Understanding the Tobacco Retail Environment on Tribal Lands in California

August 2021
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Overview of Project

What is the Family Smoking Prevention and Tobacco Control Act?

It is a law that passed in 2009 that allows the Food and Drug Administration (FDA) to regulate the production, sale, and marketing of commercial tobacco products in the United States, including on Tribal lands.

This Act does the following

- Prevents and reduces commercial tobacco sales and marketing to youth under the age of 18
- Stops misleading labeling and advertising of commercial tobacco products
- Recognizes that commercial tobacco products are legal for adults to use
- Enforces FDA laws about the sale and marketing of commercial tobacco

The questions for this project included:

1. Are tobacco products sold on Tribal lands?
2. What are the most common brands sold?
3. Do retail store clerks/owners know about FDA laws?
4. Do retail store clerks/owners believe the FDA has a right to regulate the sales of tobacco products in the stores?
5. Did retailers on Tribal lands report adequate communication with FDA regarding current regulations?

Tribes in California

In the United States, California has the largest American Indian/Alaska Native (AIAN) population, with over 720,000 residents who identify as American Indian or Alaska Native (approximately 2% of the California population). There are 109 federally recognized Tribes throughout California, with an additional 78 Tribes currently petitioning for federal recognition. Federally recognized tribes are considered domestic dependent nations that exercise inherent sovereign powers over their members and territories. The U.S. has a government-to-government relationship with federally recognized Tribes as provided in the Constitution of the United States, treaties, and federal statutes. Tribes are not subject to state government laws. For example, Tribes are not subject to state taxes, licensing requirements, health laws, and regulations. Therefore, cigarettes sold on Tribal lands are not subject to state taxes.

Tribal lands in California include reservations, rancherias, and trust lands.
Background

Commercial Tobacco Use Among American Indians and Alaska Natives

In the United States, American Indian and Alaska Native (AIAN) adults have the highest prevalence of cigarette smoking of any ethnic/racial group (22.6% compared to the U.S. adult average of 13.7%). In California, AIAN adults have the highest prevalence of cigarette smoking (19.1%) when compared to adults of other ethnic/racial groups (African Americans, 17.0%; Whites, 11.8%; Hispanics, 10.2%; Asian and Pacific Islanders, 7.4%). AIAN youth in California have higher commercial tobacco use rates (19.7%) when compared to other ethnic/racial youth groups (Whites, 18.2%; Pacific Islanders, 17.1%; Hispanics, 10.3%; African Americans, 9.9%; Asians, 7.0%).

![Tobacco Use Rates Among California Adults by Ethnic/Racial Group](image1)

![Tobacco Use Rates Among California Youth by Ethnic/Racial Group](image2)
Understanding the Tobacco Retail Environment on Tribal Lands in California

In California, there are many unique and diverse Tribal communities, and this project aimed to understand the retail environment by reaching retailers who sold commercially available tobacco products (i.e., cigarettes, chew/dip, cigars, electronic cigarettes/vapes) on or nearby Tribal lands (within a one-mile radius). Retailers included convenience stores with or without a gas station, grocery stores, tobacco shops, Tribal casinos that sold commercial tobacco, and liquor stores. Tribal retailers included these store types on Tribal lands, and off-Tribal retailers included these store types in nearby proximity to Tribal lands.

Retailers on Tribal Lands Must Comply with Federal Laws

Retailers located on Tribal lands must comply with all federal laws and regulations applicable to retailers within the Tobacco Control Act.9

This includes, but is not limited to

• Checking the photo identification of everyone who appears to be under the age of 27 who attempts to purchase any commercial tobacco product
• Only selling commercial tobacco products to customers age 18 years or older*
• Not selling commercial tobacco products in a vending machine unless in an adult-only facility
• Not giving away free samples of commercial tobacco products to consumers, including any components or parts10

*At the time of data collection, the age limit to buy tobacco was 18 years old. The legal age of purchase increased to 21 years old as of 12/20/2019.10

In turn, the FDA inspects tobacco retailers to determine compliance with FDA regulations. However, the FDA is authorized to award tobacco retail inspection contracts to states, Tribes, territories, and third parties to conduct retail inspections.9 The FDA has awarded contracts within Tribal jurisdictions to help enforce the Tobacco Control Act regulations within those jurisdictions.9

Federal Government’s Role

The FDA's Center for Tobacco Products (CTP) regulates the manufacturing, marketing, and distribution of commercial tobacco products.11
Tobacco Control Act

The Tobacco Control Act gave the FDA broad authority to regulate the manufacturing, marketing, sales, and distribution of commercial tobacco products. However, the Tobacco Control Act “does not limit the authority of Tribes to enact, adopt, issue, and enforce laws or regulations in addition to, or more stringent than, the Tobacco Control Act.” In addition, the Tobacco Control Act authorizes the FDA to award tobacco retail inspection contracts to states, Tribes, territories, and third parties to conduct retail inspections, but it prohibits the FDA from contracting with any state to exercise enforcement authority under the Tobacco Control Act in Indian Country without express written consent from the Tribe.

