

DEPARTMENT OF HEALTH SERVICES

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July 21, 2000

Secretary, Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-159
Washington, DC 20680

RE: "16 CFR Part 307 – Public Comments on Regulations Implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986."

I would like to thank the Federal Trade Commission (FTC) for providing the tobacco control community with the opportunity to comment on your regulations that implement the Comprehensive Smokeless Tobacco Health Education Act of 1986. The California Department of Health Services (CDHS) has prided itself in implementing a comprehensive tobacco control program that addresses a multitude of tobacco control devices – cigarettes, cigars, and smokeless tobacco. I hope that the following comments will prove helpful to the FTC, that the suggestions are within your jurisdiction, and that they improve the manner in which you regulate smokeless tobacco.

Background

Smokeless tobacco is a serious public health problem. California data indicate that in 1998, approximately 200,000 adult males had used smokeless tobacco in the last 30 days. Approximately 20,000 youth males ages 12-17 had used smokeless tobacco in the previous 30 days. Finally, among male and female youth ages 12-17, approximately 146,000 had ever tried smokeless tobacco (for every one female, two males tried smokeless tobacco). Clearly, consumers are not receiving sufficient warnings about the health risks associated with smokeless tobacco use.

In California we have also witnessed the proliferation of smokeless tobacco promotions and events on our college campuses. Smokeless tobacco manufacturers have held numerous free events for college fraternities, published advertisements containing coupons in college newspapers that violate California nonsale distribution laws, and have essentially made a massive attempt to make their product desirable among college-aged males. While the growing rate of these events concerns the CDHS, its implications for the health of young adults and of adolescents who aspire to be more like their college-aged brothers, family members, or friends, is downright frightening.

Since FTC regulations were promulgated in 1986, we have witnessed more intense marketing of smokeless tobacco products by the tobacco industry. FTC data show that advertising and promotional expenditures have risen from \$43,348,158 in 1986, to \$103,647,547 in 1997. While these expenditures remained relatively constant between 1986 and 1990 (\$52,778,476 in 1990), by 1991 the total amounted to \$63,970,584. The 1990's were witness to a dramatic increase in smokeless tobacco advertising and promotion expenditures.

There is definitely a continuing need for regulations on smokeless tobacco. The CDHS funds a multitude of programs at the local level to educate youth about the dangers of smokeless tobacco. These programs utilize former users of smokeless tobacco who have suffered through mouth cancers and have gone through a series of painful operations to remove cancers and reconstruct their faces. CDHS does not wish to see more youth and young adults suffer a similar fate.

Listed below, please examine California's recommendations regarding the current regulations.

Warning labels

Recommendation: CDHS recommends that the FTC adopt the present Canadian smokeless tobacco warnings. U.S. warnings take up only 8% of the principal display panel, yet Canadian warnings take up 25% of the principal display panel. Furthermore, warnings should take up 50% of the entire package. Also, warnings should be required as a packaged insert. Research and evidence from other countries suggest that black type on white background is most effective. Safe harbors should not exist as options for manufacturers; instead, specifications for warning labels should be mandated and regulated by the FTC.

A Department of Health and Human Services report on smoking states that warnings can have a positive impact on consumers, especially on starters and those contemplating quitting, if the warnings are highly visible and provide specific, rather than general information. The CDHS likes to think we have done a great deal over the last ten years to educate Californians about the danger of smoking and of smokeless tobacco products. However, we know that there are still many who underestimate the danger associated with tobacco products. Additionally, and unfortunately, the danger of smokeless tobacco is taken less seriously.

Recommendation: Section 307.4(a), Prohibited Acts. We propose that, *"This section **does** apply to any smokeless tobacco product that is manufactured, packaged, or imported in the United States for export from the United States, if the product is not in fact distributed in commerce for use in the United States."*

CDHS believes that while the United States has begun taking responsibility for the death and disease caused by tobacco products in its own backyard, it is time to begin taking responsibility for our export of cancer causing products to foreign countries.

Recommendation: Section 307.5, Language requirements. CDHS recommends the following change, *“The label of a smokeless tobacco product manufactured, packaged, or imported in the United States for export from the United States, must contain a warning label in the primary language of the country receiving the exported product.”*

CDHS believes that English might not be the primary language of the country that is importing the smokeless tobacco product, and therefore, warning labels should be printed in the primary languages of these importing countries.

Advertising Disclosure Requirements

Recommendation: Regarding Section 307.7(e), Requirements for disclosure in print advertising. CDHS recommends that advertisements in a newspaper, magazine, or other periodical that occupies more than one page shall **be required to have a warning on each page.**

Given earlier statements on the increase in smokeless tobacco advertising and promotional expenditures, CDHS believes that we need to be more vigilant with the types of strategies and tactics that smokeless tobacco manufacturers use to market their product. Because of MSA restrictions that prohibit cigarette advertising, the tobacco industry has funneled a great deal of advertising expenditures to print sources, including newspapers, magazines, and other periodicals. Ad campaigns from Winston, Camel, and Virginia Slims offer multi-paged inserts. Individually, the pages from the ads can stand on their own, and therefore, should require a warning. While we have not witnessed similar smokeless ad campaigns, smokeless tobacco manufacturers could resort to similar advertisements.

Enforcement of Existing Regulations

Recommendation: Enforce existing regulations that require utilitarian items to display warnings.

Current regulations that require warnings to appear on utilitarian items are not being enforced in California. Thousands of pieces of tobacco “gear” are being distributed each year in California. This gear ranges from t-shirts, hats, bags, etc., from giveaways at

rodeos and car races and other events where the tobacco industry has a marketing presence. CDHS funds many local tobacco control programs that canvas these events to determine the pervasiveness of tobacco gear. Youth tobacco control coalitions also conduct gear "exchanges" where youth exchange their tobacco gear for t-shirts, hats, etc., that do not display tobacco logos or advertising of any sort. CDHS has never seen tobacco gear that also displays a warning.

Additional Amendments

Recommendation: CDHS recommends that the FTC prohibit the non-sale distribution of smokeless tobacco on public and private property.

Current California law prohibits the non-sale distribution ("free sampling") of any smokeless tobacco or cigarettes to any person in any public building, park, or playground, or on any public sidewalk, street, or other public grounds. A bill currently being heard in the California legislature would add these similar prohibitions to private property that is used for public purposes (e.g., race tracks, an attractive venue for the non-sale distribution of smokeless tobacco products).

Recommendation: Section 307.4(b), Prohibited Acts. CDHS recommends that, "*other than through the use of billboard advertising,*" be stricken from the regulations.

CDHS believes that with the advent of the Master Settlement Agreement (MSA) and its prohibition placed on billboard advertising, the FTC regulations should follow suit regarding smokeless tobacco billboards, especially since not all smokeless tobacco manufacturers are signed on to the MSA.

Recommendation: CDHS recommends that the FTC create a 1-800 complaint line to report violators of any of the FTC regulations.

CDHS has had great success in using a 1-800 line to report illegal sales of tobacco to youth. The Stop Tobacco Access to Kids (STAKE) Act requires retailers of tobacco products to post a warning sign at each point of sale and on each vending machine, stating that selling tobacco products to minors is illegal and subject to penalties. Warning signs must include a toll-free telephone number (1-800-5-ASK-4-ID) that customers may use to report observed tobacco sales to youth under the age of 18.

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Thank you for considering these comments. California looks forward to seeing the FTC take action on this important health issue.

Sincerely,

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