



Drafting Tribal Laws to Regulate E-Cigarettes as an Emerging Public Health Concern

*NIHB TRIBAL PUBLIC HEALTH SUMMIT
APRIL 13, 2016*

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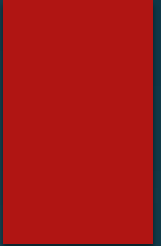
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Control Legal Consortium

Acknowledgements



- ▶ National Indian Health Board
- ▶ Public Health Law Center/Tobacco Control Legal Consortium
- ▶ National Native Network
- ▶ Chris Cooper; California Rural Indian Health Board

National Native Network



Decrease burden of cancer and commercial tobacco health disparities in American Indian and Alaska Native (AI/AN) communities



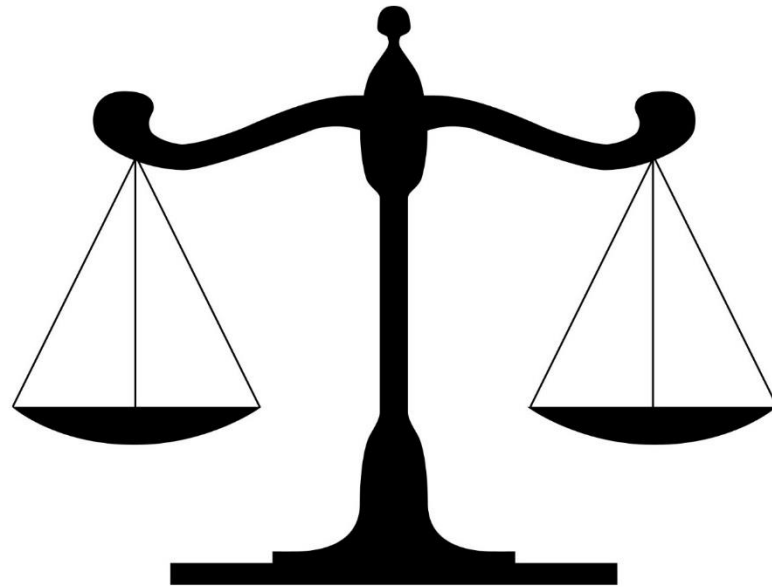
Who we serve



- ▶ Tribes
- ▶ Tribal agencies
- ▶ national, state, and local organizations
- ▶ Urban Indian Health Programs
- ▶ Tribal Epidemiology Centers
- ▶ Healthcare/Public Health settings serving Native people

Tobacco Control Legal Consortium

Supporting commercial tobacco control policy change





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FEATURED RESOURCE

E-Cigarette Regulation

A state-by-state snapshot of e-cigarette regulation across the U.S. in 2015

Announcements

Improving Website Navigation

In an effort to improve the efficiency and usability of publichealthlawcenter.org, we are currently upgrading the navigation structure of the website. We have made an effort to ensure all pages and content have carried through to the new design. If you experience any difficulty finding a page or resource, please use the search function at the top of the page or [contact us](#).

Maggie Mahoney Named 2015 C. Everett Koop Unsung Hero Award Winner

The American Lung Association and the C. Everett Koop Institute are awarding the 2015 C. Everett Koop Unsung Hero Award to Maggie Mahoney for her outstanding contributions to tobacco control. Ms. Mahoney is the Deputy Director of the Tobacco Control Legal Consortium at the Public Health Law Center.

Who we serve



- ▶ Public health staff
- ▶ Public health advocacy organizations and community coalitions
- ▶ Government attorneys
- ▶ Elected officials
- ▶ Private attorneys and individual citizens
- ▶ Researchers

What is legal technical assistance?

- ▶ Education
- ▶ Legal interpretation and research
- ▶ Policy development support
- ▶ Litigation support
- ▶ We don't represent clients or lobby.

It's free and call early!

Roadmap for the session

- What are the public health concerns about e-cigarettes?
- What is the legal regulatory landscape?
- What are policy options for Tribes who may be interested in regulating these products?





What questions do you have about e-cigarettes?

What policy ideas are you interested in?

Public Health Concerns

- ▶ Lack of regulation/unknown ingredients
 - ▶ Diacetyl: “Popcorn lung”
- ▶ Marketing to youth
- ▶ Illicit drug use
- ▶ Re-normalizes smoking behaviors



The Family Smoking Prevention and Tobacco Control Act



The Family Smoking Prevention and Tobacco Control Act

What does it regulate?