Traditional (Ceremonial) Tobacco

The FDA does not regulate the cultivation or use of traditional/ceremonial tobacco. Tribes and individuals are not regulated in the growth, cultivation, or gathering of tobacco intended for use in ceremonies or prayer or to gift in a traditional manner to a person of honor. The FDA regulates commercial tobacco products and sales on and off Tribal lands. Commercial tobacco refers to any product grown and cultivated with the explicit intention of being sold in the form of pre-rolled cigarettes, loose leaf tobacco, chewing tobacco/dip, cigars, and similar products, with each item bearing a barcode for commercial sale. This term also refers to any nicotine derivatives sold for direct consumption via vaporizing devices (e.g., electronic cigarettes, vapes) or other emerging products (e.g., mints, breath strips, and other dissolvables).

FDA Outreach to Tribal Stakeholders

The FDA’s Center for Tobacco Products (CTP) maintains contact with Tribal stakeholders—including Tribal government leaders, Tribal health leaders, public health professionals, and other relevant federal agencies—through the following methods: engaging in formal and informal consultations; conducting manufacturing inspections; holding face-to-face meetings; disseminating “Dear Tribal Leader” letters; communicating through presentations, webinars, and email updates; participating in quarterly calls among Tribal stakeholders; getting involved in listening sessions; arranging meet-and-greets; hiring Tribal policy analysts with special expertise to serve as liaisons; disseminating an American Indian Retailer video; and awarding retail inspection contracts to Tribes to conduct retail inspections within Tribal jurisdictions.

What are the federal rules about the sale and distribution of tobacco?

- No selling cigarettes, cigarette tobacco, or smokeless tobacco to people younger than 18
- No selling cigarette packages with fewer than 20 cigarettes
- No selling individual cigarettes that are not in a pack
- No selling cigarettes, cigarette tobacco, or smokeless tobacco in vending machines or self-serve displays
- No selling flavored cigarettes or cigarette tobacco (except menthol)
- No giving out free samples of cigarettes

What are the federal rules about the marketing of tobacco?

- No marketing to youth under the age of 18 years old
- No tobacco brand sponsorships of any sports, teams, musical groups, or social and cultural events
State’s Role

As previously stated, Tribal nations are not subject to state government laws.7

In the state of California, retailers on off-Tribal lands must abide by the following laws in regard to the sale of commercial tobacco:14

- Visibly display state and local (if applicable) tobacco retailer licenses
- Only sell commercial tobacco products to persons age 21 and older or persons age 18 and older with a valid military ID
- Keep all commercial tobacco products behind the counter or in a locked display
- Ensure employees properly check the IDs of every person who appears to be younger than age 27
- Post required signage of age-of-sale warning signs at the registers; in California, this is required by the Stop Tobacco Access to Kids Enforcement (STAKE) Act

It is illegal for retailers to14

- Sell unpackaged single cigarettes
- Sell flavored cigarettes other than menthol
- Place advertisements for blunt wraps within two feet of candy, snacks, or non-alcoholic beverages or lower than four feet above the floor
- Give free samples of commercial tobacco products

These businesses off Tribal lands could be inspected at random in response to public complaints or if they were found in violation at a previous inspection. These inspections are conducted by the California Department of Tax and Fee Administration (CDTFA) investigators and local law enforcement.14
American Indian community representatives were trained to visit store retailers on Tribal lands and within a 1-mile radius of Tribal lands. Store types on and off Tribal lands included convenience stores with or without a gas station, grocery stores, tobacco shops, Tribal casinos (Tribal only) that sold commercial tobacco products, and liquor stores.

