addiction to tobacco products and the relevance to them of the long-term health risks. In the short run, the educational messages would help counter these information deficits and, in the long run, they would provide young people with appropriate information to help them resist tobacco use.

The agency gathered enough evidence regarding the association between promotion and use of cigarettes and smokeless tobacco products and the efficacy of an appropriately designed educational campaign to tentatively conclude that the proposed rule's restrictions on commercial speech would alter young people's smoking behavior. Therefore, the restrictions can be said to "directly advance" the legitimate government goal of decreasing the use of these harmful products. (For a discussion of the evidence, see the discussion pertaining to proposed Subpart D, "Labeling and Advertising.'')

Finally, the proposed rule meets the fourth prong of the *Central Hudson* test, which the Court has modified to require that the governmental regulation of commercial speech not be over broad. The Supreme Court has made it clear that this prong does not require a "least restrictive means test," but rather that there be a "reasonable fit" between the government's regulation and the substantial governmental interest sought to be served. *Fox*, 492 U.S. at 4774– 4780. The Supreme Court stated:

What our decisions require is a fit between the legislature's ends and the means chosen to accomplish those ends."—a fit that is not necessarily perfect, but *reasonable*; that represents not necessarily the single best disposition but one whose scope is "in proportion to the interest served," that employs not necessarily the least restrictive means but, as we have put it in other contexts discussed above, a means narrowly tailored to achieve the desired objective. Within those bounds we leave it to governmental decisionmakers to judge what manner of regulation may best be employed.

*Id.* at 480 (citations omitted) (emphasis added). Accord, *Edenfield*, 113 S.Ct. at 1798 ("[L]aws restricting commercial speech, unlike laws burdening other forms of protected expression, need only be tailored in a reasonable manner to serve a substantial state interest in order to survive First Amendment scrutiny."); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) ("[W]e hold that an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.")

This holding is consistent with the Supreme Court's earlier decisions regarding the overbreadth doctrine. The Supreme Court has held that the overbreadth doctrine—which permits an attack on a statute on the basis that it might be applied unconstitutionally in circumstances other than those before a court—applies weakly, or not at all, to commercial speech.

Since advertising is linked to commercial well-being, it seems unlikely that such speech is particularly susceptible to being crushed by overbroad regulation. Moreover, concerns for uncertainty in determining the scope of protection are reduced; the advertiser seeks to disseminate information about a product or service that he provides, and presumably he can determine more readily than others whether his speech is truthful and protected.

*Bates* v. *State Bar of Arizona,* 433 U.S. 350, 381 (citations omitted), reh'g denied 434 U.S. 881 (1977).

As with the third prong, the Supreme Court has expressed a willingness to defer this determination to the regulating body. Since Fox, the courts have applied the "reasonable fit" standard to uphold the regulation of commercial speech. See Edge, 113 S.Ct. at 2705 (upholding restrictions on the broadcast of lottery advertisements); South-Suburban Housing Center v. Greater South Suburban Bd. of Realtors, 935 F.2d 868, 892 (7th Cir. 1991) (upholding restrictions on the mailing of solicitations to people who had registered with the municipality their desire not to receive them, as "reasonable fit" with the desire to protect residential privacy), cert. denied. 502 U.S. 1074, 112 S.Ct. 971 (1992); Puerto Rico Tele-Com, Inc. v. Ocasio Rodriguez, 747 F.Supp. 836, 845 (D.P.R. 1990) (upholding a cease and desist order by the Puerto Rico **Department of Consumer Affairs** (DACO) prohibiting a long-distance phone carrier from using a price study in a deceitful or misleading way as "a reasonable 'fit' between DĂCO's orders against plaintiff and its mandate to protect consumers"); Central American Refugee Center v. City of Glen Cove, 753 F.Supp. 437, 440 (E.D.N.Y. 1990) (upholding ordinance prohibiting solicitation of employment from a vehicle or by a pedestrian on a public street as a "reasonable fit" with the governmental interest in protecting vehicle passengers and people crossing the street). Moreover, the Court has granted greater leeway and upheld reasonable regulations of commercial speech with regard to socially harmful activities. Edge, 113 S.Ct. 2696 (upholding Federal prohibition of lottery advertising on radio in non

lottery State); Posadas de Puerto Rico Associates, 478 U.S. 328 (1986) (upholding ban of advertising of casino gambling directed to Puerto Rican citizens); Capital Broadcasting Co. v. Mitchell, 333 F.Supp. 582 (D.D.C. 1971), affd. mem, 405 U.S. 1000 (1972) (upholding broadcast ad ban on cigarette advertising); nothing in Rubin v. Coors Brewing Company, 63 U.S.L.W. 4319 (April 19, 1995) is to the contrary (statutory prohibition against statements of alcohol content of beer on labels or in advertising failed completely to advance the governmental interest asserted of preventing "strength wars" among brewers).

The agency believes that, because it could have banned the sale or distribution of the product, or banned certain of the marketing and promotional practices of the tobacco industry, the lesser steps of regulating labeling and advertising and requiring manufacturers to fund a government approved educational campaign are reasonable. As the Supreme Court has stated:

[I]t is precisely *because* the government could have enacted a wholesale prohibition of the underlying conduct that it is permissible for the government to take the less intrusive step of allowing the conduct, but reducing the demand through restrictions on advertising.

*Posadas,* 478 U.S. at 346 (emphasis in original). More specifically, the Court stated:

Legislative regulation of products or activities deemed harmful, such as cigarettes, alcoholic beverages, and prostitution, has varied from outright prohibition on the one hand. \* \* \* to legalization of the product or activity with restrictions on stimulation of demand on the other hand. \* \* \* To rule out the latter, intermediate kind of response would require more than we find in the First Amendment.

Id. at 346–347 (citations omitted). This analysis applies not only to the restrictions on the type of advertising permitted (text-only), but also the requirement that the manufacturers fund and disseminate a government approved educational campaign. The Supreme Court has stated that the government may dictate the form of, and information in, commercial speech. Virginia Pharmacy, 425 U.S. at 771 n.24 ("They may also make it appropriate to require that a commercial message appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive."); In re R.M.J., 455 U.S. 191, 201 (1982) ("warning or disclaimer might be appropriately required\* \* \*in order to dissipate the