



December 1, 2023

**NTU Comments to OIRA:
Tobacco Product Standard for Menthol in Cigarettes
E.O. Meeting Request 123866
Docket No. FDA-2021-N-1349**

The Honorable Richard Revesz
Administration of the Office of Information and Regulatory Affairs
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Administrator Revesz,

National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, appreciates the opportunity to meet with the Office of Information and Regulatory Affairs to provide recommendations and engagement in the regulatory process and to discuss the potential economic impacts of the Food and Drug Administration's (FDA) Tobacco Product Standards for Menthol Cigarettes (RIN-0910-A160), which seeks to eliminate menthol flavoring in all combustible cigarettes and all characterizing flavoring in cigars.

NTU seeks to ensure that OIRA is aware of the significant economic impacts this regulation would have on American taxpayers, including the reduction of tax revenue and an increase in illicit menthol tobacco sales.

Menthol and Tobacco Use in Minors

In our comment to the FDA¹ we noted that an analysis conducted by the Reason Foundation found that states with a higher distribution of menthol cigarettes tend to actually have lower youth smoking rates than states with low menthol distribution.² The FDA has incorrectly assumed that removing flavoring from combustible tobacco will lead to a reduction in tobacco use and increase public health outcomes while reducing or eliminating underage usage. A ban on menthol cigarettes will most likely have the inverse effect, establishing an illicit or unregulated market for menthol tobacco products. Banning menthol tobacco products would

¹<https://www.ntu.org/publications/detail/ntus-comment-on-fda-product-standard-tobacco-product-standard-for-menthol-in-cigarettes>

² Bentley, Guy, and Jacob J Rich. Does Menthol Cigarette Distribution Affect Cigarette Use? Reason Foundation <https://reason.org/wp-content/uploads/does-menthol-cigarette-distribution-affect-cigarette-use.pdf>.

establish an illicit market without government standards and age restrictions on menthol tobacco products.

Tax Loss and Illicit Use

In June 2020, Massachusetts implemented a ban on menthol cigarettes, which proved to be not only ineffective but resulted in the establishment of a large illicit market, causing a significant loss of tax revenue for the state.³ A bipartisan group of lawmakers in Massachusetts are now looking to repeal the ban.⁴ Since the Massachusetts ban took effect, sales of menthol cigarettes dropped by 24 percent. However consumers simply found other avenues to procure these banned items. In New Hampshire, tobacco purchases surged by 65 percent, and Rhode Island saw an increase in overall purchases of 17 percent. Specifically, menthol sales in New Hampshire soared by 91 percent, and Rhode Island's rose 40 percent.⁵ Not accounting for lost sales tax revenue, Massachusetts lost \$116 million in cigarette tax revenue according to the latest numbers.

The FDA Should Focus on Tobacco Harm Reduction Efforts

The FDA should refocus its efforts on traditional cessation strategies, which have worked to reduce adult and youth smoking to its lowest levels in history. According to a report⁶ issued by the Centers for Disease Control (CDC) in March 2022, youth smoking rates plummeted to an all-time low of 1.5 percent during 2021, representing a drop in more than half from the previous year's 3.3 percent of youths smoking daily. 1.5 percent of youth equates to only 1 in 250 young people being daily smokers, showing that youth smoking is close to nonexistent. According to another report by the CDC, adult usage has also hit an all-time low; only 19 percent of U.S. adults used tobacco products in 2020, representing the lowest number of adult users since the CDC began recording tobacco use data in 1965.⁷

³ Bentley, Guy. The Negative Impacts of Massachusetts' Flavored Tobacco Ban. Reason Foundation, 2 Dec. 2020, <https://reason.org/commentary/the-negative-impacts-of-massachusetts-flavored-tobacco-ban/>.

⁴ Pearce, Madeleine. "Two Years after Massachusetts Approved Menthol Ban, Some Lawmakers Seek Reversal." The Berkshire Eagle, 15 Nov. 2021, https://www.berkshireeagle.com/state/two-years-after-massachusetts-approved-menthol-ban-some-lawmakers-see-reversal/article_7cc111e2-4626-11ec-9ca9-77dad03c0bec.html.

⁵ Bentley, Guy. The Negative Impacts of Massachusetts' Flavored Tobacco Ban. Reason Foundation, 2 Dec. 2020, <https://reason.org/commentary/the-negative-impacts-of-massachusetts-flavored-tobacco-ban/>.

⁶ [https://www.cdc.gov/media/releases/2022/p1110-youth-tobacco.html#:~:text=A%20study%20released%20today%20from,million%20\(16.5%25\)%20high%20school](https://www.cdc.gov/media/releases/2022/p1110-youth-tobacco.html#:~:text=A%20study%20released%20today%20from,million%20(16.5%25)%20high%20school)

⁷ Cornelius ME, Loretan CG, Wang TW, Jamal A, Homa DM. Tobacco Product Use Among Adults — United States, 2020. MMWR Morb Mortal Wkly Rep 2022;71:397–405. DOI: <https://dx.doi.org/10.15585/mmwr.mm7111a1external icon>

As proven in Massachusetts, prohibition of menthol tobacco products will not reduce youth access to menthol cigarettes and flavored cigars but will create an illicit and unregulated market which may, in fact, increase access to these products and will cost the federal government millions of dollars in lost federal revenue and millions in enforcing this ban. A well-regulated market for menthol tobacco products is the most effective way to ensure responsible use of these products.

Thank you for your time and consideration, and please do not hesitate to reach out to NTU if we can answer any questions.

Sincerely,

Grant Carlson
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