“The term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product . . .”

21 U.S.C. § 321(rr)(1)

“Traditional (Ceremonial) Tobacco Use

The FDA does not regulate the use of traditional (ceremonial) tobacco. The FDA understands and respects the use of traditional tobacco by Native tribes.”

<http://www.fda.gov/>



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Tobacco Control Act of 2009

“This chapter shall apply to all
cigarettes,
cigarette tobacco,
roll-your-own tobacco, and
smokeless tobacco

and to any other tobacco products that the Secretary by regulation **deems** to be subject to this chapter.”

21 U.S.C. § 387a(b)



The Family Smoking Prevention and Tobacco Control Act

FDA has comprehensive authority:

- Premarket review of new products
- Set product standards
- Require warning labels
- Establish advertising and marketing restrictions
- Require registration of manufacturers
- Require disclosure of product lists
- Require testing and disclosure of ingredients
- Require disclosure of health information

The Family Smoking Prevention and Tobacco Control Act

FDA cannot:

- ▶ Prohibit the use of tobacco products
- ▶ Prohibit the sale of an entire class of tobacco product
- ▶ Prohibit the sale of tobacco products in a specific category of retail outlets
- ▶ Require a prescription for tobacco products
- ▶ Levy taxes on tobacco products
- ▶ Raise the minimum purchase age of tobacco products



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Tribal Sovereignty

“...nothing in this subchapter ... shall be construed to limit the authority of ... the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this subchapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this subchapter shall limit or otherwise affect any State, tribal, or local taxation of tobacco products.

21 U.S.C. § 387p(a)(1)



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Tribal Sovereignty

“ ... the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

“(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian country without the express written consent of the Indian tribe involved.”

21 U.S.C. § 372

FDA Actions (Tribal)



“Inspections on Tribal Lands

FDA inspects establishments engaged in the manufacture, compounding, or processing of regulated tobacco products. FDA also inspects tobacco retailers to determine a retailer’s compliance with FDA regulations.

FDA is authorized to award tobacco retail inspection contracts to States, Tribes, Territories, and third parties to conduct retail inspections. FDA has awarded two contracts within Tribal jurisdictions to help enforce the TCA regulations within those jurisdictions. FDA may also use its own personnel to conduct retailer inspections.

The Tobacco Control Act specifically prohibits FDA from contracting with any state to exercise enforcement authority under the Tobacco Control Act in Indian Country without the express written consent from the tribe involved.”

www.fda.gov

Tribal Awards: Seminole Tribe of Florida, Shoshone-Bannock Tribes (Idaho).



Tobacco Control Act of 2009

In June 2009, President Obama signed the Family Smoking Prevention and Tobacco Control Act, giving the Food and Drug Administration unprecedented authority to protect the public health by regulating tobacco products. The law provides sweeping authority to the FDA to comprehensively regulate tobacco products including establishing tobacco product standards, reviewing products before their introduction to the market, restricting tobacco product marketing and advertising, preventing illicit trade, and strengthening warning labels. Below is a comprehensive summary of the law as well as a summary of the law's impact on state and local authority to regulate tobacco.

[Read the final legislation, H.R. 1256.](#) PDF, 348 Kb

Federal Regulation of Tobacco: A Summary

Our first series of fact sheets summarizes by topic key elements of the new law.

Fact Sheet 1: [Overview](#) PDF, 105 Kb

Fact Sheet 2: [Tobacco Product Standards](#) PDF, 112 Kb

Fact Sheet 3: [Tobacco Product Marketing Restrictions](#) PDF, 99 Kb

Fact Sheet 4: [Tobacco Product Labeling and Advertising Warnings](#) PDF, 104 Kb

Fact Sheet 5: [Tar, Nicotine and Other Smoke Constituent Disclosures](#) PDF, 98 Kb

Fact Sheet 6: [Litigation](#) PDF, 98 Kb

Fact Sheet 7: [Preemption](#) PDF, 99 Kb

Fact Sheet 8: [Preventing Illicit Trade in Tobacco Products](#) PDF, 96 Kb

Proposed Deeming Regulation



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Tobacco Products

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Product Requirements, Marketing & Labeling

▶ [Deeming – Extending Authorities to Additional Tobacco Products](#)

[Labeling](#)

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[Tobacco Product Review & Evaluation](#)

Deeming – Extending Authorities to Additional Tobacco Products

Despite decades of efforts to reduce tobacco use, it continues to be the leading cause of preventable disease and death in the United States. To address this public health problem, FDA proposes extending its authority to cover additional products that meet the definition of a tobacco product under the proposed rule: Tobacco Products Deemed To Be Subject to the Food, Drug & Cosmetic Act (Deeming).



