

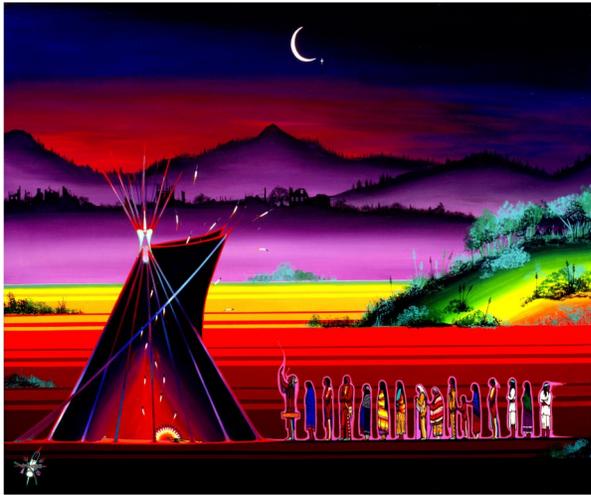
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NATIONAL NATIVE NETWORK

Family Smoking Prevention and Tobacco Control Act: Strengthening Tribal Sovereignty and Health

National Native Network

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Contents

Introduction P.1

**Act Provision
Description P.2**

**Act Benefit to
Tribal Self-
Determination
P.3**

**Next Steps to a
Implementation
of the Act and
additional sanc-
tions. P.4**

The Network

The **National Native Network** is a diverse community of American Indians/Alaska Natives (AI/AN) leading commercial tobacco abuse prevention efforts throughout Indian Country. The National Native Network management is led by the Inter-Tribal Council of Michigan. (ITCM). Funding for the Network comes through a cooperative agreement with the Centers for Disease Control and Prevention #U58DP001519-04.

The National Native Network supports culturally sensitive commercial tobacco prevention programs by developing a forum for AI/AN tribes and tribal organizations to obtain and disseminate evidence-based and culturally appropriate information that assists in the elimination of health disparities related to commercial tobacco. The Network is committed to protecting tribal sovereignty and preserving the revered status of traditional tobacco and its ceremonial and sacred uses.

Introduction

Over 3,000 state, local, and tribal tobacco policies have passed since the 1964 Surgeon General's report on smoking and health, which exposed the adverse effects of tobacco use on the health of Americans. In June 2009, the Family Smoking Prevention and Tobacco Control Act (the Act) was signed into law granting, for the first time, the Federal Food and Drug Administration (FDA) authority to regulate tobacco products. As a result of this historic legislation, the FDA is able to intervene in the Tobacco Industry's production and distribution of tobacco products by: 1) limiting tobacco product marketing; 2) restricting youth access to tobacco products; 3) dictating tobacco product standards; and 4) requiring more accurate information for consumers. As a result of these new regulations, the tobacco industry will be held accountable for the contents and manufacturing of its products. In addition, the Act should substantially limit the Industry's powerful marketing strategies that commonly target youth. Ultimately, the Act is designed to ensure that science is used to guide effective public health interventions in efforts to reduce morbidity and mortality directly linked to commercial tobacco abuse.

Opportunity

The Act's provisions, under the Commerce Clause in the U.S. Constitution, cover tribal nations. The clause grants Congress the power ". . . to regulate Commerce with foreign Nations, and among the several states, and with the Indian tribes". Though the Act preempts state, local, and tribal regulation of tobacco product standards, the Act preserves and enhances the authority of state, local, and tribal governments to pass stricter provisions than those described in the Act.

Commercial tobacco use remains the leading cause of preventable death in Indian Country. By embracing the Act, tribes have an opportunity to assert their sovereignty by not only protecting the health of Native people but by also requiring even tougher regulations. The purpose of this policy brief is to assist tribal leaders in protecting the health of Native people through enactment of the time-sensitive provisions of the Act; to document how implementing the Act's provisions and stricter tribal policy regulations can help protect and strengthen sovereignty; and to inform readers about the National Native Network and its purpose. The brief explains the Act and the next steps to execution of the Act's provisions. This policy brief serves as one of the many National Native Network capacity-building materials to inspire and support tribes to implement the provisions outlined in the Act as well as additional regulations that have the potential to provide even more protection to American Indians and Alaska Natives (AI/AN).

