).

20. Rodu, B., Jansson, C. (2004). Smokeless tobacco and oral cancer: A review of the risks and determinants. *Critical Reviews in Oral Biology and Medicine*. Retrieved Nov. 1, 2012, from <http://cro.sagepub.com/content/15/5/252.full>.
21. Centers for Disease Control and Prevention. (2011). *Smoking & Smokeless Tobacco*. Retrieved Oct. 24, 2012, from [http://www.cdc.gov/tobacco/basic\\_information/smokeless/](http://www.cdc.gov/tobacco/basic_information/smokeless/).
22. U.S. Food and Drug Administration. (2012). *TPSAC Report on Dissolvable Tobacco Products*. Retrieved Nov. 12, 2012, from <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM295842.pdf>.
23. Rath, Jessica, Villanti, Andrea, Abrams, D. B., & Vallone, D. M. (2012). Patterns of tobacco use and dual use in U.S. young adults: The missing link between youth prevention and adult cessation. *Journal of Environmental Public Health*. Retrieved Nov. 12, 2012, from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3361253/>.
24. Ibid.
25. Campaign for Tobacco-Free Kids. (2012). *Smokeless Tobacco and Kids*. Retrieved Nov. 1, 2012, from <http://www.tobaccofreekids.org/research/factsheets/pdf/0003.pdf>.
26. U.S. Food and Drug Administration. (2012). *TPSAC Report on Dissolvable Tobacco Products*. Retrieved Nov. 12, 2012, from <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM295842.pdf>.
27. U.S. Food and Drug Administration. (2012). *Overview of the Family Smoking Prevention and Tobacco Control Act*. Retrieved Oct. 23, 2012, from <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/>.
28. Centers for Disease Control and Prevention. (2012). *Tobacco Control State Highlights 2012*. Retrieved on April 7, 2014 from [http://www.cdc.gov/tobacco/data\\_statistics/state\\_data/state\\_highlights/2012/states/indiana/index.htm](http://www.cdc.gov/tobacco/data_statistics/state_data/state_highlights/2012/states/indiana/index.htm)
29. Freiberg, M. (2012). Options for state and local governments to regulate non-cigarette tobacco products. *Annals of Health Law*. Retrieved Oct. 24, 2012, from <http://publichealthlawcenter.org/sites/default/files/resources/phlc-review-freiberg-regulating-otp-2012.pdf>.
30. Ibid.
31. U.S. Food and Drug Administration. (2012). *Overview of the Family Smoking Prevention and Tobacco Control Act*. Retrieved Oct. 23, 2012, from <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/>.
32. Campaign for Tobacco-Free Kids. (2012). *Smokeless Tobacco and Kids*. Retrieved Nov. 1, 2012, from <http://www.tobaccofreekids.org/research/factsheets/pdf/0003.pdf>.
33. Tobacco Control Legal Consortium. (2011). *Regulating non-cigarette tobacco products more effectively*. Freiberg, M.: Author. Retrieved Oct. 29, 2012, from <https://publichealthlawnetwork.webex.com/publichealthlawnetwork/1sr.php?AT=pb&SP=EC&rID=4425987&rKey=185e0581164dee0a>.
34. Freiberg, M. (2012). Options for state and local governments to regulate non-cigarette tobacco products. *Annals of Health Law*. Retrieved Oct. 24, 2012, from <http://publichealthlawcenter.org/sites/default/files/resources/phlc-review-freiberg-regulating-otp-2012.pdf>
35. Ibid.
36. Tobacco Control Legal Consortium. (2011). *Novel Non-Cigarette Tobacco Products: An Overview of Regulatory Options*. Freiberg, M.: Author. Retrieved Oct. 29, 2012, from <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-novelotps-2011.pdf>.

## **Record of Action**

*Proposed by Healthy Living and Prevention Workgroup*

*Approved by NACCHO Board of Directors*

*February 27, 2013*

*Updated April 2014*