Currently FDA regulates cigarettes, cigarette tobacco, roll-your-own tobacco and smokeless tobacco. Proposed newly “deemed” products would include electronic cigarettes, cigars, pipe tobacco, certain dissolvables that are not “smokeless tobacco,” gels, and waterpipe tobacco.

Once the proposed rule becomes final, FDA will be able to use powerful regulatory tools, such as age restrictions and rigorous scientific review of new tobacco products and claims to reduce tobacco-related disease and death.

Automatic Requirements

	E-Cigs & other newly-covered products
Regulation of adulterated products	Effective date of Final Rule
Required disclosure of measure/contents; premarket approval	24 mos after Final Rule issued
Prohibition on false or misleading advertising	Effective date of Final Rule
Required disclosure of ingredients, substances, compounds and additives	6 mos after effective date of Final Rule
Required disclosure of harmful and potentially harmful constituents	36 mos after effective date of Final Rule
Required disclosure of health-related documents	6 mos after effective date of Final Rule
Required registration of manufacturers	By end of calendar yr in which Final Rule issued (if issued in 2nd half of year, FDA will designate a date)
Required disclosure of product lists	Upon submission of new product applications
Prohibition of the use of “light,” “mild,” “low,” or similar descriptors	12 mos after effective date of Final Rule

All of these currently apply to cigarettes, cigarette tobacco, smokeless tobacco, & roll-your-own tobacco.

Additional Requirements

	Cigarettes	Smokeless Tobacco	Cigars	E-Cigarettes and Other Newly-covered Products
Minimum purchase age of 18	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
No vending machine sales	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Allowed in adults-only facilities	Allowed in adults-only facilities
No self-service displays	Allowed in adults-only facilities	Allowed in adults-only facilities	<input type="checkbox"/>	<input type="checkbox"/>
Minimum package size requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No loosies	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No free samples	<input checked="" type="checkbox"/>	Allowed in adults-only facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
No characterizing flavors	Menthol and tobacco allowed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Warnings on packages and ads	9 Rotating warnings	4 Rotating warnings	4 Rotating warnings	1 Static warning re: containing nicotine, which is addictive
No brand-names sponsorship of sporting and cultural events, no brand names on non-tobacco items	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Required notice of ads in any non-traditional medium	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Missed Opportunities

Flavored Tobacco Products

Television Advertising

Internet Sales

Brand Name Sponsorship

Self-Service Displays

Minimum Package Size

Child-Resistant Packaging



How are other jurisdictions addressing concerns about e-cigarettes?

- ▶ Banned in some countries, or heavily regulated
- ▶ Most US states and many local governments prohibit e-cigarette sales to minors
- ▶ Some US states and local governments include e-cigarette in smoke-free laws
- ▶ A number of US localities restrict sale of flavored products



Add E-Cigarettes to Smoke-Free Laws and Policies

Public policy rationale:

- Health impact of second-hand aerosol
- Social norm impact
- Enforcement challenges

Drafting tips:

- Add to existing law
- Include all devices
- Do not exempt cessation devices



Success Story: Working with Tribes

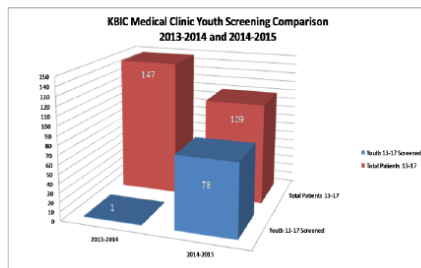
Native American Youth Tobacco Screening and Cessation: Implementing Policy and Systems Change



According to national survey data, commercial tobacco use is higher in American Indian populations than in any other racial/ ethnic group in the U.S. ¹ Commercial tobacco use has a serious impact on the health of this culturally rich and historical population. Heart disease is the leading cause of death, while lung cancer is the most common cause of cancer death. ² In Michigan, smoking rates range from 35% to 72% among tribal communities compared to the general population smoking rate of 20.5%. ³ The American Indian Adult Tobacco Survey results found that age of smoking initiation ranged from 13 to 15.7 years of age. While efforts exist to address tobacco screening and cessation among adults, there were very few interventions aimed at addressing youth screening and referrals.