Scientific research has proven that tobacco control policies are valuable public health tools for tribal nations just as they are for the federal, state, and municipal governments. Tobacco control policies can reduce commercial tobacco prevalence rates, which in turn decreases tobacco-related diseases and deaths, and improves community health. The use of effective and evidence-based interventions is critical in reducing prevalence rates and the commercial tobacco related health disparities from which AI/AN populations suffer.

Commercial Tobacco Epidemic in Indian Country

National surveillance data indicate that American Indian and Alaska Native adults have the highest prevalence of smoking when compared with all other U.S. populations, with thirty-two percent (32.4%) of AI/AN adults identified as current smokers. (1) Tribal specific data from the American Indian and Alaska Native Adult Tobacco Surveys revealed that the range for specific smoking estimates within tribal nations were as low as 28% to as high as 79%. AI/AN youth are also disproportionately at risk of commercial tobacco abuse. The prevalence of current smoking among Native youth, ages 12-17, is higher (11.6%) than their counterparts of other racial/ethnic groups. (14) Smokeless tobacco abuse among both adults and youth is highest among AI/AN. (14)

Commercial tobacco abuse is directly associated with many of the health disparities from which AI/AN populations experience disproportionately. With smoking prevalence rates so high it is not a surprise that lung cancer is one of the leading causes of AI/AN deaths and cardiovascular disease (i.e. heart disease, stroke, high blood pressure, etc.) is the number one cause of death among AI/AN populations. (12) Further, commercial tobacco abuse exacerbates many other health inequities experienced by AI/AN. These inequities include maternal child health issues like SIDS, low infant birth weight, and infant mortality as well as diseases such as diabetes, chronic bronchitis, emphysema, asthma, HIV/AIDS, cataracts, rheumatoid arthritis, and prostate, breast and colorectal cancers. (15), (16), (17), (18)

Family Smoking Prevention and Tobacco Control Act

The Food, Drug, and Cosmetic Act grants a majority of the Food and Drug Administration's (FDA) regulatory powers. The Family Smoking Prevention and Tobacco Control Act now empowers the FDA to regulate commercial tobacco products and establishes the regulatory body, the Center for Tobacco Products. The Center's mission is to reduce commercial tobacco-related disability, disease and death. (13) Integrating population health science, the Center oversees the Act's implementation and assists other federal, state, territorial and tribal authorities to implement the Act's provisions. In 2010, the Center began intensive assistance for states with a Request for Proposals (RFPs) to support Act enforcement such as the inspection of tobacco retail establishments. (13) The FDA plans to issue additional RFPs and establish contracts with tribes and tribal organizations. (13) The FDA has started the process of establishing relationships with tribes and tribal entities through stakeholder meetings that allow for bilateral communication and work toward the development of a positive collaboration. (13) The National Native Network is committed to working with the FDA and tribal leaders toward increasing tribal capacity to implement components of the Act that will ultimately increase the protection of AI/AN peoples.

Family Smoking Prevention and Tobacco Control Act Provision Matrix (5),(8),(11)

Provision Areas	Date in Effect	Cigarettes	Smokeless Tobacco
Manufacturing			
Requires disclosure of tobacco product ingredients by the tobacco industry to the FDA	2009	√	√
Allows the FDA to require changes to products to reduce or eliminate harmful ingredients	2009	√	√
Provides the FDA authority to change nicotine yields but only Congress can ban nicotine entirely	2009	√	√
Applies a user fee on tobacco manufacturers based on manufacturers share of the U.S. market	2009	√	√
Sales			
No sales of cigarettes or chew to any person under age 18 and requires retailers to verify age if under the age of 27	2010	√	√
No flavors other than menthol cigarettes, including filters, cigarette rolling papers, etc.	2009	√	
Prohibits the sales of cigarette packages with fewer than 20 cigarettes	2010	√	
Eliminates vending machines or self-service displays; retailers must sell in face to face exchange	2010	√	√
Marketing			
Limits print /video tobacco advertising and labeling to black text only on white background	2010	√	√
Prohibits industry reduced harm claims (e.g. lights, mild, low tar, etc.)	2010	√	√
Requires larger health warnings on packages for chew and cigarettes	2010;2011	√	√
Prohibits tobacco products marketed in tandem with any other product regulated by FDA	2010	√	√
Eliminates distribution of free tobacco products	2010	√	√

