

July 7, 2014

Jonathan E. Fielding, Chair
Director Health Officer,
Los Angeles County Department of Public Health
Professor of Health Services and Pediatrics
Schools of Public Health and Medicine
University of California, Los Angeles
Los Angeles, CA

Leticia Van de Putte, Vice-Chair
Texas State Senator
San Antonio, TX

Tom Miller, Treasurer
Attorney General of Iowa
Des Moines, IA

Lawrence G. Wasden
Immediate Past Chair
Attorney General of Idaho
Boise, ID

Donald K. Boswell
President and CEO
Western New York Public Broadcasting Association
Buffalo, NY

Nancy Brown
Chief Executive Officer, American Heart Association
Dallas, TX

Gary R. Herbert
Governor
State of Utah
Salt Lake City, UT

Mike Moore
Principal, Mike Moore Law Firm, LLC
Flowood, MS

Jeremiah W. (Jay) Nixon
Governor
State of Missouri
Jefferson City, MO

Charles K. Scott
Wyoming State Senator
Casper, WY

Cass Wheeler
Chief Executive Officer Emeritus
American Heart Association
Dallas, TX

Greg Zoeller
Attorney General of Indiana
Indianapolis, IN

Judy Hou, Youth Board Liaison
Princeton University
Princeton, NJ

Mauro Medrano, Youth Board Liaison
Dodge City High School Alumnus
Dodge City, KS

Robin Koval, Ex-Officio
CEO and President
Legacy

The Honorable Anthony Foxx
Secretary
Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

Dear Secretary Foxx,

On behalf of the American Legacy Foundation, I am writing to urge the immediate issuance of final rules regarding the inclusion of electronic cigarettes in DOT's existing regulations that prohibit smoking on aircraft. On November 14, 2011, Legacy, in coordination with the American Cancer Society Cancer Action Network, the American Heart Association, American Lung Association, and the Campaign for Tobacco-Free Kids, submitted comments supporting DOT's Notice of Proposed Rulemaking on Smoking of Electronic Cigarettes on Aircraft (Docket No. DOT-OST-2011-0044).ⁱ Nearly three years have passed since DOT's Notice with no final rule or guidance indicating when a final rule will be issued. In light of the potential of e-cigarettes to undermine non-smoking environments, the current lack of federal regulation over them, and the consistently mixed research results on their safety and effects on bystanders, I urge you to finalize DOT's proposed rules and ban the use of electronic cigarettes on all aircraft.

Legacy aims to create a generation of Americans for whom tobacco use is a thing of the past. Our work focuses on youth and young adult public education programs, research and policy, and partnering with other organizations to promote programs and policies to reduce the disparate impact of the tobacco epidemic. Legacy was created as a result of the 1998 Master Settlement Agreement (MSA) between the states and the tobacco industry. Pursuant to the terms of the MSA, Legacy cannot lobby, and therefore takes no position on legislation.

As Legacy pointed out in its comments in 2011, the public health community has come far over the last decade in shifting public attitudes away from smoking, especially among youth. Over thirty-five states now have laws prohibiting smoking in at least one type of public place, and three states and dozens of localities have added e-cigarettes to their indoor air laws and smoking bans.ⁱⁱ The Institute of Medicine has noted that the creation of non-smoking environments "played a major role in reducing smoking altogether by changing social norms and helping smokers quit or reduce smoking."ⁱⁱⁱ Legacy is concerned that allowing the use of e-cigarettes during flights muddles a hard-fought social norm against smoking in enclosed environments and can contradict decades-long smoking prevention and cessation public health messages.

Since the issuance of DOT's proposed rules in 2011, interest in and use of e-cigarettes has greatly increased.^{iv,v} A just-published study on



the use of e-cigarettes in air transit found that e-cigarettes are frequently used in air transit – on airplanes and in airports – by flight attendants, crew, and passengers.^{vi} Findings also indicate confusion around knowledge and awareness of airline and federal transit regulations concerning e-cigarettes and support the need to take action to consistently ban these products on flights.^{vii} As DOT’s own proposed rules state,^{viii} there is insufficient information on the health impact to third parties from e-cigarettes to conclude that they would not “negatively impact the air quality within the aircraft or increase the risk of adverse health effects on passengers and crewmembers.” Health effects associated with exposure to e-cigarette vapor are not fully studied, but research conducted during the years since DOT issued its proposed rule indicates that some potentially harmful constituents exist in e-cigarette vapor, including nitrosamines, heavy metals, and carbonyls.^{ix,x,xi} Nicotine is also present in exhaled e-cigarette vapor, and there is concern that exposing bystanders to nicotine, particularly the chronically ill, youth, and pregnant women could lead to negative health consequences.^{xii,xiii} In the enclosed environment of an airplane cabin, it is impossible to contain the vapors emitted by e-cigarettes.