To address the need to screen and refer youth for tobacco use and cessation, the Inter-Tribal Council of Michigan partnered with the Keweenaw Bay Indian Community, the Saginaw Chippewa Indian Tribe, Indian Health Services Clinical Support Center and the State Quit Line. Together we a training session on tobacco use rates among Native American youth and the need for intervention at younger ages to tribal clinic staff and providers. The providers were eager for more information on electronic cigarettes and other nicotine delivery devices. They were also anxious to learn about recommended cessation protocols and resources for this age group. Thus, additional education on these topics was provided and each site was given a wealth of patient education materials, such as fact sheets and referral resources. While this delayed to implementation of a clinical policy, it resulted in a much more comprehensive policy, covering all nicotine delivery devices and several cessation referral options.

The two tribal clinics implemented a policy to screen and refer youth ages 12 – 18 for commercial tobacco and other nicotine delivery devices. They also expanded this policy to their dental departments. The Saginaw Chippewa Nimkee Wellness Center achieved a 100% screening and referral rate. The Keweenaw Bay Indian Community built their policy into their electronic health system and achieved a screening and referral rate of 71.6%.



¹ <http://cdc.gov/nchs/data/nhsr/nhsr020.pdf>

² Cancer Mortality Among American Indians and Alaska Natives – United States, 1994-1998.

³ ITC of MAI/ATS 2010-2012, http://www.cdc.gov/tobacco/data_statistics/surveys/american_indian/pdfs/ai_ats.pdf

“After policy implementation and a review of the initial results, we have learned that youth in this age range are reluctant to admit to smoking or use of other nicotine delivery devices,” states Noel Pingatore, Project Coordinator and the Inter-Tribal Council of Michigan. Within a two month time span following the new policy, only one youth identified as a smoker and was referred to the quit line, “ This is highly contradictory to the rigorous youth tobacco use survey data for this population,” states Pingatore. However, based on the current literature this is not surprising and we believe there is value in the providers asking about nicotine use for this age group. We know from evidence based interventions, that provider input has a strong influence on the patient’s behavior. We are hopeful that youth who are smoking will utilize the health education materials and quit line resources available throughout the clinic to 1) take action to seek cessation support individually, and 2) keep those who are not yet smokers, from starting.

This project has resulted in 1) increased knowledge and capacity for tribal clinic providers to screen, educate and refer young patients for cessation services and resources, such as the quit line. (The quit line has a program specifically for the younger population which includes texting options); and 2) increased screening and referral rates within the two tribal clinics.

Next steps include sharing the impact of the screening policy with additional tribal medical and dental clinics for adoption. We are also interested in monitoring the number of calls to the quit lines services from Native American youth, especially those within the two clinic service areas. The two clinics will continue to monitor their screening rates and give feedback to the providers in an effort to improve screening rates and sustain the policy and clinical protocol. This Project has helped to identify policy and systems changes aimed at reducing the health disparities while supporting the health of future generations.



Tribal Health Clinic Policy: Saginaw Chippewa Tribe

Nimkee Memorial Wellness Center

SUBJECT: Youth Tobacco/Nicotine Screening
& Referral Policy

POLICY NUMBER: DRAFT

ISSUED BY: Health Educator

APPROVED BY:

EFFECTIVE DATE: 07/01/15

REVIEWED BY: Margaret Steslicki, Medical Clinic Director; Dr. Laura Lund, Dental Clinic Director

PURPOSE

To reduce smoking rates among youth ages 12-18 years of age through screening, education and referrals. Nimkee Memorial Wellness Center strives to ensure excellence in health care is top priority while respecting the importance of the culture and tobacco as a sacred medicine. Nimkee staff seek to safeguard the health and wellbeing of their patients and give comprehensive services with referrals to all appropriate sources.

