

FAQs on Prohibiting Menthol Cigarettes and Flavored Cigars

Q. Al Sharpton and others have said that a ban on menthol unfairly targets black smokers. Wouldn't prohibiting menthol cigarettes give police an excuse for racial profiling?

A: First, racial bias in policing is an urgent problem, and fixing that problem should be a priority. But regulation of tobacco products is also needed to protect children from tobacco addiction, advance health equity and save lives, especially among Black Americans. We can and must do both.

Second, the FDA's plan to prohibit menthol cigarettes will apply to manufacturers and retailers. But it will not make it illegal for individuals to possess or use menthol cigarettes. That is how FDA has enforced the current prohibition on other flavored cigarettes and the current prohibition on sales to minors. There is no reason to expect that FDA would enforce a prohibition on menthol cigarettes any differently. FDA officials have stated, "The FDA cannot and will not enforce against individual consumer possession or use of menthol cigarettes or any tobacco product." In addition, the Director of the Center for Tobacco Products at FDA has stated that "state and local law enforcement do not enforce the Food Drug and Cosmetic Act and so could not enforce a federal ban on menthol cigarettes or flavored cigars."

We know that the tobacco industry is certain to go all-out in fighting this decision. For years, the tobacco industry has funded organizations and prominent spokespeople to try to leverage real concern about law enforcement abuses into opposition to prohibiting menthol cigarettes. These connections were recently detailed in an investigation by the [Los Angeles Times and the Bureau of Investigative Journalism](#), which documented the industry's funding of Black lobbyists and consultants, including former Congressman Kendrick Meek and Reverend Al Sharpton, to oppose laws prohibiting menthol cigarettes and stoke fears about criminalization. This cynical fearmongering cannot hide the fact that it is the industry itself that has caused so much harm to Black Americans through the targeted marketing of menthol cigarettes. This is not a question of criminalizing Black smokers; it is a question of saving Black lives.

For these reasons, there is strong support for prohibiting menthol cigarettes from leading Black organizations and members of Congress. In February 2020, members of the Congressional Black Caucus (CBC) voted overwhelmingly for legislation that included a prohibition on menthol cigarettes, and 34 CBC members recently sent a letter to Secretary Becerra expressing strong support for prohibiting menthol cigarettes. In April 2021, [ten Black civil rights and public health organizations](#) wrote to HHS Secretary Becerra in support of prohibiting menthol cigarettes. Just this month, the [NAACP](#) again wrote to Secretary Becerra in support of FDA rulemaking to prohibit menthol cigarettes. The letter challenges the assertion that the rule would lead to criminalization, noting that, "We do not agree with the tobacco industry's message and strategy presented by a few Black leaders: prohibiting menthol cigarettes would be discriminatory. We reject this view. The failure to prohibit the sale of menthol cigarettes and products would be discriminatory and counter the goal and function of the FDA to protect and promote public health for all, including the African-American community."

Q: Why is FDA prohibiting the type of cigarette disproportionately used by Black smokers?

A: The FDA is finally prohibiting the type of cigarettes disproportionately killing and harming Black Americans. In 2009, all flavored cigarettes—except menthol—were prohibited. Given the role that menthol plays in luring kids to a deadly addiction and the impact it has on the health of Black Americans, it's time to close this loophole and prohibit menthol cigarettes.

The popularity of menthol cigarettes among Black Americans and youth is a direct result of a decades-long predatory marketing campaign by the tobacco industry – sponsorship of community and music events, free samples, magazine advertising and retail promotions. Menthol cigarettes continue to be heavily advertised, widely available and priced cheaper in Black communities. In the 1950s, less than 10% of Black smokers used menthol cigarettes. Today, that number is 85%.

Among the African American community, menthol cigarettes were responsible for 1.5 million extra smokers, 157,000 smoking-related premature deaths and 1.5 million excess life-years lost during 1980-2018. African Americans bear a disproportionate toll of the public health impact of menthol cigarettes. During this time, African Americans represented 15% of extra new smokers, 41% of excess premature deaths and 50% of excess life-years lost, despite only accounting for 12% of the population. Prohibiting menthol cigarettes will disproportionately benefit Black Americans by reducing smoking and saving lives.

Q: Is there science to support a prohibition on menthol cigarettes?

According to the FDA, menthol cigarettes make it easier for kids to start smoking and harder for smokers to quit. From 1980 to 2018, menthol cigarettes were responsible for 10.1 million new smokers, 378,000 premature deaths and nearly 3 million life years lost. That’s roughly 10,000 premature deaths and 265,000 new smokers each year.

Menthol cools and numbs the throat, masking the harshness of tobacco smoke and making it easier for young people to try cigarettes and become regular smokers. As a result, half of youth who have ever tried smoking initiated with menthol cigarettes. Young people who start using menthol cigarettes are more likely to become addicted long-term smokers.

Q: Shouldn’t adults have the freedom to choose what type of cigarette they want to smoke?

A: Tobacco use is a lethal and addictive behavior. For the vast majority of smokers, smoking was not an adult choice but an addiction started in childhood—90% of adult smokers started when they were teens or earlier. Tobacco companies target young people before they can fully appreciate the consequences of becoming addicted. Most adult smokers want to quit (nearly 70%), but overcoming an addiction to nicotine is difficult and often requires multiple quit attempts to succeed.

Q: Smoking menthol cigarettes is not more harmful than smoking non-menthol cigarettes, so why should menthol cigarettes be prohibited?

