



**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 • Walker River Paiute Tribe

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**Coalition of Large Tribes (COLT)**

**Resolution: 06-03-2023-Resolution #01-2022 (WR-Las Vegas)**

**Resolution Calling for Pause in FDA Rulemaking on Tobacco to Allow for Tribal Consultation and Protection of Tribal Ceremonial Uses and Public Safety**

**WHEREAS**, the Coalition of Large Tribes (COLT) was formally established in early April 2011, and is comprised of Tribes with large land base, including the Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe • Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nations • Navajo Nation • Northern Arapaho Tribe • Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe • Shoshone Bannock Tribes • Spokane Tribe • Ute Indian Tribe • Walker River Paiute Tribe and is Chaired by Councilman Marvin Weatherwax, Blackfeet Tribal Business Council: and

**WHEREAS**, COLT was organized to provide a unified advocacy base on all issues affecting tribes that govern large trust land bases; and

**WHEREAS**, COLT tribes consist of tribes that have a land base of 100,000 acres of land or more, of which, of the 574 Federally recognized Tribes, more than 50 tribes meet this criteria; and these tribes control 95 percent of tribal lands and consist of one half of the Native population; and

**WHEREAS**, COLT member tribes have participated for many years in outreach and advocacy with federal policymakers to address matters of pressing concern to Indian Country, including regarding tobacco regulations, manufacturing and marketing and protection of tribal public safety by opposing regulations that create illicit markets; and

**WHEREAS**, Food and Drug Administration (FDA) is planning on finalizing regulation as early as August 2023 to ban menthol in all cigarettes. FDA News Release, “FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Death and Disease” as of April 28, 2022, [FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death | FDA.](#); and



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**WHEREAS**, FDA is planning to issue a proposed regulation as early as October 2023 banning cigarettes unless they contain only trace amounts of nicotine. FDA News Release, “FDA Announces Plan for Proposed Rule to Reduce Addictiveness of Cigarettes and Other Combusted Tobacco Products,” as of 6/21/22, <https://www.fda.gov/news-events/press-announcements/fda-announces-plans-proposed-rule-reduce-addictiveness-cigarettes-and-other-combusted-tobacco>. If adopted, this regulation would ban the legal sale of over 99.9% of the cigarettes on the U.S. market today; and

**WHEREAS**, COLT’s member tribes are very concerned about the Final Menthol Rule and Proposed Nicotine Rule for several reasons. First, the FDA has not consulted with tribes at all on the Rules, despite the strong policies of the Biden Administration and numerous Executive Orders. Second, tribal tobacco manufacturers could be severely impacted by both Rules. Third, tribal ceremonial use of tobacco could be severely restricted, infringing on tribal cultural and religious practices. Additionally, the Rules will no doubt create illicit markets for menthol and nicotine-containing products, gaps that 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. We say more about each of these concerns below; and

**WHEREAS**, the FDA has not consulted with tribes **at all** about the Final Menthol and Proposed Nicotine Rules. This contravenes FDA’s own Tribal Consultation Policy, which provides:

FDA adheres to the HHS Tribal Consultation Policy (HHS TCP), which serves as a guide for federally recognized Indian or Alaska Native Tribes (hereafter, Indian Tribes) to participate in policy development by HHS and its divisions to the greatest extent practicable and permitted by law ...

As described in Section 2 of the HHS TCP, a unique government-to-government relationship exists between the Federal Government and Indian Tribes, which is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes. An integral element of this government-to-government relationship is that consultation occurs with Indian Tribes. Consultation is an enhanced form of communication which emphasizes trust, respect, and shared responsibility. True and effective consultation results in information exchange, mutual



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understanding, and informed decision making on behalf of the Tribal governments involved and the Federal Government. ...

To the extent practicable and permitted by law, consultation with Indian Tribes will occur before any policy action is taken that has tribal implications and substantial direct effects on: • one or more Indian Tribe(s), or • the relationship between the Federal Government and the Indian Tribe(s), or • the distribution of power and responsibilities between the Federal Government and the Indian Tribe(s). **A policy action includes actions such as the promulgation of a regulation ...**

[Tribal Consultation Policy - December 22, 2016 \(fda.gov\)](#). (Emphasis supplied). By failing to consult with tribes about the Rules, FDA has failed to follow its own policy as well as the policy of the Department of Health and Human Services, Executive Order 13175 and President Biden’s January 26, 2021 Memorandum on Tribal Consultation and Strengthening Government-to-Government Relationships; and