In 2016, retail stores on Tribal lands were approached with prior Tribal approval (N=53), and stores within a 1-mile radius of the Tribal land (N=43) were approached once all retail stores on Tribal lands were visited. Retail store owners, managers, clerks, and other employees were interviewed with a survey questionnaire to inquire about their knowledge, attitudes, opinions, and beliefs regarding tobacco products and marketing. With two data collectors on site, one facilitated the interview with the retailer, and the other data collector conducted store observations on tobacco advertising, tobacco product variety, and pricing.
Observational Data

Retail Store Information
- Located on Tribal lands
- Located off Tribal lands

Data was collected in 54 retail stores on Tribal lands and in 46 stores within a one-mile radius of Tribal lands. **Of those retail stores located on Tribal land, 23 retail stores (43%) were located inside a casino or outside on casino property.**

Frequency of Store Type

<table>
<thead>
<tr>
<th>Store Type</th>
<th>On Tribal lands</th>
<th>Off Tribal lands</th>
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<tbody>
<tr>
<td>Convenience store (with or without gas)</td>
<td>14</td>
<td>18</td>
</tr>
<tr>
<td>Beer, wine, or liquor store</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Grocery store</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>Tobacco store</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>0</td>
</tr>
</tbody>
</table>

Observational data were collected from 96 of 100 retail stores visited (on and off Tribal lands). Of those 53 retail stores located on Tribal lands, 14 were convenience stores, 10 were grocery stores, 16 were tobacco shops, and 13 were identified as “other.” A total of 43 retail stores off Tribal lands were observed. Of those, 18 were convenience stores; two were beer, wine, or liquor stores; 18 were grocery stores; and five were tobacco shops.
The top five brands sold by both retail stores on and off Tribal lands were Marlboro, Camel, Camel Crush, Newport (Green), and Natural American Spirit.

The top three Tribally manufactured cigarette brands available in retail stores both on and off Tribal lands were Seneca, Smokin Joes, and Opal.
Of those 100 retailers, 98 provided ethnicity information, which helped to provide insight into the demographics of individuals employed in these retail stores, both on and off Tribal lands. For those employed on Tribal lands, 53 of 54 retailers provided ethnicity information. The majority of participants identified as non-Hispanic White (38%), American Indian (30%), and Hispanic/Latino (19%). The remaining participants identified as South Asian (5%), Asian (4%), and “other” (4%).

For those employed in a retail store off Tribal lands, 45 of 46 participants provided ethnicity information. The majority of retailers identified as non-Hispanic White (54%), South Asian (18%), and Hispanic/Latino (18%). The remaining participants identified as American Indian (6%), African American (2%), and “other” (2%).
Who Owns the Retail Stores on Tribal Land?

- Stores are on land leased from the Tribe: 7
- Stores are owned by a member of the Tribe (individual or family): 4
- Stores are owned by the Tribe: 29
- Don't know: 13
- Refuse to answer: 1

Retailer Preferences for Communication with the FDA

Retailers Received Information From the FDA About Tobacco Rules in the Past Year

- Yes: 14 On Tribal lands, 14 Off Tribal lands
- No: 16
- Don't know: 16
Among the 100 retailers interviewed, 28 retailers indicated they had received information from the FDA in the past year, 40 retailers had not received any information from the FDA about commercial tobacco rules in the past year, and 32 retailers did not know if they had received any information from the FDA.

Seventy-five percent of retail stores either did not receive information about tobacco rules from the FDA or did not know the rules.

Top Three Most Trusted Forms of Communication Expressed by Retail Stores

<table>
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<tr>
<th>Form of Communication</th>
<th>Frequency</th>
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<tbody>
<tr>
<td>Face-to-face</td>
<td>43</td>
</tr>
<tr>
<td>Email</td>
<td>29</td>
</tr>
<tr>
<td>Phone</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>16</td>
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Retailer Opinions on Who Regulates Tobacco Products

Who Do You Think Regulates Tobacco Products?

Retailers were asked who they think regulates commercial tobacco products.
Do You Believe the FDA Has the Right to Regulate the Sales of Commercial Tobacco in This Store?

E-Cigarette Safety Opinions

What Is Your Opinion About the Safety of E-Cigarettes? Would You Say They Are...
Retail Store Compliance With Tobacco Regulations and Challenges

Do You Have A Current Tobacco License?

On Tribal Lands: Retailer Responses
- Yes: 75.9%
- No: 9.3%
- Don’t know: 14.8%

Off Tribal Lands: Retailer Responses
- Yes: 95.7%
- Don’t know: 4.3%

None of the retailers believed e-cigarettes were completely safe.
Retailers were asked about the challenges they face when attempting to follow FDA/federal government commercial tobacco rules.

