

ATS and Tobacco Control

Tobacco use continues to be the single largest source of preventable death and disease in the US, killing 480,000 Americans each year. In 2009, Congress gave the Food and Drug Administration authority to regulate all tobacco products, giving physicians and tobacco control advocates hope that finally we could get a handle on tobacco addiction, disease and death in the U.S.

Protecting FDA's authority to Act

In 2009, a strong bi-partisan majority of Congress passed legislation giving FDA authority to regulate tobacco. However, as soon as the legislation was enacted, proponents of the tobacco industry have been trying to weaken and delay FDA's authority to regulate tobacco products. Through appropriations riders and standalone legislation, Congress has considered legislation to weaken or delay FDA's authority to regulate tobacco products including exempting cigars from FDA regulation, grandfathering e-cigarettes from most of FDA regulation and potentially limiting FDA's authority to regulation tobacco flavorings. The ATS has strongly advocated in Congress against all these legislative proposals that would prevent FDA from fully regulating tobacco products. So far, our efforts have been successful in preserving FDA's unfettered authority to regulate all tobacco products. But will FDA use that authority?

Urging FDA to Act

Even while the ATS is working Congress to preserve FDA's authority to act, we are simultaneously trying to get FDA to take action. To date, FDA has sought public input on several areas of tobacco regulation, but has failed to take decisive action to regulate most tobacco products. The ATS has reviewed and submitted public comments on a number of FDA proposed rules and notice of proposed rules on how FDA might regulate tobacco products. Despite seeking public input, the agency has been frustratingly slow in taking final action to regulate many tobacco products. Key areas where FDA has not yet finalized action include; pre-market review of e-cigarette products, final action menthol and flavors in cigars, final action menthol cigarettes, regulating flavors in e-cigarettes and graphic warning labels on all tobacco products.

E-cigarettes and FDA

The recent publication of CDC data showing an over 70% increase in youth use of e-cigarettes from 2017 to 2018 seems to have galvanized FDA to finally taking action on a number of key areas. FDA announced its intent to ban menthol cigarettes, ban characterizing flavors in cigars and place more limitations on in person and online sales of e-cigarettes products. However, none of these announced actions have actually happened yet and some will take years to implement. While FDA's announced intent to act is welcomed, it still represents an IOU on future actions and does not yet constitute final regulatory action by the agency. The ATS and our colleagues in the tobacco control community will need to hold FDA accountable for these important promised actions.

Forcing FDA to Act

But the ATS just waiting for FDA to action, we are working with our tobacco control colleagues to force FDA to act. The ATS has joined several court actions to force FDA to take timely action to regulate tobacco products. Most recently, the ATS submitted an amicus brief in a federal court case submitted by the American Academy of Pediatrics seeking to force FDA to take immediate action to regulate e-cigarettes and cigars.

Going Beyond FDA's Authority

While FDA does have broad authority to regulate all tobacco products, the agency does not have two key authorities, namely to raise tobacco taxes and to raise the tobacco products purchase age to 21.

Both these policies actions have been shown to be very effective in reducing youth nicotine initiation. The ATS is working with state and municipalities to raise the purchase age and to raise excise taxes on tobacco products. We congratulate the six states (CA, HI, MA, ME, NJ and OR) and over 350 municipalities that have already taken action to raise the tobacco product purchase age to 21. ATS looks forward to working with policy makers on the local, state, and national level to enact to expand to tobacco 21 policy and to raise tobacco taxes across all forms of tobacco products.