



The Problem with Menthol: A Backgrounder

The evidence is clear: menthol in tobacco products is a public health risk. Menthol encourages youth to smoke and makes it harder for smokers to quit. Menthol cigarettes are also disproportionately marketed to African Americans and other targeted populations. In the absence of federal action to regulate menthol, state and local governments can end special treatment for this most harmful of cigarette flavor additives.

What is Menthol?

Menthol is an ingredient produced synthetically or found organically in plants of the mint family. Its cooling properties, which make it a popular additive in toothpaste, cold remedies, and peppermint candies, also reduce the harshness of tobacco smoke and the irritation of nicotine in cigarettes. As a result, menthol cigarettes are a popular choice for those first starting to smoke.



The Problem of Menthol

- Approximately 19 million Americans smoke menthol cigarettes.¹ In Minnesota, for example, menthol cigarettes are used by a quarter of all smokers.² Women smokers in Minnesota use menthol cigarettes at a higher rate than men (29.2 percent vs. 21.9 percent), while young adults have the highest menthol use rate of any age group at 31.6 percent.³
- Tobacco manufacturers have used menthol cigarettes for years to target vulnerable populations. In fact, menthol cigarettes are the source of addiction for more than half of all teen smokers (56.7%), compared to 45% for 18-25 year olds and 30.5% to 34.7% for older adults.⁴
- Menthol in cigarettes results in more youth initiation to smoking.⁵
- Menthol cigarettes are also used disproportionately in communities of color. According to the combined 2004–2008 National Survey on Drug Use and Health data, menthol cigarettes are used at higher rates by racial and ethnic minority smokers, including African Americans (82.6 percent), Native Hawaiian or Pacific Islanders (53.2 percent), Hispanics or Latinos (32.3 percent) and Asian Americans (31.2 percent), relative to White smokers (23.8 percent).⁶
- A recent study shows that while non-menthol cigarette prevalence declined from 2004-2010, menthol cigarette prevalence has either increased or remained stable.⁷

Smoking Remains a Critical Public Health Issue

- Tobacco use remains the leading cause of preventable death and disease in the United States. Cigarette smoking kills approximately 480,000 Americans each year,⁸ and more

than 8.5 million people suffer from tobacco-related chronic disease.⁹

- Smoking costs the U.S. \$289 to \$332.5 billion annually, including \$156.6 billion per year in lost productivity and \$132.5 to \$175.9 billion per year in healthcare costs.¹⁰

Prohibiting menthol cigarettes would benefit health

- One model of smoking in the U.S. concludes that if menthol were prohibited, the number of people who start smoking between 2010 and 2020 would drop by over 2.2 million. By 2050, that number would reach 9 million.¹¹
- A leading model of smoking in the U.S. predicts that a 10% quit rate among menthol smokers would save thousands of lives, preventing more than 4,000 smoking-attributable deaths in the first ten years, and that more than 300,000 lives would be saved over forty years. Approximately 100,000 of the lives saved would be African Americans.¹²

Support for a Menthol Ban

- Many menthol smokers support the elimination of menthol cigarettes. Studies have found that 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.¹³
- In Minnesota, for instance, nearly 50 percent of menthol cigarette smokers indicated that they would quit smoking if menthol cigarettes were no longer sold in the United States.¹⁴

Policy Options

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) prohibits any characterizing flavor, including candy, fruit, and alcohol flavors, in cigarettes.¹⁵ Importantly, the flavor prohibition exempts menthol flavors.

Over the past several years the federal government has received a wealth of evidence on the health effects of menthol. Nevertheless, it has yet to take any action to regulate menthol in tobacco products. Specifically:

- In 2011, a report by the Tobacco Products Scientific Advisory Committee concluded that removing menthol cigarettes from the marketplace would benefit public health.¹⁶
- In 2013, the U.S. Food & Drug Administration (FDA) conducted a second investigation, which concluded that menthol is associated with youth smoking initiation and greater addiction and poses a public health risk that exceeds the risk posed by non-menthol cigarettes.¹⁷
- Also in 2013, the FDA issued a nonbinding advanced notice of proposed rulemaking and accepted public comments.¹⁸
- Despite the submission of more than 174,000 public comments on this docket, the FDA has been silent on the topic of menthol since the comment period closed in November 2013.

