



U.S. Department of Transportation
Office of the Secretary
RE: Docket No. DOT-OST-2011-0044
Smoking of Electronic Cigarettes on Aircraft

November 14, 2011

To Whom it May Concern:

The undersigned organizations are pleased to submit the following comments in response to the Department of Transportation (DOT)'s Notice of Proposed Rulemaking on Smoking of Electronic Cigarettes on Aircraft (Docket No. DOT-OST-2011-0044). Overall, our organizations support DOT's proposal to include electronic cigarettes in its existing regulations that prohibit smoking on aircraft.

The Department should amend its existing airline smoking rule to explicitly prohibit e-cigarettes on all commercial passenger aircraft in the U.S.

We support the DOT's proposal to amend part 252, which prohibits the smoking of all tobacco products on all scheduled passenger flights of air carriers and segments of foreign air carriers between points in the U.S. and foreign points, to include use of electronic cigarettes in the definition of "smoking." We agree that in the context of smoking prohibitions in aircraft, electronic cigarettes should be considered comparable to traditional cigarettes.

Our organizations support the inclusion of e-cigarettes in the prohibition for several reasons, outlined below.

1. The health consequences of e-cigarettes are unknown at this time; therefore, restrictions on aircraft are appropriate.

There is insufficient evidence to conclude that the use of e-cigarettes in confined spaces is safe either for primary or secondary inhalation. On the contrary, as DOT acknowledges in its own Notice of Proposed Rulemaking (NPRM), in initial lab tests the U.S. Food and Drug Administration (FDA) found detectable levels of carcinogens and toxic chemicals in two brands of e-cigarettes and numerous cartridges of these brands. FDA determined that users could potentially be exposed to these chemicals.ⁱ These findings contradict manufacturers' claims^{ii,iii,iv} that their products are safe alternatives to traditional tobacco products. Unless and until it can be shown with a high degree of certainty that e-cigarettes pose no such harm to non-users, DOT should prohibit their use. Non-users should not have to put their health at risk by traveling by air.

2. Allowing use of e-cigarettes on aircraft would create significant confusion for passengers and enforcement challenges for airline personnel.

Permitting usage of e-cigarettes on airplanes would create enforcement problems for airline personnel. E-cigarettes are purposely designed to look and feel like traditional cigarettes. They are usually the approximate size, length and cylindrical shape of a traditional cigarette. E-cigarettes produce a vapor that can appear to be traditional cigarette smoke or even smoke from an incendiary device. Attempted use of e-cigarettes could lead to serious disagreements between passengers and require airline personnel to referee heated disputes. Performing such a role is the last thing airline personnel need to be doing. There has already been at least one reported occurrence in which a flight was disrupted and a flight attendant harassed because of a passenger's e-cigarette use.^v Passengers are likely to be confused about which products would be permissible, given the wide variety of electronic cigarette and cigar-like devices on the market. Moreover, the Public Health Law Center notes that "omitting e-cigarettes from smoke-free laws could cause conventional smokers to assume that smoking is permitted and nonsmokers might become needlessly concerned at what they see as a violation of a smoke-free law."^{vi} If use is permitted, airline staff would need to take time away from their other duties to carefully investigate each user to determine what type of product is actually being used. Although some airlines already prohibit the use of e-cigarettes on their flights,^{vii} implementing a policy across all passenger flights would enable consistent, predictable enforcement.

3. DOT’s regulatory proposal is consistent with FDA’s current regulatory approach on e-cigarettes.

Following the April 2011 *Sotterra v. FDA* decision, FDA announced that it is now developing a strategy to regulate e-cigarettes containing tobacco derived ingredients as tobacco products under the Tobacco Control Act.^{viii,ix} It is important for Federal agencies to adopt a uniform approach to regulating e-cigarettes and their use. The proposal achieves this by including e-cigarettes with other tobacco products in the definition of “smoking,” for purposes of prohibition on aircraft. Until the FDA or other independent research into the safety of these products has shown that the use of the products and the released vapor from the products are harmless, the DOT should prohibit their use for the safety of all passengers on aircraft.

4. Prohibiting e-cigarettes on aircrafts promotes the critical public health goal of reducing the use of tobacco products through promotion of non-smoking environments.

