

United States of America

Overall score:

72

I. Industry participation in policy development:

In the USA the tobacco industry operates at the federal, state and local levels. Federally, the industry has been invited to weigh in on the Food and Drug Administration's (FDA) regulatory approach to tobacco and e-cigarettes. The FDA Tobacco Products Scientific Advisory Committee is composed of 3 non-voting members who have an identified interest with the tobacco industry including manufacturing (large industry and small business) and growing.

Nationwide all 50 states have at least one lobbyist registered to represent a tobacco company. The industry spent over USD 46 million in federal lobbying between 2017 and 2018 and utilized lobbyists and multiple front groups to thwart state and local legislation including raising the age of purchase to 21 (T21), flavored tobacco (including menthol) and tax bills. The industry also continued its trend of drafting sample legislation with pre-emptive language (i.e., removing the right of lower governments to enact stricter regulations) and delaying and weakening state and federal action and authority.

II. Tobacco industry-related CSR activities: The industry actively supported many humanitarian and disaster relief causes. However, no specific endorsements from the government and its agencies were identified.

III. Benefits given to the tobacco industry: The FDA extended the ingredient listing deadline for manufactures as well as the ingredient compliance deadlines for newly-deemed tobacco products. The FDA also delayed the premarket review of e-cigarettes. The FDA e-cigarette plan exempts mint and menthol from proposed restrictions and the US government provides crop insurance premium subsidies to tobacco farmers.

There are also common state level exemptions for T21 (including the members of the military), grandfathering provisions and government-sponsored compliance checks. Some states also have retail sales taxes that are not applied to tobacco products.

IV. Unnecessary interaction with the tobacco industry:

The tobacco industry sponsored and funded events for both federal and state politicians. Altria gave USD500,000 to President Trump's inaugural activities and tens of thousands of industry dollars went to charitable events in multiple states.

V. Procedure for transparency measures: Federally, the FDA does not have policies in place to (1) disclose all public comments on FDA dockets and (2) to provide copies of communications between the FDA and tobacco industry representatives. In most states lawmakers are not typically required to disclose the full nature of their informal interactions with lobbyists. That being said, there are other government disclosure rules such as annual tobacco company registration under The Family Smoking Prevention and Tobacco Control Act, registration of firms with in-house lobbyists when income/expense minimums are met under the Federal Lobbying Disclosure Act, permit requirements under the Alcohol and Tobacco Tax and Trade Bureau (ATB) and permit requirements for businesses related to the manufacture of tobacco under Chapter 52 of the Internal Revenue Service (IRS) Code. All 50 states do provide public access to registration information for lobbyists and/or entities who contract for lobbying services.

VI. Avoiding conflicts of interest: The industry has spent millions in political campaign contributions including over USD5 million in federal level campaign contributions during the 2018 election

cycle alone. The industry has also infiltrated state governments, with former lobbyist and directors taking government positions. Dr. Brenda Fitzgerald, the former Director of the Centers for Disease Control and Prevention (CDC) stepped down from her position when it was revealed that she invested in tobacco and drug companies, which was deemed inconsistent with the mission of the CDC.

VII. Preventive measures: The FDA Tobacco Scientific Advisory Committee provides links to agendas, rosters, webcasts, presentations, public submissions, minutes and questions for their meetings. Federal oversight is also conducted by several government agencies (for example FDA, IRS, CDC, ATB). However, a government code of conduct for public officials when dealing with the industry, policies disallowing the acceptance of contributions/gifts from the tobacco industry to government agencies and officials and programs to help raise awareness within government departments on FCTC Article 5.3 guidelines could not be identified.

Recommendations

The United States negotiated and signed the WHO FCTC on May 10th, 2004 but unfortunately, the U.S. has not yet ratified the treaty and is not a party to the FCTC. Government officials and advocates should encourage the United States to become a party. However, regardless of whether the United States ever ratifies the treaty, the FCTC still provides excellent lessons and examples that federal, state, and local governments can adopt in order to further protect the health of the U.S. population. Many of the most crucial advancements in tobacco control in the U.S. began at the local level. National ratification of the FCTC is not a prerequisite for greater action.

1. Restrict lobbying: While a complete ban on lobbying is prohibited in the U.S., there are measures that states can undertake to help prevent tobacco industry interference.
2. Limit CSR: A complete ban of industry CSR activities would be prohibited by the U.S. Constitution; however, states can enforce some limits.
3. Divestment: Several states and localities have already complied with Article 5.3 by divesting from tobacco, other states should follow.
4. Official code of conduct/conflict of interest policies: States should reject partnerships with the tobacco industry and develop a code of conduct for their agencies and officials when interacting with the tobacco industry.
5. Increase transparency: Government officials should be required to report interactions with the tobacco industry and its affiliates. The transcripts of meetings with the industry should be made public. Lobbyists should be required to divulge if they are financed by the tobacco industry or its affiliates.