With the federal government showing little appetite for regulating menthol tobacco products, state and local governments are poised to take action. Some communities have already adopted or considered regulations that would impact menthol.

Community Engagement and Education

In order to engage the community and determine the level of support for state or local regulation of menthol tobacco products, communities can:

Engage stakeholders from diverse sectors of the community

- Reach out to groups most affected by the health risks of flavored tobacco products—especially youth, racial and ethnic populations, and the LGBT community—to raise awareness about how the tobacco industry targets them and the resulting high nicotine addiction and health impact on their populations.
- Consider edgy campaigns on the health risks and impact of menthol tobacco products to excite interest among young and disaffected communities.
- Use menthol use and targeted marketing demographics to focus on the social justice aspect of this issue.

Build supportive network of traditional and nontraditional partners

- Engage, educate and train community members affected by this issue who may not be informed about or experienced in tobacco control. Cultivate and encourage them to get involved. Build capacity at the local level for diverse and nontraditional partners.

Encourage Federal Regulation

The FDA has the power to completely ban the use of menthol as a flavor in tobacco products and it has a vast body of scientific evidence demonstrating the health hazards posed by menthol in cigarettes. However, to date the agency has failed to act. Parents, educators, community groups, health care providers, and local governments can all urge the FDA to prohibit menthol. The Tobacco Control Legal Consortium has an online [Menthol Toolkit](#), which includes a model resolution and other policy resources for communities interested in restricting menthol tobacco products.

State and Local Policy Options¹⁹

Public health organizations support regulating menthol for several reasons, including reducing the appeal of tobacco products to youth, helping adult tobacco users quit, and reducing disparities in tobacco use. Several policy options can advance these public health goals.

- *Prohibit Sale of Menthol in Tobacco Products.* The most straightforward way to address the problem of menthol is to prohibit its sale in your community. A sales prohibition would likely face an aggressive legal challenge from tobacco manufacturers and retailers, but tobacco industry challenges against policies prohibiting the sale of flavored tobacco products (that do not include menthol) have not been successful to date.²⁰
- *Restrict Sale of Menthol Tobacco Products to Certain Locations.* Menthol tobacco products pose a risk for youth tobacco initiation, so prohibiting the sale of these products to adult-only facilities or within a certain number of feet of schools or other youth-oriented facilities might be an option. For example, Chicago adopted a law that prohibits the sale of flavored tobacco products, including those with a menthol flavor, within 500 feet of a school. Restricting the sale of menthol products to only adult-only tobacco stores

would prohibit even more menthol sales. For instance, New York City prohibits the sale of flavored tobacco products except in “tobacco bars.”

Although this law does not currently include menthol, a state or local government could adopt a similar ordinance that does include menthol.²¹

Other Policy Options

- *Age of Sale.* Since menthol tobacco products are common starter products for youth, a state or local government could raise the age to purchase menthol tobacco products from 18 to 21.²²
- *Price.* A state or local law prohibiting multi-pack discounts and coupon redemption for menthol tobacco products might help prevent young people from experimenting with smoking.²³ Another possible option is to raise taxes on menthol tobacco products beyond the level applied to non-menthol products. Increased taxes might constitute an impetus to quit smoking and an additional deterrent to initiate tobacco use. Note that most tobacco tax increases are implemented at the state and federal, rather than local, levels. Additionally, arguments could arise that taxing menthol products is regressive, since menthol products are more popular than non-menthol products in low income communities.
- *Marketing.* States and communities could consider going beyond nationwide marketing regulations to restrict point-of-sale advertising of menthol tobacco products. For example, these restrictions could include limiting ads in certain store locations, such as within close proximity to schools or enforcing existing content-neutral advertising laws. Note that any restrictions on tobacco advertising at the point of sale are likely to face legal challenges.
- *Disclosure.* Requiring tobacco companies to disclose information that would help indicate whether menthol tobacco products are being targeted to low income or other priority populations in a jurisdiction could be a precursor to a more substantive policy addressing menthol, such as a sales restriction.