The public health community and local and state authorities have made great strides over the last decade in shifting public attitudes away from smoking, especially among youth. Thirty-five states and the District of Columbia now have some sort of law prohibiting smoking in at least one type of public place such as bars, restaurants, and/or workplaces. Allowing the use of e-cigarettes in closed environments serves to break down this hard-fought social norm and contradict smoking prevention and cessation public health messages. The Institute of Medicine, in their 2007 report on reducing tobacco use noted that assertion of non-smoking environments “played a major role in reducing smoking altogether by changing social norms and helping smokers quit or reduce smoking.”^x

There is no evidence that airlines have been hurt financially by the current smoking prohibition on flights, and smoking passengers are already accustomed to not smoking on flights. There are FDA-approved nicotine replacement therapies that can help curb nicotine cravings on long flights, thus it does not seem necessary to allow an unapproved, potentially hazardous substance onto airline flights.

Smoking on Charter Flights

The Department should implement regulations that prohibit smoking on charter flights.

In the NPRM, the Department also requested comments on potential regulations to prohibit smoking on charter flights. Our organizations would support such a prohibition. Regulations prohibited smoking on regular commercial flights for critical safety and public health reasons. These same concerns apply to charter flights.

The health effects of secondhand smoke are well established in the scientific literature.^{xi} Charter flight staff, like any other employees, should not be exposed at their workplace to secondhand smoke, which has been shown to increase risk of heart disease, stroke, and cancer.^{xii} Non-smoking policies may reduce workers' long-term risk of lung cancer and cardiovascular disease.^{xiii} Charter flight passengers are potentially exposed to secondhand smoke for extended periods of time in a confined space. Passengers and workers on charter flights should be afforded the same level of protection from the adverse health impacts of secondhand smoke as commercial flight passengers and workers. There is no safe level of exposure to secondhand smoke, regardless of the type of plane or flight one takes.^{xiv} Current regulations in Part 252 that allow no-smoking sections on charter flights do not effectively protect the public health and should be changed to prohibit smoking, including use of e-cigarettes.

We appreciate the opportunity to offer comment on regulations that have the potential to protect the public health through reducing exposure to potentially harmful substances and contributing to a climate of reduced tobacco use.

American Cancer Society Cancer Action Network

American Heart Association

American Lung Association

Campaign for Tobacco Free Kids

Legacy

ⁱ U.S. Food and Drug Administration. Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA. July 22, 2009. Available online at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>.

ⁱⁱ The E-Cigarettes Shop. Electronic Cigarettes - A Healthier Alternative to Smoking. Available online at <http://theecigarettes.com/electronic-cigarettes-a-healthier-alternative-to-smoking/>.

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- ⁱⁱⁱ ECigarettesUSA, Inc. ECigarettes...a healthier alternative to cigarettes. Available at <http://www.ecigarettesusa.com/>.
- ^{iv} The Safe Cig. Electronic Cigarette FAQs. Available online at <http://www.thesafecig.com/contactus.php>.
- ^v Skoloff, B. "Man jailed for tossing peanuts, pretzels on flight." *Associated Press*. July 13, 2011.
- ^{vi} Regulating E-cigarettes. Public Health Law Center. Available online at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-regecigs-2011.pdf>
- ^{vii} Continental Airlines. *Dangerous Goods*. Accessed November 9, 2011 from <http://www.continental.com/web/en-US/content/travel/baggage/dangerous.aspx>. American Airlines. *Onboard Technology*. Accessed November 9, 2011 from <http://www.aa.com/i18n/travelInformation/duringFlight/onboardTechnology.jsp>. Southwest Airlines. *Portable Electronic Devices*. Accessed November 9, 2011 from http://www.njgasp.org/Southwest_Airlines_noecigs_April_2010.pdf.
- ^{viii} The U.S. Court of Appeals for the D.C. Circuit, *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010).
- ^{ix} FDA Letter to Stakeholders. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm252360.htm>. Accessed November 14, 2011.
- ^x Institute of Medicine.. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC. The National Academies Press, 2007.
- ^{xi} U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, GA, 2006
- ^{xii} U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, GA, 2006.
- ^{xiii} National Cancer Institute (NCI). *Health Effects of Exposure to Environmental Tobacco Smoke: A Report of the California Environmental Protection Agency*, 1999.
- ^{xiv} .S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: A Report of the Surgeon General*. Atlanta, GA, 2010.