



COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock Tribes • Spokane Tribe • Ute Indian Tribe

October 19, 2023

Ms. Shalanda Young, OMB Director

Via email to: Shalanda.D.Young@omb.eop.gov

Ms. Elizabeth Molle-Carr, OMB Tribal Advisor

Via email to: Elizebth.E.Molle-Carr@omb.eop.gov

Mr. Elizabeth Reese, Senior Policy Advisor for Native Affairs, Domestic Policy Council

Via email to: Elizabeth.A.Reese@who.eop.gov

Mr. PaaWee Rivera, Senior Advisor and Tribal Affairs Director for The White House Office of Intergovernmental Affairs

Via email to: PaaWee.Rivera@who.eop.gov

RE: Coalition of Large Tribes' Urgent Request for OMB Consultation Regarding Review of FDA Tobacco Rule-Makings

Dear Honorable Officials:

Notice showing the progress of the Food & Drug Administration's menthol rule¹ has been transmitted for review by the OMB,² which will have devastating consequences for large land base tribes. The Coalition of Large Tribes, an intertribal organization representing the interests of the

¹ [FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death | FDA](#); [FDA Announces Plans for Proposed Rule to Reduce Addictiveness of Cigarettes and Other Combusted Tobacco Products | FDA](#).

² **AGENCY:** HHS-FDA

RIN: [0910-AI28](#)

Status: [Pending Review](#)

TITLE: Tobacco Product Standard for Characterizing Flavors in Cigars

Section 3(f)(1) Significant: Yes

STAGE: Final Rule

Economically Significant: No

**** RECEIVED DATE:** [10/13/2023](#)

LEGAL DEADLINE: None

AGENCY: HHS-FDA

RIN: [0910-AI60](#)

Status: [Pending Review](#)

TITLE: Tobacco Product Standard for Menthol in Cigarettes

Section 3(f)(1) Significant: Yes

STAGE: Final Rule

Economically Significant: No

**** RECEIVED DATE:** [10/13/2023](#)



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more than 50 tribes with reservations of 100,000 acres or more, has previously [echoed](#) the U.S. Senate concerns raised by Senators Cassidy, Rubio, Budd and Hagerty in their July letter to Commissioner Califf of the Food and Drug Administration, sounding the alarm over the Biden administration's plans to restrict tobacco products for Americans, potentially creating opportunities for foreign cartels to profit from illegal tobacco on the black market. [Ranking Member Cassidy, Colleagues Sound... | Senate Committee on Health, Education, Labor and Pensions](#) (July 24, 2023 COLT media statement attached for convenience). COLT is very concerned about the illicit markets this rule will create and the pressure that will result on already-strained tribal law enforcement. This will be a cash cow for cartels already present on reservations and bombarding us with fentanyl and other drugs.

As with other forms of prohibition, unregulated supply chains will take over once legal pathways to adult consumers are closed off. Banning the legal sale of menthol and nicotine-containing cigarettes will cede control of the market to illicit producers. Tribes are painfully aware from our experience with the fentanyl crisis that criminal interests in China, the Middle East and Mexico already use various channels to traffic drugs through and concentrate drugs on our reservations, where the jurisdictional maze and chronic underfunding of tribal law enforcement leaves a persistent gaps for public safety. COLT's [June 2, 2023 Resolution #03-2022 \(WR-Las Vegas\), Calling for Pause in FDA Rulemaking on Tobacco to Allow for Tribal Consultation and Protection of Tribal Ceremonial Uses and Public Safety](#) addressed these concerns head on. COLT sent that Resolution to its Congressional delegations, the FDA and to the White House and has followed up in numerous meetings and communications since.