What Can Make It Hard for You as a Retailer to Follow FDA/Federal Government Tobacco Rules?

On Tribal Lands: Retailer Responses

- I have no access to educational materials: 8.3%
- I have customers who want me to sell singles or get free samples: 12.5%
- I don't know the rules: 12.5%
- I don't understand the rules: 16.7%
- I receive pressure from tobacco distributors that come to my store: 45.8%
- Other: 4.2%

Off Tribal Lands: Retailer Responses

- I have no access to educational materials: 6.7%
- I have customers who want me to sell singles or get free samples: 6.7%
- I don't know the rules: 13.3%
- I don't understand the rules: 3.3%
- I receive too much information from different sources that confuse me: 3.3%
- Information is not offered in the language I understand best: 26.7%
- Other: 40.0%
Retailers were asked about the methods they feel would be most helpful in following FDA commercial tobacco rules.

Ways FDA Can Support Retail Stores on and off Tribal Lands

Ways FDA Can Support Retail Stores on and off Tribal Lands

Would You Like to Learn More About FDA Regulation?

Which of the Following Could Help You or Other Retailers Follow FDA Tobacco Rules?

On Tribal Lands: Retailer Responses

Off Tribal Lands: Retailer Responses

Retailers were asked about the methods they feel would be most helpful in following FDA commercial tobacco rules.
The FDA developed an American Indian-specific retailer training video. Retailers were asked if they had ever seen the video.

**Have You Seen the American Indian Video on Retail Store Training?**

- **Yes**: On Tribal lands: 3, Off Tribal lands: 2
- **No**: On Tribal lands: 50, Off Tribal lands: 43
- **Don't know**: On Tribal lands: 1, Off Tribal lands: 0
- **Refuse to answer**: On Tribal lands: 1, Off Tribal lands: 0

Nintey-three percent of retailers interviewed reported not having seen it.
This project provided an opportunity to understand the retail environment on and near Tribal lands throughout California. One hundred tobacco retailers participated, including 53 stores on Tribal lands. It was not common knowledge among retailers located on or off Tribal lands that they must comply with all federal laws and regulations applicable to retailers within the Tobacco Control Act. The project findings indicated that retailer staff who participated had low knowledge of FDA laws and regulations, and 75% reported not receiving information or did not know if they received information regarding these regulations.

A national effort by the FDA created an American Indian-specific video on retail store training for Tribes to review, but only 5% of the Tribal retailers report having seen it. This clearly indicates that retailers located on and off Tribal lands need more education and training to understand federal laws and regulations. Retailers were asked their preferred methods of communication for future information, and the top responses mentioned were face-to-face, email, and phone communication. Because retailers would like more information about current FDA regulations, recommendations are listed on page 19 for future information to better inform retailers on and off Tribal lands in California.
Recommendations

The following recommendations are based on input from the survey respondents and community commercial tobacco control experts. They are based on the questions that were connected to the question, "Among retailers in AIAN neighborhoods, what are the knowledge, attitudes, beliefs, and behaviors regarding tobacco products and the FDA tobacco product regulatory authority?"

Addressing the issue of access to educational materials, recommendations are:
- Ensure each Tribe with a retailer/lease that sells commercial tobacco products receives a mailed packet of information when there is new legislation that will impact sales.
- Create an email listserv that will update Tribes, retailers, and their staff immediately on changes or potential changes in federal regulations.

Addressing the issue of "I don’t understand rules," our recommendation is:
- Create educational and retailer outreach materials at a fifth-grade reading level, incorporating graphics and jargon-free language.

Addressing "I don’t know the rules," recommendations are:
- Provide easily understandable educational materials through frequent physical and electronic transmissions.
- Create and distribute checklists/posters with clearly outlined, up-to-date rules that can be placed by the checkout counter for ease of reference (preferably with AIAN-specific graphics or imagery).
- Offer training/webinars on a regular basis for technical assistance and questions and answers.

Our recommendation to address "What are the best communication avenues to convey those messages to retailers in AIAN communities?" is:
- Provide as many opportunities as possible for Tribal retailers to meet with the FDA to discuss current and pending legislation.

Our recommendation to address "What communication strategies will maximize retailers' compliance with FDA" is:
- Utilize focus groups comprised of California AIAN individuals to test all materials and electronic products (videos, webinars).


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