

Amendment 1227: This amendment expands on the provision in this bill that applies these regulations to Indian Tribes and eliminates a provision that would restrict the Secretary's ability to impose "no-sale" determinations on non-complying tribal retailers.

Purpose: To ensure the applicability of all of the provisions in this legislation to Indian Tribes.

The bill's authors clearly intended for the FDA's tobacco regulations to apply to all tobacco manufacturers and retailers. Unfortunately, the bill currently falls short of that goal. S.982 fails to fully apply FDA's authority over Native American retailers and manufacturers on tribal lands.

This amendment expands on the provision in this bill that applies these regulations to Indian Tribes and eliminates a provision that would restrict the Secretary's ability to impose "no-sale" determinations on non-complying tribal retailers.

There are significant restrictions in this legislation regarding the Secretary's authority. For example, this language denies the Secretary the authority to put a "no-sale" determinations on non-complying tribal retailers. This amendment would eliminate that restriction. Article I, Section 8 of the Constitution clearly gives the Federal government the authority to regulate commerce between the States and Indian Tribes. The current bill requires the Secretary to get the express, written consent from the Indian Tribe involved before placing a no-sale restriction. If a retailer is breaking the law, it should not matter whether it is on tribal lands or not.

If these tobacco regulations are not applied equitably, tobacco products sold on tribal lands will have an extreme competitive advantage over FDA-regulated products that must pay to comply with Federal regulations. This amendment expands on the provisions requiring the equitable application of this legislation to Indian tribes in order to ensure that there is parity between tribes and the States. Otherwise, tribal retailers will have a competitive advantage that will create a parallel market for tobacco products. Tribal retailers and manufacturers will also not be subjected to the same advertising restrictions and safety requirements as other manufacturers and retailers.

This will create a semi "black market" for tribal retail outlets. Smokers can simply drive to the nearest reservation to purchase their tobacco products at a lower rate. This amendment will ensure that this bill does not create a loophole in Federal tobacco regulation.