PHILOSOPHY

The Saginaw Chippewa Indian Tribe endorses the philosophy that every person has the right to comprehensive health services and appropriate referrals. It is recognized that tobacco is a sacred medicine and that smoking is dangerous to the health of the smoker and others close to them who may be exposed to second hand smoke.

DEFINITIONS

Nicotine Delivery Systems – A system that creates an aerosol of exhaled nicotine, ultra –fine particles, volatile organic compounds, and other toxins. Nicotine Delivery Systems can also be referred to as Vaping and include e-cigarettes, hookahs, etc.

REFERENCES

Michigan Department of Community Health; Description of what happens when the Quit-line is called. http://www.michigan.gov/documents/mdch/3.29.12_WHAT_HAPPENS_381888_7.pdf.

POLICY

- All youth ages 12 – 18 will be screened for commercial tobacco/nicotine use at every visit in the Medical and Dental Clinics. Nicotine delivery systems will be included in the screening of youth due to the fact that many do not identify using them as smoking.
- Medical and or Dental Clinic staff will offer referrals to all who identify as positive for commercial tobacco/nicotine use, and provide comprehensive care and education to the level the patient agrees to.

PROCEDURE:

1. Youth ages 12 – 18 years of age will be screened at every visit in the Medical and / or Dental Clinics for smoking commercial tobacco and/or using any nicotine delivery devices.
 - 1.1. Medical Clinic – Documentation in RPMS/EHR Health Factors section (3 areas)
 - Tobacco Screening includes patients screened for tobacco use including: Tobacco (smoking), Tobacco (smokeless-chewing/DIP), Tobacco (exposure)
 - Tobacco Users assessment includes: Current smoker, Current smoker and smokeless, Cessation –smoker, Cessation-smokeless, Current smoker – status unknown, Current smoker – everyday, Current smoker- some day, Heavy tobacco smoker, light tobacco smoker.
 - Patients exposed to smoker in home and environmental tobacco smoke.
 - 1.2. Dental Clinic – Documentation in Dentrix utilizing Tobacco screening tool
 - Screening tool includes the following descriptions with details for screening: Never smoked, Tobacco smoking consumption unknown, Occasional tobacco smoker, Light tobacco smoker, Heavy tobacco smoker, Smokes tobacco daily, Smoker, and Ex-smoker.
2. The Medical Clinic Nurse/MA and/or the Dental Clinic Dental Assistant will provide the youth with educational materials on tobacco use and other nicotine delivery systems as appropriate.
3. If a youth identifies they do smoke and/or use a nicotine delivery system, they will be given a referral to the Michigan Tobacco Quit Line. Posters and business size cards are available in every clinic exam room. This quit line is funded by the Michigan Department of Community Health 1-800-QUIT-NOW (1-800-784-8669) or on line at www.michigan.gov/tobacco.
4. The Nimkee Dental Clinic will make a referral to the PCP (primary care provider) when the patient requests more information and/or NRT (nicotine replacement therapy).
5. The PCP will work with the Nimkee Pharmacists to provide the patient with the appropriate prescription specifically designed to provide the best care and success.

Tribal College Policy: Leech Lake Tribal College

Commercial Tobacco Free Policy LLTC



Definitions: Commercial tobacco is defined as tobacco products such as cigarettes and not the sacred and indigenous uses of tobacco practiced by Native American communities. This Tobacco Free Policy will in no way prohibit the use of traditional/ceremonial/sacred use of tobacco or infringe in any manner on any tobacco cultivation or harvesting for spiritual and ceremonial use.

Purpose: The Leech Lake Tribal College provides quality higher education grounded in Anishinaabe values. We are devoted in providing our students with the skills to promote well-being and for themselves and their families through providing students, employees and the community with a safe and healthy environment, in conformance with the intent of Minnesota Clean Indoor Air Act and National Congress of American Indians Resolution # TUL-05-101/resolution 74-05. Knowing that smoking has a significant negative impact on the health and wellbeing of smokers and non-smokers alike, this policy is designed to include all commercial tobacco products including, but not limited to, cigarettes, smokeless tobacco and electronic cigarettes.

Policy: Commercial Tobacco/smokeless tobacco and electronic cigarettes usage is prohibited on all campus properties including all buildings, college vehicles, parking lots, walking trail, and garages.