**WHEREAS**, dozens of tribes, including COLT member tribes, are engaged in manufacturing cigarettes. These tribal tobacco businesses account for significant revenues that tribes rely upon to provide government services to our citizens (because tribes lack a tax base). Additionally, the tribal tobacco industry accounts for thousands of direct and ancillary jobs in Indian Country and many millions of dollars in annual revenue for tribal businesses both large and small (mostly small businesses). The FDA has made no assessment of the impact the Rules will have on tribal economies; and

**WHEREAS**, historic tobacco use and cigarette use are essential features of many tribal cultural and religious ceremonies. Eliminating the availability of domestically manufactured cigarettes will impede tribal spiritual practices. For example, cigarettes are often given in recognition of prayers. The FDA has not considered the impacts of the Rules on tribal cultural and religious practices utilizing cigarettes; and

**WHEREAS**, as with other forms of prohibition, unregulated supply chains will take over once legal pathways to adult consumers are closed off. With cigarettes in particular, illegal markets will have significant geopolitical consequences. Banning the legal sale of menthol and nicotine-



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containing cigarettes will cede control of the market to illicit producers.<sup>1</sup> 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. The Rules will strain already overburdened tribal law enforcement; and

**WHEREAS**, abundant cigarette manufacturing exists outside the United States, to meet US consumer demand once domestic, regulated manufacturers are barred from the market. The world’s largest cigarette manufacturer is the state-owned Chinese Tobacco Monopoly which controls the domestic Chinese market of more than 300 million smokers. This company already makes 2.3 trillion cigarettes each year. Organized Crime and Corruption Reporting Project, What is China Tobacco?, June 22, 2021, <https://www.occrp.org/en/loosetobacco/china-tobacco-goes-global/what-is-china-tobacco>. Many of COLT member tribes’ citizens are cigarette smokers. We are very concerned that illicit markets borne from the Rules -- Native American smokers who obtained such products will have no idea what foreign illicit cigarettes might be laced with -- just like certain foreign drugs today are routinely laced with fentanyl; and

**WHEREAS**, in summary, the Rules’ sweeping nicotine and menthol prohibition will result in even more illicit and unregulated products flowing into the U.S. from foreign countries like China. This will result in a completely unregulated marketplace where Native American businesses and Native American consumers pay a heavy price, including risk of contaminants. The Rules will result in loss of thousands of Native American jobs, undercutting dozens of tribal communities’ economic stability and putting Native American lives at risk.

**NOW THEREFORE BE IT RESOLVED**, COLT finds that the Rules are each a “Critical Event” as that term is defined in the FDA’s Tribal Consultation Policy because the Proposed Rules have “or may have tribal implications and substantial direct effects on Indian Tribe.” Therefore, COLT calls upon the FDA to immediately engage in tribal consultation regarding the Final Menthol and

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<sup>1</sup> Massachusetts’ 2020 flavored tobacco ban is a 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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Proposed Nicotine Rule, and that such consultation be robust, given the potential wide-ranging implications of the Proposed Rule for tribal manufacturers, tribal economies, tribal ceremonial and religious uses of tobacco, and tribal law enforcement and communities based on the Rules' substantial likelihood of creating a massive illicit market.

**BE IT FURTHER RESOLVED,** COLT calls for a pause in the FDA's rulemaking with respect to the Rules unless and until the FDA satisfies its tribal consultation obligations.

**BE IT FURTHER RESOLVED,** COLT calls upon the FDA to assess in the Final Menthol and Proposed Nicotine Rule its impacts that will drive the entire tribal tobacco industry out of business.

**BE IT FURTHER RESOLVED,** COLT calls for engagement on the Proposed Rule by the Small Business Administration pursuant to Small Business Regulatory Enforcement Fairness Act to assess the Rules' impact on Indian Country small businesses.

**BE IT FURTHER RESOLVED,** COLT calls upon the FDA to exempt tribally-manufactured cigarettes from the Final Menthol and Proposed Nicotine Rules.

**BE IT FINALLY RESOLVED,** that this resolution shall be the policy of COLT until it is withdrawn or modified by subsequent resolution.



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**CERTIFICATION**

This resolution was enacted at a duly called meeting of the Coalition of Large Tribes held in Las Vegas, Nevada within the home state of the Walker River Paiute Tribe on June 2, 2023 at which a quorum was present, with the resolution approved unanimously.

Dated this June 2, 2023

Attest:

Nathan Small, Secretary, Coalition of Large Tribes

Marvin Weatherwax, Chairman, Coalition of Large Tribes