



3430 E. Russell Road, Las Vegas, NV 89210

[info@COREcivilrights.org](mailto:info@COREcivilrights.org) |  
[www.thecongressofracialequality.org](http://www.thecongressofracialequality.org)  
T 702.637.7968 | F 702.637-7953 |

June 2, 2022

Hon. Robert Califf  
Commissioner  
U.S. Food and Drug Administration

Re: Docket No. FDA-2021-N-1309  
Proposed Tobacco Product Standard for Characterizing Flavors in Cigars

Dear Commissioner Califf:

Founded in 1942, the Congress of Racial Equality (CORE) is the third oldest of the 'Big Four' civil rights groups in the United States. CORE's aim is to bring about equality for all people regardless of race, creed, sex, age, disability, sexual orientation, religion, or ethnic background. In pursuing its aim, CORE seeks to identify and expose acts of discrimination in the public and private sectors of society.

We are writing to oppose the product standard banning flavored cigars because its likelihood of increasing the incidence of unnecessary conflict between the law enforcement community and the communities of color we represent.

The FDA claims in its rule-making that it will pursue enforcement of the new standard against manufacturers and retailers and not against individuals. But the FDA is not the only enforcement agency in the country, and state and local governments are heavily dependent on excise and sales taxes from tobacco products. They must and will actively enforce their laws requiring cigars to be sold only when properly taxed.

No serious observer – other than the FDA – fails to recognize that the proposed product standard will result in increases in sales of contraband and counterfeit cigars, with major losses of tax revenue. The task force in charge of policing illegal tobacco sales in Massachusetts, the only state with a jurisdiction-wide flavor ban, instituted in 2019, reported that cigar and smoking tobacco revenues had dropped for the second straight year in 2021, by 7% over the previous year.

The Task Force stated in its recent report: “The Task Force now identifies the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth.”

Despite the FDA’s representations, these cross-border sales will not fade with a nationwide ban – not when foreign suppliers, especially in Asia, will find a rich new vein of profits in contraband sales of newly outlawed products and can easily get them into the country over our porous border, with now-record crossings. These illegal products will soon make their way across state borders around the country and into our cities.

The FDA points out that flavored cigars are disproportionately used by Black people and especially Black youth, which of course means that local and state interdiction efforts, as they have been in the past, will be focused on communities of color. It is not a coincidence that the tragic deaths of George Floyd, Eric Garner and Michael Brown at the hands of police all involved tobacco enforcement. Michael Brown’s initial infraction was related to cigars and Garner’s to sales of unstamped tobacco. How many more enforcement efforts in inner cities will end tragically as the FDA’s action feeds a new supply of contraband materials and creates the atmosphere for more such confrontations?

The FDA insists that a primary purpose for the rule is to reduce flavored cigar use among youth and “vulnerable populations.” But youth use of flavored cigars is miniscule: according to the 2020 National Survey on Drug Use and Health, less than 1% of youth ages 12-17 used cigars of any kind, and the latest National Youth Tobacco Survey indicates that the decline in youth usage is accelerating, and that fewer than half of this 1% used flavored cigars.

Legislation passed two and a half years ago to raise the purchase age for cigars to 21 is having its intended effect of reduced usage among the youth. An increase in contraband sales could reverse that trend. Individuals selling bootleg and counterfeit cigars on the street will not be checking the identification of the underaged.

CORE strongly urges that FDA withdraw this ill-considered and unjustified rule; and that the Agency focus on enforcement of existing laws and regulations that minimize the potential for unnecessary confrontation between the police and the communities of color they serve.

Sincerely,



Niger Innis