Policy Implementation: This policy will be effective the start of fall term 2014 August 18th.

Policy Enforcement: Enforcement of this policy will depend upon the cooperation of all faculty, staff, and students as well as campus visitors helping us care for the land and people by promoting a clean, safe, healthy environment in which to work, study, and live. The college will give short trainings at orientations and other training opportunities designed to assist and prepare students and staff to help one another comply with the policy.

The enforcement strategy is through peer encouragement, with the goal of changing the well-being of our community over time.

In the event of a violation, the person will be informed of the LLTC Tobacco Free campus policy. Should the individual continue to violate the policy, a report will be made by security through the use of a tobacco use grievance form to the appropriate office.

Definitions: Commercial Tobacco is defined as tobacco products such as cigarettes, cigars, smokeless tobacco, and electronic-cigarettes. This Commercial Free Tobacco Free Policy will in no way prohibit the use of traditional/ceremonial/sacred use of tobacco or infringe in any manner on any tobacco cultivation or harvesting for spiritual and ceremonial use.

Purpose: The Leech Lake Tribal College provides quality higher education grounded in Anishinaabe values. We are devoted in providing our students with the skills to promote well-being and for themselves and their families. As we implement this new policy knowing that smoking has a significant negative impact on the health and wellbeing of smokers and non-smokers alike, this policy designed to include all commercial tobacco products including smokeless tobacco and electronic cigarettes. Reducing tobacco use also increases productivity in the workplace, decreases absenteeism, and possibly lowers excess medical expenditures and other costs associated with tobacco work in the workplace and educational setting.

Executive Order Policy: Navajo Nation



EXECUTIVE ORDER NO. 13-2014

**PROTECTING NAVAJO NATION EMPLOYEES EXPOSURE TO
COMMERCIAL TOBACCO PRODUCTS AND SECONDHAND SMOKE IN THE
WORK PLACE**

THE NAVAJO NATION
EXECUTIVE ORDER NO. 13-2014

August 14, 2014

WHEREAS:

1. The President of the Navajo Nation serves as the Chief Executive Officer for the Executive Branch of the Navajo Nation government with full authority to conduct, supervise, and coordinate personnel and program matters. 2 N.N.C. § 1005 (A);
2. The President shall have the enumerated power of issuing an executive order for the purpose of interpreting, implementing or giving administrative effect to statutes of the Navajo Nation in the manner set forth in such status. 2 N.N.C. § 1005 (C) (14);
3. An executive order shall have the force of law upon the recipient. Id.
4. Executive Order No. 02-2011 was implemented April 26, 2011 for the similar purpose. Executive Order No. 13-2014 provides clarification and will supersede Executive Order No. 02-2011.
5. The cultural, spiritual, and ceremonial use of Hozooji Dzil Natoh/ Natural Mountain Smoke is the fundamental values and principles of Dine Life Way;
6. Navajo cultural teachings about the Hozooji Dzil Natoh/ Natural Mountain Smoke and its use are of importance to the health, wellness, and welfare of the Navajo people;

7. The Navajo fundamental traditional and ceremonial use of Hozooji Dzil Natoh/ Natural Mountain Smoke shall not be restricted;
8. Secondhand smoke has been classified by the U.S. Environmental Protection Agency (EPA) as a group A carcinogen;
9. There are no safe levels of secondhand smoke and no available adequate ventilation technology based upon scientific studies that can ensure that protection and prevention of involuntary exposure to secondhand commercial tobacco smoke and its health -related illness; and
10. Everyone has the right to breathe clean air and be free from the pollution of spit tobacco smokeless tobacco, e-cigarettes, or any other commercial tobacco products.


THEREFORE:

I, Ben Shelly, President of the Navajo Nation, by the authority vested, I hereby issue the following order:

1. Policy. It is the policy of the Navajo Nation Executive Branch to establish a commercial tobacco free environment for government employees and member of the public visiting or occupying Navajo Nation facilities. The use of commercial tobacco products is thus prohibited in all interior space owned, rented, or leased by the executive branch of the Navajo Nation and in any outdoor areas under the executive branch, and within a reasonable distance of 25 feet of entrances, operable windows, and ventilation systems of enclosed areas where commercial tobacco products are hereby deemed prohibited.
2. Other locations. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under the auspices of the executive branch in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.
3. Responsibility for implementation. The heads of divisions agencies departments and programs are responsible for implementing and ensuring compliance with the provisions of this order. Independent agencies are mandated to comply with the provisions of this order.
4. Consistency with the other laws. The provisions of this order shall be implemented consistent with the laws and highest welfare of the people.