Yet, the FDA appears to be barreling ahead with this despite the strong and well-grounded opposition and even as media reports on the significant illicit / cartel markets that have sprung up in California immediately after their flavor ban. See, e.g., <https://www.axios.com/2023/10/13/illegal-vapes-thwart-fda-enforcement>; <https://sjvsun.com/california/study-ban-hasnt-stopped-californians-from-using-flavored-tobacco-menthols/>.³

The multi-billion-dollar product gaps created by the proposed rules will be filled by foreign criminal interests and directly and negatively impact public safety on remote rural Indian reservations like those of COLT member tribes. The California empty and discarded packs study

³ Massachusetts' 2020 flavored tobacco ban is another good example of prohibition's expansion of illicit market. <https://www.wbur.org/commonhealth/2019/11/27/explainer-flavored-tobacco-vaping-law>. After the Massachusetts flavor ban went into effect adult consumers shifted their flavored tobacco purchases to neighboring states. The ban also fueled the already robust illegal market. [Sharon man charged in connection with major illegal tobacco operation \(bostonherald.com\)](#); [Smuggled cigarettes continue to flow into Massachusetts \(bostonherald.com\)](#); [Ban on menthol cigarettes sends sales to black market, convenience store owners say \(bostonherald.com\)](#).



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showed the dominance of the “Sheriff” brand of menthol cigarettes which is a well-documented Mexican cartel brand, and that dominance emerged after just one year of California’s flavor ban. If FDA’s menthol rule were to go into effect, tribal law enforcement would need to be fully funded at \$2.9 billion annually⁴ to try to address it. We are already out-manned and out-gunned and the proposed rules would provide the cartels with abundant cash as they fill the multi-billion-dollar product gap.

In addition to intensive public safety concerns, COLT is also dismayed that the FDA has not consulted with tribes at all on the Rules, despite the strong policies of the Biden Administration and numerous Executive Orders. COLT is also concerned that tribal tobacco manufacturers could be severely impacted by both rules, and that tribal ceremonial use of tobacco could be severely restricted, infringing on tribal cultural and religious practices. It is no coincidence that COLT raised these concerns and then we immediately see garbage responses from a major non-Native anti-tobacco non-profit messaging on Native culture to try to minimize tribes’ illicit market and ceremonial use concerns (as addressed in COLT’s Resolution calling for a pause in the FDA’s rulemaking). See [The difference between commercial tobacco and sacred tobacco \(truthinitiative.org\)](https://truthinitiative.org). Additionally, COLT is concerned that product bans create yet another potential tension point between law enforcement and communities of color.

All of this points to the importance of the FDA substantively engaging with tribes asap. But the FDA has refused to listen to tribes or to the law enforcement concerns. COLT called upon FDA to pause its rulemakings, engage in appropriate, required tribal consultation, and fully assess the rules’ impacts to tribal economies and tribal public safety. FDA failed to do so.

COLT requests that OMB undertake urgent tribal consultation with respect to the review of the FDA’s proposed rules and the associated very significant tribal law enforcement budget issues accordingly. COLT has submitted meeting requests with respect to the proposed rules through OIRA already, but narrow meetings are not consultation. COLT requests consultation consistent with OMB’s April 26, 2021 Tribal Consultation Plan of Actions.

⁴ According the Bureau of Indian Affairs Office of Justice Services information presented in April 2023 to the Tribal Interior Budget Council, tribal law enforcement needs minimum annual funding of \$2.9 billion. That number should be the floor. Presently, all of BIA, across many dozens of functions, is funded and \$2.4 Billion. The underfunding is stark.



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Thank you for your consideration of our request.

Respectfully,

Hon. Marvin Weatherwax
Chairman, Coalition of Large Tribes
Member, Blackfeet Tribal Business Council

CC: Leader Schumer; Ranking Member McConnell and all COLT Member Tribe Delegations
Mr. Bryan Newland, Assistant Secretary for Indian Affairs, Department of the Interior

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Mr. Wizipan Little Elk Garriott, Principal Deputy Assistant Secretary, Indian Affairs

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Via email to: clint.bowers@bia.gov