Electronic cigarettes are currently unregulated by the federal government. Although the Food and Drug Administration issued an Advanced Notice of Proposed Rulemaking stating its intent to exert jurisdiction over e-cigarettes, a final rule is optimistically years away. As DOT correctly noted in its proposed rule, however, several federal and quasi-federal agencies have acted on their own to address concerns over e-cigarettes. Amtrak has banned their use on trains and in any area where smoking is prohibited.^{xiv} The Navy and Marine Corps Public Health Center has discouraged their use.^{xv} And, in 2012, the Air Force revised its tobacco policy to include e-cigarettes.^{xvi} In the absence of e-cigarette research showing their safety to third parties in enclosed environments, I encourage DOT to follow the example of these institutions and act now to protect the health of passengers and crew on all aircraft.

In originally banning smoking on aircraft during flights, DOT sought to improve air quality within the aircraft, reduce the risk of adverse health effects on passengers and crewmembers, and enhance aviation safety and passenger comfort.^{xvii} By further delaying final rules addressing the use of e-cigarettes on flights, DOT is potentially undermining these important goals. I encourage you to immediately finalize these rules without further delay.

Should you have further questions or would like to follow up, please contact Diane Canova, Legacy’s Vice President of Government Affairs at dcanova@legacyforhealth.org or 202-454-5559.

Sincerely,

Robin Koval
CEO and President, Legacy

CC: Howard Shelanski
Administrator, Office of Information and Regulatory Affairs (OIRA)

Brian Deese
Acting Director, Office of Management and Budget (OMB)

ⁱ Comment submitted to DOT Docket No. DOT-OST-2011-0044, “Smoking of Electronic Cigarettes on Aircraft.” <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2011-0044-0693>. Accessed June 25, 2014.

ⁱⁱ American Nonsmokers’ Rights Foundation. U.S. State and Local Laws Regulating Use of Electronic Cigarettes. <http://www.no-smoke.org/pdf/ecigslaws.pdf>. Accessed June 20, 2014.



-
- ⁱⁱⁱ Institute of Medicine. Ending the Tobacco Problem: A Blueprint for the Nation. Washington, DC. The National Academies Press, 2007.
- ^{iv} Zhu SH, Gamst A, Lee M, Cummins S, Yin L, Zoref L. The Use and Perception of Electronic Cigarettes and Snus among the U.S. Population. *PLoS one*. 2013;8(10):e79332.
- ^v King BA, Alam S, Promoff G, Arrazola R, Dube SR. Awareness and ever-use of electronic cigarettes among u.s. Adults, 2010-2011.
- ^{vi} Stillman FA, Soong A, Zheng L Y, et al. Tob Control Published Online First: [July 3, 2014] doi:10.1136/tobaccocontrol-2013-051514.
- ^{vii} *Ibid.*
- ^{viii} Smoking of Electronic Cigarettes on Aircraft, Final Rule, 76 Fed. Reg. 57008-57012 (September 15, 2011) (to be codified at 14 C.F.R. pt. 252).
- ^{ix} Goniewicz ML, Knysak J, Gawron M, et al. Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tobacco control*. Mar 6 2013.
- ^x Williams, M, Villareal, K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. PLoS ONE 8(3): e57987. Doi:10.1371/journal.pone.0057987.
- ^{xi} Schober W, Szendrei K, Matzen W, et al. Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers. *International Journal of Hygiene and Environmental Health* 217 (2014):628-637. DOI: 10.1016/j.ijheh.2013.11.003.
- ^{xii} Czogala J, Goniewicz ML, Fidelus B, Zielinska-Danch W, Travers MJ, Sobczak A. Secondhand exposure to vapors from electronic cigarettes. *Nicotine & tobacco research : official journal of the Society for Research on Nicotine and Tobacco*. Jun 2014;16(6):655-662.
- ^{xiii} Schripp, T., Markewitz, D., Uhde, E. and Salthammer, T. (2013), Does e-cigarette consumption cause passive vaping?. *Indoor Air*, 23: 25–31. doi: 10.1111/j.1600-0668.2012.00792.x
- ^{xiv} Amtrak Smoking Policy. <http://www.amtrak.com/smoking-policy>. Accessed: June 26, 2014.
- ^{xv} U.S. Navy and Marine Corps Public Health Center. Frequent Questions about Electronic Cigarettes. [http://www.med.navy.mil/sites/nmcphc/Documents/health-promotion-wellness/tobacco-free-living/Frequent Questions about Electronic Cigarettes March 2013.pdf](http://www.med.navy.mil/sites/nmcphc/Documents/health-promotion-wellness/tobacco-free-living/Frequent%20Questions%20about%20Electronic%20Cigarettes%20March%202013.pdf). Accessed: June 26, 2014.
- ^{xvi} Air Force Instruction 40-102. Medical Command: Tobacco Use in the Air Force. http://static.e-publishing.af.mil/production/1/af_sg/publication/afi40-102/afi40-102.pdf. Accessed: June 26, 2014.
- ^{xvii} Smoking of Electronic Cigarettes on Aircraft, Final Rule, 76 Fed. Reg. 57008-57012 (September 15, 2011) (to be codified at 14 C.F.R. pt. 252).