5. Construction. Nothing in this order shall limit a division, agency, department or program head from establishing more protective policies on smoking in the workplace for employees and members of the public who are served, invited and welcome.

Executed at the Office of the President and Vice President of the Navajo Nation
On this 14th day of August 2014.


Ben Shelly, President
THE NAVAJO NATION

ATTEST:


Harrison Tsosie, Attorney General
THE NAVAJO NATION

Restrict Youth Access

- ▶ No sales to minors
- ▶ No free samples
- ▶ No self-service shelving



Child-Resistant Packaging

- ▶ Illinois
- ▶ Minnesota
- ▶ New York
- ▶ Vermont
- ▶ ...and more

- ▶ Child Nicotine Poisoning Prevention Act of 2016

First Child's Death From Liquid Nicotine Reported as 'Vaping' Gains Popularity

Dec 12, 2014, 5:40 PM ET

By GILLIAN MOHNEY



A variety of electronic cigarette flavors are viewed for sale at an electronic cigarette store, June 10, 2013, in New York City.

Spencer Platt/Getty Images

NEXT VIDEO >>

Why Americans Can Not Get The Same Effective Sunscreen Protection Europeans Can

AUTO START: ON | OFF

A toddler from upstate New York could be the first child to die from **liquid nicotine**, the substance used in e-cigarettes, poisoning in the U.S., concerning health officials as e-cigarettes continue to rise in popularity.

Police reported that the 1-year-old child died after ingesting liquid nicotine at a home in Fort Plain, New York, on Tuesday. The child was found unresponsive and rushed to a hospital where he was

Additional Policy Options

- ▶ Restrict the sale of flavored e-cigarettes (including menthol)
- ▶ Limit the number of vape shops
 - ▶ Retail licensure
 - ▶ Moratorium
- ▶ Restrict marketing



Additional Policy Options



▶ Tax and Price Regulations

- ▶ Coming soon: publication for Tribes interested in commercial tobacco taxes and expanding them to include e-cigarettes
- ▶ We need your help—we are doing a high level survey to ask Tribes about their experiences with commercial tobacco taxes
- ▶ <http://tinyurl.com/NNN-Tobacco-Tax>
- ▶ Survey closes April 29, 2016

Survey Link:



@keepitsacred



Keep It Sacred

NAVIGATE

- HOME
- ABOUT US
- TOBACCO & TRADITION**
- AMERICAN INDIAN COMMERCIAL TOBACCO PROGRAM (AICTP)
- TRIBAL TOBACCO TAX SURVEY**
- TRADITIONAL TOBACCO
- COMMERCIAL TOBACCO
- TOBACCO ABUSE PREVALENCE

KEEP IT SACRED
NATIONAL NATIVE NETWORK

Tribal Tobacco Tax Survey

The National Indian Health Board, National Native Network, and Public Health Law Center are collaborating on a series of publications dealing with various aspects of tribal regulation of commercial tobacco products. Our first publication will focus on the taxation of commercial tobacco products, including electronic cigarettes. We hope that these publications will be useful for tribal officials and advocates seeking to exercise tribal sovereignty to address the public health problems posed by commercial tobacco products.

Important things to know about this survey:

Your input is important. The data will be used to assess how Tribes are exercising sovereignty related to commercial tobacco and to develop informational and educational materials on these topics.

The survey takes very little of your time. It should take most people less than 10 minutes to complete. This short survey is totally voluntary. You can choose to skip any question or stop taking the survey at any time. *We are requesting the most knowledgeable person regarding tribal-state agreements and taxes provide answers to this survey.*

Your answers are secure and confidential. Your answers will be anonymous; we cannot identify you by name unless you share that information with us. No names will be published in

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KEEP IT SACRED
NATIONAL NATIVE NETWORK