Cigarette smoking among adults in 2008 (1)

	2008 (n = 21,525)
	% (95% CI)
Race/Ethnicity	
White, non-Hispanic	22.0 (21.1--23.0)
Black, non-Hispanic	21.3 (19.5--23.1)
Hispanic	15.8 (14.3--17.5)
American Indian/ Alaska Native, non-Hispanic	32.4 (24.4--41.6)
Asian, non-Hispanic	9.9 (7.8--12.6)

CDC (2009). Cigarette Smoking Among Adults and Trends in Smoking Cessation --- United States, 2008. *MMWR Weekly* 58(44):1227-1232

How Can the Family Smoking Prevention and Tobacco Control Act Strengthen Tribal Self-Determination?

As sovereign nations, tribes are responsible for the health and protection of their constituents. Federal, state, and municipal governments have used tobacco control policies to successfully reduce the burden of commercial tobacco on the public for years. With the passage of the Family Smoking Prevention and Tobacco Control Act (the Act), tobacco product regulation now serves as one of the most effective policy tools in which to improve public health. Tribes have an opportunity to protect tribal community health through implementation of the Act.

The Act empowers the FDA with sole authority over tobacco product standards, regulating the sale, design, manufacturing and safety of such products. Although the law limits sole tribal authority to regulate tobacco product standards, tribes retain significant regulatory powers. (11) The Act preserves tribal sovereignty by securing a tribe's power to enforce additional, more stringent commercial tobacco control regulatory policies on the sale, distribution, marketing, possession, availability, use, or taxation of tobacco products. (11) Furthermore, the Act grants tribes new authority to limit the time, place, and mode (not content) of cigarette advertising. (11)

The implementation of strong tobacco control policies that reduce commercial tobacco consumption and exposure to secondhand smoke remain a cost-efficient avenue to improving tribal community health. (3) Through leveraging scarce resources by implementing policies, tribes are investing in the decision-making power of tribal leaders, in tribal autonomy, and ultimately in the youth, the future tribal leaders. Tribal self-determination enables tribes to plan, implement, and enforce tribal governmental policies and Indian health care system changes. By embracing and applying the Act, tribal nations can assert their sovereignty through enacting policies that protect the health of Native peoples.

The social, cultural, and economic impact of passing public health policy must always be considered when weighing po-

tential health benefits. Tribal business revenues are critical to tribal economic self-sufficiency and tribes must balance revenues with the protection of the health and indigenous culture. Several tribal nations are involved in the manufacture, sale and/or marketing of commercial tobacco products; these businesses are part of tribal economic self-sufficiency. (13) These businesses often employ tribal members, and produce revenue used to fund health and social programs. However, the question must be asked, "are the revenues worth the cost?" AI/AN populations suffer disproportionately from chronic diseases that are directly related to commercial tobacco use and the attenuating morbidity and mortality costs Indian Health Services and Tribal Health Divisions well over 200 million dollars a year. (6) The early loss of Native people, and with them, the loss of history and traditions, cannot be quantified.

In an effort to combat these economic, social, and cultural losses, many tribes have successfully implemented a range of tobacco control policies over the last two decades including, but not limited to: public indoor and outdoor smoke-free ordinances; policies banning the use of American Indian imagery in tobacco marketing on tribal lands; excise taxation on tobacco products; policies requiring retailer training to prevent sales to minors; 24/7 tobacco-free schools on reservation/tribal lands; commercial tobacco-free administrative and medical campuses; and smoke-free tribal housing.