A: According to the FDA, menthol cigarettes lead more kids to start smoking, and to greater addiction and less success in quitting. Menthol cigarettes increase the number of people who suffer from tobacco-caused disease and premature death.

Menthol cigarettes also contribute greatly to health disparities. Because of decades of targeted marketing by the tobacco industry, 85% of Black smokers use menthols compared to just 29% of White smokers. Tobacco use is the number one cause of preventable death among Black Americans, claiming 45,000 Black lives every year. Tobacco use is a major contributor to three of the leading causes of death among Black Americans – heart disease, cancer and stroke – and Black Americans die from these conditions at far higher rates than other Americans.

Q: Won’t prohibiting menthol cigarettes lead to an illicit (black) market?

A: Research suggests that demand for illicit menthol cigarettes would be modest. Nearly 70% of adult smokers want to quit, and more than half try to quit in any given year. Removing menthol cigarettes would likely increase quitting among menthol smokers. For menthol smokers who do not quit, other tobacco products, including cigarettes, will remain on the market, further discouraging the formation of an illicit market.

There would also be considerable obstacles to creating a substantial market for illicit menthol cigarettes and there are steps FDA can take to minimize the risk of an illicit market. In January 2021, a bipartisan coalition of 23 attorneys general – the leading law enforcers in their states – sent a letter to FDA stating that, “There is little reason to suggest that prohibiting menthol cigarettes will cause the emergence of an illicit market that will threaten the public health gains from prohibiting menthol cigarettes or that that state and federal authorities will be unable to prevent the emergence of such illicit activity.”

Tobacco companies consistently exaggerate the risk of an illicit market to discourage governments from implementing effective tobacco control measures. The tobacco industry makes similar claims following tobacco tax increases – and study after study has shown that the industry’s claims are overblown. The tobacco companies argued that the 2009 federal tobacco tax increase would create more unintended consequences than benefits, but public health gains quickly materialized. There were huge declines in youth smoking and calls to the national quitline increased greatly.

Q: Wouldn’t prohibiting menthol harm the economy and cost jobs?

A: Prohibiting menthol cigarettes will prevent kids from starting to smoke, lead more smokers to quit, improve health, save lives, and reduce health care spending. These benefits vastly outweigh any impact on tax revenues and retailer profits—especially because tobacco kills nearly half a million Americans and is responsible for more than \$225 billion in health care costs every year. More than 60% of these health care costs are paid by government programs such as Medicare and Medicaid.

Research shows that declines in cigarette consumption do not reduce the number of convenience stores or convenience store jobs. Money spent on tobacco products does not disappear when users quit or cut back. A pack-a-day menthol smoker who quits will stop spending more than \$2,500 per year on cigarettes and instead spend it on other goods and services, like food, which has a larger profit margin than tobacco for retailers. Additionally, retailers who now sell menthol cigarettes will still be able to sell non-menthol cigarettes, which constitute the vast majority (63%) of the cigarette market.

Tobacco farming in the United States has been shrinking for decades, with fewer tobacco farms producing less tobacco and playing an increasingly smaller role in the country’s economy. Tobacco manufacturing is also on the decline, even in the major tobacco manufacturing states. The number of tobacco farms in the U.S. has declined by 93% since 1997, due to tobacco use declines as well as the \$10 billion buyout of tobacco farmers and quota holders in 2005. In 2019, tobacco product manufacturing employment made up just 0.1% of all manufacturing jobs in the U.S. Even in the two states with the most tobacco manufacturing (North Carolina & Virginia), related employment makes up less than 2% of all state manufacturing jobs, and even smaller fractions of total employment.

Q: How soon can the FDA prohibit menthol cigarettes?

A: The process will likely take several years to complete. FDA must engage in a multi-step rulemaking process, which can be lengthy. First, FDA must publish a notice of proposed rulemaking, which must be open for public comment for at least 60 days. Then FDA must review all the comments and publish a

final rule. The effective date of a final rule would be at least one year after it is published in the Federal Register. Additionally, court challenges by the tobacco industry could further delay implementation.

Q: Is there science to support prohibiting flavors in cigars?

A: In recent years, cigars have surpassed cigarettes in popularity among young people, and they are most popular among Black youth. A primary reason for the popularity of cigars among youth is the wide array of flavors. There are now over 250 cigar flavors, including Cherry Dynamite, Brownie, and Strawberry Kiwi. In fact, 73.8% of youth cigar smokers report that they smoke cigars “because they come in flavors I like.”

Cigar smoke is composed of the same toxic and carcinogenic chemicals found in cigarette smoke. FDA has concluded that “all cigars pose serious negative health risks” and that “all cigar use is harmful and potentially addictive.” According to the National Cancer Institute, smoking cigars causes serious health consequences, including cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are also at increased risk for aortic aneurysms. Each year, about 9,000 Americans die prematurely from regular cigar use.

Q: If the FDA prohibits menthol cigarettes, shouldn't it leave menthol e-cigarettes on the market so menthol smokers have a safer alternative they can turn to?

A: US public health authorities—including the CDC, the Surgeon General, the U.S. Preventive Services Task Force and the National Academies of Science, Engineering and Medicine—agree that there is not enough evidence to recommend e-cigarettes, including menthol e-cigarettes, for smoking cessation. Just like menthol cigarettes entice young smokers, flavors like menthol are driving the youth e-cigarette epidemic. Nearly 30% of youth e-cigarette users use menthol e-cigarettes. With no proven benefit to adult smokers and a proven risk to youth, there's no reason to keep menthol e-cigarettes on the market.