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**Re: Notice of proposed order to amend the schedule to the *Tobacco Act*  
*Canada Gazette Part I, October 11, 2014, pp. 2637-2639***

Dear Mr. Cook,

Physicians for a Smoke-Free Canada welcomes the opportunity to provide comments on the above-noted proposed order to amend the schedule to the Tobacco Act.

We welcome the attempt to improve a flaw in the *Tobacco Act*. We note that the notice in the Canada Gazette, Part 1 of October 11, 2014 proposes one repair to one loophole with respect to flavoured tobacco products. Regrettably, it does not address a second loophole by which blunt wraps continue to be sold. Suppliers have taken to wrapping several blunt wraps together until their weight exceeds 1.4 grams and calling them a small cigar. Under the new proposal, to carry on selling a product that the government is trying to ban, they need only wrap more blunt wraps together until the weight exceeds 6 grams. This problem would be easily solved if all blunt wraps were banned, no matter what they were called or how they were packaged.

We note also that the proposed change would require some definitional changes. It cannot be effected by changing the schedule alone. Some modification would be required to the law and/or the regulations, beyond a change to the Schedule.

While we do not oppose the modification to the treatment of little cigars, we regret the opportunity cost of not addressing other important vulnerabilities in the current regulatory scheme at the same time that this change will be presented for regulatory and parliamentary review.

While the *Tobacco Act* was an excellent measure when it was adopted 17 years ago, it has proved to be poorly adapted to rapidly changing circumstances. In addition to the rise of flavoured tobacco products, recent years have seen a marked shift in tobacco leaf supply from sale at auction to direct contract buying, moving of a major cigarette production operation to Mexico and consequent avoidance of the tobacco manufacturers profits surtax, poorer tracking of tobacco production and imports, the rise of contraband tobacco, cost-recovery litigation by provinces against the tobacco industry, a major class action suit against the tobacco industry in Quebec and the growing popularity of electronic cigarettes.

All of these phenomena have health implications. Yet neither the current law nor the policy framework it supports can adequately monitor what the health effects of these changes in the marketplace are. We need a more responsive and robust federal public health response, built for the challenges of the 21<sup>st</sup> century.

I refer you to previous recommendations and suggestions we provided to the department in [2005](#), February 2008, June 2008 and [2011](#). Copies of these are attached for your convenience.

In the current circumstance, we recommend that the department consider using the opportunity presented by the proposed regulation to strengthen the tobacco control framework in the context taking advantage since changes to the law and/or regulations are being contemplated in any case, there are some current problems that could be solved by making further changes to the law and regulations at the same time that the problems of flavoured small cigars and blunts are being solved

**Problems that could be solved within the current legislative and regulatory framework by changes to the *Tobacco Act* and its regulations**

- Continued presence in the marketplace of hazardous low-volume products.
- Continued use of menthol in tobacco products.
- Continued use of attractive flavourings in tobacco products.
- Health warnings that are wearing out.
- The rise of electronic cigarettes.
- Too many brand variants.
- Too many new products, and too many examples of stealth promotion through new packaging for existing products.
- Too little public information available from Tobacco Reporting Regulations that are unnecessarily difficult to administer.

**Legislative and regulatory solutions to the problems noted above**

- Ban all low-volume tobacco products with no redeeming public health benefit. These would include blunt wraps (however they are packaged), chewing tobacco, moist snuff, dry snuff, water pipes and all products intended for burning in them, whether tobacco or non-tobacco.
- Ban the use of menthol, l-menthol and l-menthone in all products.
- Except for menthol and its derivatives, permit only additives currently listed as excluded in the Schedule to the *Tobacco Act* of Prohibited Additives. In addition, allow certain traditional flavours in pipe tobacco and spiral-wrapped cigars.
- To avoid warning wear-out, create a new set of warnings to be placed on packages.
- Adopt WHO recommendations for the control of electronic cigarettes.
- Restrict brand variants to one for each brand of cigarette or cigarette tobacco. Such a measure is currently in effect in Uruguay. For further information, see the 2005 report [A comprehensive plan to end the 'light' and 'mild' deception](#).
- Enact a partial moratorium on packaging changes, allowing voluntary changes only at the same time as changes required by law.
- Enact a moratorium on new tobacco products that have no health benefit.

- Substantially revise the legislative and regulatory provisions pertaining to tobacco reporting. These could include:
  - Make accurate and timely reporting a condition of sale, just as it currently is for manufacturing and labelling.
  - Require reporting in standard electronic format.
  - Afford the Minister and officials rapid-response powers for violations of reporting requirements.
  - Encourage consultations between industry and officials to ensure full compliance with reporting requirements as soon as products are placed on the market.
  - Disallow benchmarking.
  - Specify that several reports will be quickly made public on a website, in the standard electronic form in which they are received. These would include, at a minimum:
    - sales by brand, province and month
    - ingredients by brand
    - results of three toxicity tests and ignition propensity tests by brand
    - results of testing for 41 toxic chemicals and pH, by brand
    - summaries of advertising and promotion activities and expenditures
    - summaries of research activities
  - In addition, further reports and analyses would be made public by Health Canada from time to time.

### **Adapting tobacco control for the 21st century**

As noted above, a fundamental problem is policy and legal machinery that is too creaky and unresponsive to fast-moving changes in the marketplace. In the long run, sound public health policy would require phasing out tobacco completely. While Canada does not yet have a plan to achieve such a goal, such a plan could be created that would move us along towards near-zero tobacco consumption.

## Suggested solutions

- Tobacco control is the business of the whole of government. In addition to Health Canada, Agriculture and Agri-Food Canada, the Canada Revenue Agency, Finance Canada and other departments that deal with the tobacco industry in one way or another all need to adjust their policies and practices so that achieving public health goals for tobacco control, as set by Health Canada, is a central policy focus.
- Tobacco control law could be brought into the 21st century by granting the Minister and officials rapid-response powers akin to those in the *Consumer Products Safety Act*.
- Interim and final targets for tobacco use reduction could be proposed. In addition to the policy and legislative measures proposed here, tobacco companies could be obliged to meet targets for tobacco supply and demand reduction. Various options for how this could be done are discussed in [The Tobacco Endgame, Tobacco Control, May 2013, Volume 22, Supplement 1](#). Further useful discussion of this subject can be found in the attached documents. Your attention is directed particularly to the 2011 report [Moving Forward](#) and our February and June 2008 submissions on the *Consumer Product Safety Act*.

We would welcome the opportunity to further discuss these and other ideas for improved tobacco control in Canada.

Yours sincerely,



Neil E. Collishaw  
Research Director

c.c. Suzy McDonald, Associate Director General, Controlled Substances and Tobacco Directorate, Healthy Environments and Consumer Safety Branch