

Model Resolution Requesting that the U.S. Food and Drug Administration Prohibit Menthol as a Characterizing Flavor in Cigarettes.

WHEREAS , tobacco use is the foremost preventable cause of premature death in America.¹ It causes over 480,000 deaths in the U.S. each year,² and approximately 8,600,000 Americans have chronic illnesses related to smoking.³ As of 2012, 18.1% of U.S. adults – 42.1 million people – smoke cigarettes.⁴

WHEREAS, smoking costs the U.S. between \$289–332.5 billion annually, including \$156.6 billion per year in lost productivity and between \$132.5–175.9 billion per year in healthcare costs.⁵

WHEREAS, each day 3,200 adolescents try smoking for the first time, 2,100 of whom will become addicted.⁶

WHEREAS, menthol cigarettes are particularly attractive to kids. According to national surveys, 47.7% of adolescent smokers (age 12-17) report menthol cigarette use compared to 40.8% of young adult smokers (age 18-25) and 31.5% of adult smokers (age 26 and older).⁷

WHEREAS, among children, the youngest smokers are the most likely to smoke menthols, with a greater proportion of middle school age smokers reporting menthol use than high school age smokers.⁸

WHEREAS, menthol in cigarettes results in more youth initiation to smoking. Among youth and young adult smokers, menthol cigarette use is more prevalent among those who started smoking in the past year than among those who started smoking more than one year ago.⁹

WHEREAS, menthol cigarettes are used disproportionately in communities of color. 82.6% of African American smokers, 53.2% of Native Hawaiian or Pacific Islander smokers, 32.3% of Hispanic or Latino smokers, and 31.2% of Asian American smokers use menthol cigarettes as opposed to 23.8% of White smokers.¹⁰

WHEREAS, many menthol smokers support the elimination of menthol cigarettes. Studies have found that among menthol smokers, nearly half (49.5%) of respondents either supported prohibiting menthol in cigarettes or did not have a strong opinion for or against such a regulation.¹¹ Another study showed 56.1% of all respondents and 75.8% of African American survey respondents supported prohibiting menthol cigarettes.¹²

WHEREAS, many menthol smokers would quit smoking if menthol cigarettes were prohibited, especially African American (44.5%) and female (44.0%) menthol smokers.¹³

WHEREAS, one model of smoking in the U.S. concludes that if menthol was prohibited, between 2010 and 2020, over 2.2 million people would not start smoking.¹⁴ By 2050, the number of people who would not start smoking would reach 9 million.¹⁵

WHEREAS, a leading model of smoking in the U.S. predicts that a 10% quit rate among menthol smokers would save thousands of lives, preventing 4,000 smoking-attributable deaths in the first ten years and that 300,000 lives would be saved over forty years.¹⁶ Approximately 100,000 of the lives saved would be African Americans.¹⁷

WHEREAS, [Insert local data].

RESOLVED, [Insert jurisdiction] requests that the FDA add menthol to the list of characterizing flavors that are prohibited as constituents or additives of cigarettes.

RESOLVED, [Insert jurisdiction] shall send this resolution to the following FDA officials:

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¹ Ctrs. for Disease Control & Prevention, *Current Cigarette Smoking Among Adults, United States, 2011*, 61(44) MORBIDITY AND MORTALITY WEEKLY REPORT 889, 891 (2012), available at <http://www.cdc.gov/mmwr/pdf/wk/mm6144.pdf>.

² U.S. DEP'T OF HEALTH & HUMAN SERVS., *THE HEALTH CONSEQUENCES OF SMOKING – 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL*, ch. 12 p. 659 (2014), available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>

³ Ctrs. for Disease Control & Prevention, *Cigarette smoking-attributable morbidity – United States, 2000*, 52(35) MORBIDITY AND MORTALITY WEEKLY REPORT 842, 842, available at <http://www.cdc.gov/mmwr/PDF/wk/mm5235.pdf>.

⁴ Ctrs. for Disease Control & Prevention, *Current Cigarette Smoking Among Adults, United States, 2005-2012*, 63(2) MORBIDITY AND MORTALITY WEEKLY REPORT 29, 32 (2014), available at <http://www.cdc.gov/mmwr/pdf/wk/mm6302.pdf>.

⁵ HHS, *supra* note 2, at 679.

⁶ *Id.* at 846.

⁷ OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., NSDUH 09-1119, THE NSDUH REPORT: USE OF MENTHOL CIGARETTES 2 fig. 1 (2009), available at <http://store.samhsa.gov/product/Use-of-Menthol-Cigarettes/NSDUH09-1119> [hereinafter SAMHSA 2009].

⁸ James Hersey et al., *Menthol Cigarettes Contribute to the Appeal and Addiction Potential of Smoking for Youth*, 12(suppl. 2) NICOTINE & TOBACCO RESEARCH S136, S141 tbl. 3 (2010).

⁹ OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., NSDUH 09-1119, THE NSDUH REPORT: USE OF MENTHOL CIGARETTES 4 fig. 5 (2009), available at <http://store.samhsa.gov/product/Use-of-Menthol-Cigarettes/NSDUH09-1119> [hereinafter SAMHSA 2009]; see also TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMM., U.S. FOOD & DRUG ADMIN., MENTHOL CIGARETTES AND PUBLIC HEALTH: REVIEW OF THE SCIENTIFIC EVIDENCE AND RECOMMENDATIONS 215 (2011), available at <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf> (final as reviewed and approved by the TPSAC on July 21, 2011) [hereinafter TPSAC REPORT] (“[t]here is some evidence that new smokers – those who have been smoking for less than a year – have a greater prevalence of menthol cigarette use than established smokers.”).

¹⁰ SAMHSA 2009, *supra* note 9, at 4 fig. 4.

¹¹ Jennifer L. Pearson et al., *A Ban on Menthol Cigarettes: Impact on Public Opinion and Smokers’ Intention to Quit*, 102(11) AM. J. OF PUB. HEALTH e107, e108 (2012).

¹² Jonathan P. Winickoff et al., *US Attitudes About Banning Menthol in Cigarettes: Results From a Nationally Representative Survey*, 101(7) AM. J. OF PUB. HEALTH 1234, 1234 (2011).

¹³ Pearson et al., *supra* note 11, at e112 tbl. 3.

¹⁴ TPSAC REPORT, *supra* note 9, at 221-22 tbl 1 (referring to predictions based on TPSAC best estimates).

¹⁵ *Id.*

¹⁶ David T. Levy et al., *Modeling the Future Effects of a Menthol Ban on Smoking Prevalence and Smoking-Attributable Deaths in the United States*, 101(7) ADDICTION 1236, 1239 tbl. 1 (2011); *id.* at 1237 (assuming that 10% of those who would have initiated with menthol cigarettes do not initiate as a result of a prohibition).

¹⁷ *Id.* at 1239 tbl. 1.