Tribal nations can continue to build on the aforementioned policy successes by implementing the Act's provisions and complementary tobacco control policies. Both are great vehicles for asserting tribal self-determination. Tribal leaders have an opportunity to respond to the commercial tobacco abuse epidemic and use their power to make a broad, collective change in tribal communities.

Protecting AI/AN Youth from Predatory Tobacco Industry Tactics

Studies have long documented the strong correlation between commercial tobacco product advertisements and promotion and the increased use of those products by youth.(9) To this end, tobacco companies spend 34 million dollars per day in advertisements.(7)

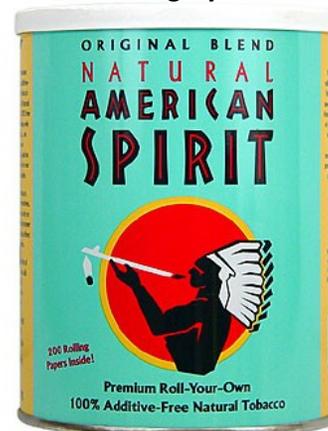
In an effort to protect youth from the well funded marketing tactics of the tobacco industry, the FDA Center for Tobacco Products enforces a provision of the Family Smoking Prevention and Tobacco Control Act (the Act) which reduces the sale, distribution, and promotion of cigarette and smokeless tobacco products to children and adolescents under the age of 18.(5)

Nearly 4,000 children and teens try their first cigarette each day and of these 4,000, 1,000 of them become regular smokers.(4) Research has shown that the younger the age of initiation, the more difficult it is to quit.(2)

AI/AN youth have the highest smoking and smokeless tobacco use percentage and report some of the youngest ages of initiation. The tobacco industry engages in direct targeting of youth from communities of color.(19) AI/AN youth are particularly vulnerable because the industry employs marketing with misappropriated Native symbols, images, and language.

The provision of the Act aimed at protecting children and adolescents provides needed protection against the tobacco industry manipulations for the generations to come.

Misappropriation of Native Imagery



Next Steps to a Implementation of the Tobacco Control Act

- ◆ Peruse the Tobacco Control Act's provisions, deadlines, and funding opportunities.
- ◆ Participate in the FDA's Tobacco Control Act Stakeholder meetings in 2011 and 2012.
- ◆ Discuss the approaches, benefits, and challenges with other tribal leaders and tribal attorneys.
- ◆ Discuss the boundaries, jurisdictions, and the effect of non-Native lands within your reservation boundaries on the implementation of the Act and stricter commercial tobacco regulations.
- ◆ Consider enacting stronger commercial tobacco regulations to compliment the Tobacco Control Act provisions for your tribal nation.

Key Activities for Planning, Implementation and Enforcement of the Tobacco Act

The National Native Network provides enhanced technical assistance in planning, implementation, and enforcement of the Tobacco Control Act. Contact the National Native Network and staff will assist tribal leaders and/or advocates with the following steps to implementation.

- ◆ Review and assess tribal businesses and other entities under the purview of the Act.
- ◆ Educate tribal businesses and other entities about the Act's goal, provisions, and assistance.
- ◆ Mobilize support and provide community education about the Act using either the tribe's own resources or the National Native Network's resources.
- ◆ Select potential additional tobacco control regulatory policies appropriate to improve tribal health.
- ◆ Choose and modify a tobacco control policy template from the National Native Network's ordinance repository.
- ◆ Select and modify media advocacy templates from the Network's repository to notify public.
- ◆ Ensure enforcement of the Act and any stricter regulation provisions with assistance from the FDA and the National Native Network.

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SACRED TOBACCO & THE TOBACCO CONTROL ACT

Adherence to the Act as well as the passing of tailored commercial tobacco policies shows respect for the powerful nature of traditional tobacco while differentiating this use from commercial tobacco abuse. The Act does not affect the use of ceremonial tobacco. In fact, by limiting the abuse of tobacco, the Act and stricter policies can assist tribes in reinforcing the sacred role of tobacco in Native cultures.

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