

# CAMPAIGN For TOBACCO-FREE Kids®

## THE MULTISTATE TOBACCO SETTLEMENT AGREEMENT DOES NOT REDUCE THE NEED FOR COMPREHENSIVE FDA AUTHORITY OVER TOBACCO

Despite the new restrictions on tobacco company activities contained in the multistate settlement agreement between the states and the tobacco companies, comprehensive U.S. Food and Drug Administration (FDA) jurisdiction over tobacco products and marketing is still needed to protect the public and to prevent and reduce smoking and other tobacco use, especially among kids. The multistate settlement agreement (MSA) simply does not address many important matters, and others are not covered adequately.

Most notably, providing FDA with comprehensive jurisdiction over tobacco would for the very first time in history provide the U.S. Government with comprehensive authority over manufactured tobacco products and their marketing in order to better protect the public health and safety. With this authority FDA could, for the first time:

1. Create an enforceable mechanism to require the tobacco companies to truthfully disclose what they are placing in their products, including harmful additives, and what they know about the health and safety of their products.
2. Institute a nationwide, comprehensive, and enforceable system for restricting youth access to tobacco products.
3. Put in place a system and set of rules to restrict or eliminate all of the major tobacco advertising and marketing tools that have the greatest influence over children.
4. Adjust and improve its tobacco-related rules and regulations whenever justified by new events and new information or necessary to better protect the public health and safety.
5. Implement and enforce the entire FDA Tobacco Rule, which was blocked by the March 21, 2000 U.S. Supreme Court ruling that Congress has not yet provided FDA with jurisdiction over tobacco.

### **The MSA Does Not Adequately Restrict Those Forms of Tobacco Marketing That Have the Greatest Appeal to Children**

***The MSA places no restrictions on advertisements in the print media.*** The FDA Rule would have required that tobacco ads in newspapers and magazines with large youth readerships be only in black text on white backgrounds. Studies released in 2000 showed that the major cigarette companies increased their advertising in magazines with large youth readerships after the MSA was signed.

***The MSA does nothing about in-store tobacco advertising.*** The FDA Rule would have limited the size and number of in-store ads and limited them to black text on white backgrounds. Another recent study has shown that the tobacco companies have increased their marketing at retail outlets since the MSA went into effect.

***The MSA restricts but does not eliminate tobacco brand-name sponsorship of events.*** The FDA Rule would have prohibited all tobacco brand-name sponsorship of events.

***The MSA permits outdoor tobacco product ads near schools and playgrounds.*** While the MSA bans large billboards, it permits outdoor or outdoor-facing signs of up to 14 square feet on the buildings or property of businesses that sell tobacco products, even if they are right next to schools or playgrounds. The FDA Rule would have banned all outdoor tobacco ads within 1,000 feet of schools and limited other outdoor tobacco ads to black text on white backgrounds.

### **Compared to the FDA Rule, the MSA Does Little to Restrict Youth Access to Tobacco**

The FDA Tobacco Rule created a comprehensive system for restricting youth access to tobacco, but the MSA does little or nothing to reduce tobacco sales to kids. For example, the MSA has no restrictions on vending machine sales, self-service sales, or tobacco-product advertising on the internet. It also contains no requirement that retailers verify with a photo I.D. that young persons attempting to purchase tobacco products are 18 or older. But the FDA Rule would have done all of these things and more.

### **The MSA Does Not Provide for the Regulation of Tobacco Products or Their Constituents for Health and Safety Purposes**

Any adequate FDA authority over tobacco would enable FDA to regulate tobacco products for health and safety purposes to the same extent FDA already regulates other products. The MSA does not address these issues at all. Until FDA is provided authority over tobacco products and their marketing, the U.S. Government will have no ability to do any of the following:

- Block the introduction of new tobacco products or new tobacco marketing efforts that would significantly increase the human suffering and economic costs caused by tobacco use.
- Require safety testing and disclosure of any ingredients added to tobacco products during the manufacturing process.
- Require the tobacco companies to remove or reduce additives or other constituents in tobacco products that have been shown to cause cancer, make the products more addictive, or otherwise contribute to the products' harmfulness.
- Require tobacco companies to disclose their health research concerning their products.
- Require tobacco companies to take reasonable steps to reduce the harm caused by their products.
- Make changes in any tobacco-related rules and regulations based upon the discovery of new information whenever necessary to better protect and promote public health and safety.

### **The MSA is Not a Law**

The MSA is only a contract between the states, the major U.S. tobacco companies, and other tobacco manufacturers that have chosen to sign on. Other tobacco companies are not subject to its restrictions; and the U.S. government has no authority to enforce any of the MSA's terms.

*The National Center for Tobacco-Free Kids, October 23, 2003 / Eric Lindblom*

**For more on FDA authority over tobacco products, see <http://tobaccofreekids.org/reports/fda> and <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=12>.**

**For more on the MSA, see <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=8> and <http://tobaccofreekids.org/research/factsheets>.**