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Notes

¹ 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) (citing to data from the National Survey on Drug Use and Health), at 41 [hereinafter TPSAC REPORT].

² MINNESOTA ADULT TOBACCO SURVEY, TOBACCO USE IN MINNESOTA: 2014 UPDATE, 2-34 (January 2015), available at <http://www.mntobacco.nonprofitoffice.com/vertical/Sites/%7B988CF811-1678-459A->

[A9CE-34BD4C0D8B40%7D/uploads/MATS_2014_Technical_Report_Final_2015-01-21.pdf](#)

[hereinafter MINNESOTA ADULT TOBACCO SURVEY].

³ *Id.*

⁴ Gary A. Giovino et al., *Differential Trends in Cigarette Smoking in the USA: Is Menthol Slowing Progress?* TOBACCO CONTROL 052259, 1–10 (2013).

⁵ TPSAC REPORT, *supra* note 1, at 215-16; see James C Hersey et al., *Menthol Cigarettes Contribute to the Appeal and Addiction Potential of Smoking for Youth*, 12 (suppl. 2) NICOTINE & TOBACCO RESEARCH S216-46 (2010).

⁶ 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://sks.sirs.swb.orc.scoolaid.net/cgi-bin/hst-article-display?id=SNY5419-0-7046&artno=0000299368&type=ART&shfilter=U>.

⁷ OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., NSDUH 11-1118, THE NSDUH REPORT: RECENT TRENDS IN MENTHOL CIGARETTE USE 2-3 (2011), available at <http://store.samhsa.gov/product/Recent-Trends-in-Menthol-Cigarette-Use/NSDUH11-1118>.

⁸ U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING – 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL 679 (2014), available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>.

⁹ Ctrs. for Disease Control & Prevention, *Cigarette Smoking-Attributable Morbidity — United States, 2000*, 52(35) MMWR 842, 842 (2003), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5235.pdf>.

¹⁰ U.S. DEP'T OF HEALTH & HUMAN SERVS, *supra* note 8.

¹¹ TPSAC REPORT, *supra* note 1, at 221-22 tbl 1.

¹² 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).

¹³ 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).

¹⁴ MINNESOTA ADULT TOBACCO SURVEY, *supra* note 2, at 4-27.

¹⁵ Family Smoking Prevention and Tobacco Control Act, Pub. L. 111-31, tit. I, sec. 101, § 907(a)(1)(A), 123 Stat. 1776, 1799-1800 (2009) (codified at 21 U.S.C. § 387g(a)(1)(A)).

¹⁶ TPSAC REPORT, *supra* note 1.

¹⁷ U.S. FOOD AND DRUG ADMIN., PRELIMINARY SCIENTIFIC EVALUATION OF THE POSSIBLE PUBLIC HEALTH EFFECTS OF MENTHOL VERSUS NONMENTHOL CIGARETTES (2013), available at <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.

¹⁸ Press Release, U.S. Food and Drug Admin., FDA Invites Public Input on Menthol in Cigarettes (July 23, 2013), available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm361966.htm>.

¹⁹ For more information on these policy strategies, see the Tobacco Control Legal Consortium publication *Regulating Menthol Tobacco Products – Tips & Tools* (2015), available at <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-reg-menthol-tips-tools-2015.pdf>.

²⁰ U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428 (2d Cir. 2013); National Ass'n of Tobacco Outlets, Inc. v. City of Providence, 731 F.3d 71 (1st Cir. 2013).

²¹ CHI., ILL., CODE § 4-64-180(b); N.Y.C. ADMIN. CODE § 17-715.

²² See, e.g., *NYC Gets Tough on Tobacco, Raises Purchase Age To 21*, CNN, Nov. 19, 2013, <http://www.cnn.com/2013/11/19/us/new-york-city-tobacco-age-law/>.

²³ PROVIDENCE, R.I., CODE OF ORDINANCES § 14-303. A court upheld a law in Providence, Rhode Island, preventing the redemption of any coupons for tobacco products. National Ass'n of Tobacco Outlets, Inc., *supra* note 20.