



Tell the FDA to Prohibit Menthol in Cigarettes and Other Tobacco Products

The U.S. Food and Drug Administration (FDA) must exercise its regulatory power to protect America's health by prohibiting menthol in cigarettes and other tobacco products. Menthol tobacco products pose an especially dangerous threat to public health. Menthol increases the palatability of smoking, especially among youth¹ and members of racial and ethnic populations.² Nearly half of adolescent smokers begin as menthol smokers, and the youngest smokers are the most likely to smoke menthols.³ Menthol also increases the difficulty of quitting smoking.⁴

The Family Smoking Prevention and Tobacco Control Act of 2009⁵ prohibited fruit- and candy-like additives as “characterizing flavors” in cigarettes.⁶ Because tobacco manufacturers use flavors, herbs and spices to mask the harshness of tobacco and attract new generations of underage smokers, the flavor prohibition was an important step to prevent youth smoking. The Tobacco Control Act, however, made one exception to this flavor ban, deferring action on the most popular of all flavors – menthol – and directing the FDA to decide whether allowing menthol cigarettes is “appropriate for public health.”⁷

To ensure that the FDA was advised about menthol and other scientific issues, the Tobacco Control Act established the Tobacco Products Scientific Advisory Committee, which included leading scientific experts, and mandated that the Committee study menthol in cigarettes and issue a report.⁸ After a careful review of the evidence, the Committee concluded: “Removal of menthol cigarettes from the marketplace would benefit public health in the United States.”⁹

On July 23, 2013, more than two years after receiving the Committee's report, the FDA issued an [Advanced Notice of Proposed Rulemaking](#) (ANPRM) seeking additional information on menthol in cigarettes. The FDA also released its [preliminary scientific evaluation](#) of public health issues related to the use of menthol in cigarettes. The agency has now opened a docket to accept public comments on menthol, including scientific data, local survey data, and evidence of the public health impact of menthol. The FDA has published a list of specific questions related to potential restrictions on menthol in tobacco products. This is a first step toward meaningful regulation of menthol. To make the most of this opportunity, and to press the FDA to prompt action, submit comments on this new docket. The FDA will accept public comments until September 23, 2013.

The ANPRM includes questions that provide an opportunity to press the agency to take the boldest, broadest possible action on menthol. Even if you submitted a comment on the [Menthol Citizen Petition](#), please consider reviewing the questions and submitting additional responsive

information to the FDA. Important messages for the FDA to hear as it considers regulating menthol cigarettes include:

- Prohibit menthol as an additive at any level.
- Forbid menthol in all tobacco products, not just cigarettes.
- Bar menthol analogs and substitutes in tobacco products to ensure that the FDA's action on menthol is not undermined by alternative products.
- Promote culturally appropriate cessation services to maximize the opportunity for menthol smokers to quit rather than transition to a new tobacco product.

Evidence that will be the most helpful to inform the FDA's thinking on regulation of menthol in cigarettes and other tobacco products includes:

- Research regarding the effect of menthol as a characterizing flavor in tobacco products.
- Evidence of the public health impact of menthol when used as an additive at levels less than a characterizing flavor in tobacco products.
- Local survey data, observations and examples related to the potential impact of sale and distribution restrictions of menthol cigarettes on specific subpopulations, including African Americans, Latinos, the LGBT community, and the poor in your community.
- Local survey data, observations and examples related to current advertising or promotion of menthol cigarettes targeting specific communities, subpopulations, and locations in your community.

The FDA's latest review of the evidence confirms the results of study after study: prohibiting menthol in cigarettes is a powerful measure to improve America's health. We hope you will respond to the FDA's request for information and press the agency to prohibit menthol in cigarettes and other tobacco products. For more information about the devastating health impact of menthol cigarettes, take a look at the full [Citizen Petition](#) or the [Citizen Petition Highlights](#).

¹ Valerie Rock et al., *Menthol Cigarette Use Among Racial and Ethnic Groups in the United States, 2004-2008*, 12(supp. 2) NICOTINE & TOBACCO RES. S117, S120 tbl.2 (2010).

² U.S. Dep't of Health & Human Servs.: Substance Abuse & Mental Health Servs.: Office of Applied Studies, *Use of Menthol Cigarettes*, NSDUH REP., Nov. 19, 2009, at 4 fig.4, available at <http://store.samhsa.gov/product/Use-of-Menthol-Cigarettes/NSDUH09-1119>.

³ TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMM., U.S. FOOD & DRUG ADMIN., MENTHOL CIGARETTES AND PUBLIC HEALTH: REVIEW OF THE SCIENTIFIC EVIDENCE AND RECOMMENDATIONS 41 (2011), available at <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf> (final as reviewed and approved on July 21, 2011) [hereinafter TPSAC REPORT].

⁴ Ctrs. for Disease Control & Prevention, *Quitting Smoking Among Adults — United States, 2001–2010*, 60(44) MMWR 1513, 1515 tbl.1 (2011).

⁵ Family Smoking Prevention and Tobacco Control Act, Pub. L. 111-31, tit. I, sec. 101, § 907(a)(1)(A), (3)(A)-(B), 123 Stat. 1776, 1799-1800 (2009) (codified at 21 U.S.C. § 387g(a)(1)(A), (3)(A)-(B)) [hereinafter Tobacco Control Act].

⁶ Tobacco Control Act, § 907(a)(1)(A), 123 Stat. at 1799-1800 (codified at 21 U.S.C. § 387g(a)(1)(A)).

⁷ Tobacco Control Act, § 907(a)(1)(A), (a)(3)(A)-(B), 123 Stat. at 1799-1800 (codified at 21 U.S.C. § 387g(a)(1)(A), (a)(3)(A)-(B)).

⁸ Tobacco Control Act, § 907(e)(1), 123 Stat. at 1804 (codified at 21 U.S.C. § 387g(e)).

⁹ TPSAC REPORT, *supra* note 3, at 225.