Lessons learned



- ▶ Build a robust, jurisdiction-specific evidence base
- ▶ Anticipate opposition arguments; prepare data-driven responses
- ▶ Consult an attorney early in the drafting process
 - ▶ Each jurisdiction's legal code and system is different
 - ▶ Definitions are critical
 - ▶ Concise language
- ▶ Work with enforcement staff to plan
 - ▶ Robust enforcement options; well-planned implementation
 - ▶ Testing and verification of claims

Specific is **powerful**, if you have it

“The Cheyenne River Sioux Tribe finds that smoking prevalence, and therefore the incidence of ETS, is disproportionately higher amongst Cheyenne River Sioux Tribal members at a rate of 50.9% of the adult population, as compared to a South Dakota average of 15.4%, putting American Indian non-smokers and children at great risk for the health consequences caused by ETS exposure.”



Tobacco Control
Legal Consortium

Working with definitions



“Vape pen” means a device that simulates smoking and delivers nicotine to a person using the device. Vape pen includes any component, part, accessory, or related product of such a device, whether or not sold separately. “E-cigarette” does not include products used for cessation purposes.

Simulates smoking?



Better definition



“Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine or other substances to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Drafting note

- ▶ Goal should inform the definition
 - ▶ Smoke-free?
 - ▶ Youth access?
 - ▶ Tax?
- ▶ But consistency is also important
- ▶ Exempt traditional tobacco/sacred uses

Resources



U.S. E-Cigarette Regulations - 50 State Review

The following is a snapshot of the U.S. landscape of e-cigarette regulation as of May 22, 2015. The information below was based on a 50-state (plus Washington, D.C.) survey of current state statutes pertaining to e-cigarette regulations in the following areas: definition of "tobacco product," taxation, product packaging, youth access/other retail restrictions, and smoke-free air legislation. Please click on a state to see the regulations in place as of May 22, 2015.

[Click here to download the complete data set.](#) [PDF]



E-Cigarette Regulations - Missouri

Are e-cigarettes included in the definition of "Tobacco Products"?

No

What is the state's legal definition of an e-cigarette?

Alternative Nicotine Product means "any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. 'Alternative nicotine product' does not include any vapor product..." [Mo. Rev. Stat. § 407.925\(1\) \(2015\)](#)

Vapor Product means "any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit ... [including] the container of nicotine in a solution or other form..." "Vapor products does not include any alternative nicotine product or tobacco product." [MO Rev. Stat. § 407.925\(12\) \(2015\)](#)

Is there a state excise or special tax (non-sales tax) placed on e-cigarettes?

N/A

What regulations are in place for e-cigarette packaging?

N/A



Drafting Tribal Public Health Laws and Policies

to Reduce and Prevent Chronic Disease



Laws and policies can support the efforts of Tribal Nations to reduce and prevent chronic disease within their communities. American Indian Tribes are sovereign nations with unique political and legal status, which makes them distinct from other cultural and racial groups in the U.S. They have their own legal systems, which vary across Tribal Nations. Depending on the Tribe, a Tribe's laws and policies might be found in written documents such as a Constitution, Tribal code, and Tribal court case law. A Tribe's laws might also be found in unwritten forms, such as customary laws and traditions. Some Tribes include both written and unwritten laws in their legal systems.

What is policy?

At the most basic level, a policy is a plan or course of action designed to influence and determine decisions. Policies can be written or unwritten. They often take the form of laws, regulations, resolutions, executive orders, and other types of legal policies. They can also be organizational policies, such as wellness or dress code policies.

Resources

The screenshot shows a web browser window with the URL keepitsacred.org. The browser's address bar and tabs are visible at the top. Below the browser window, the website's navigation menu is on the left, and the main content area is on the right. The main content area features a large photograph of two women in traditional Native American attire sitting on the grass. Overlaid on the photograph is the text "IMPROVING OUR COMMUNITY" and a mission statement. At the bottom of the photograph are three circular logos and the SEARHC logo.

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NATIONAL NATIVE NETWORK

Search our resource library Category Type

IMPROVING OUR COMMUNITY

Through Better Health

The mission of the National Native Network is to enhance the quality and performance of public health systems to reduce commercial tobacco-related illnesses and cancer disparities among American Indian and Alaska Native populations.

About The National Native Network

INTER-TRIBAL COUNCIL OF MICHIGAN, INC.
CALIFORNIA RURAL INDIAN HEALTH BOARD, INC. SINCE 1969
GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD
SEARHC

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