

Tobacco Issues

Background

Convenience stores are the nation's dominant retail channel for tobacco products, and tobacco product sales account for roughly one-third of in-store sales for convenience retailers. These businesses create jobs in communities and train their employees to age verify customers purchasing age-restricted products.

Unfortunately, retailers are likely to be affected by the Food and Drug Administration's (FDA) April 2022 proposed ban on menthol-flavored cigarettes and all cigars. If implemented, the FDA will enforce its ban on menthol cigarettes and flavored cigars against manufacturers, distributors, wholesalers, importers and retailers, but not against individual consumers who possess banned tobacco products.

Licensed Retailers Have Helped Reduce Underage Use to Historic Lows¹

- Youth cigarette smoking is the lowest in a generation (1.3%)
- Youth menthol cigarette use is the lowest in a generation (0.8%)
- Youth use of cigars is also the lowest in a generation (0.8%)

None of this progress could be made without responsible retailers checking for ID and stopping kids' access to tobacco products. That's why it's so important to keep these products in licensed stores.

Proposed Menthol ban would lead to illicit sales and Governments Losing Tax Revenue

A proposed menthol ban would give rise to illicit sales of these products by vendors and individuals who would not verify the age of consumers or collect taxes. Convenience retailers train their employees how not to sell tobacco products to underage customers, yet law-abiding small businesses could lose in-store sales of flavored tobacco products and likely other in-store products if such a ban goes into effect. Menthol cigarette sales make up about one-third of overall cigarette sales and even more in some regions. The ban also has the potential to affect all levels of the tobacco industry from the thousands of unionized farmers, machinists, raw materials providers, truck drivers, warehouse operators, and retailers who operate responsibly in the legal, regulated industry today. Finally, cigarette smoking rate for youth is still at historic lows.

In addition, the federal government and state governments combined stand to lose more than \$6.6 billion in tax revenue in the year following prohibition of menthol-flavored cigarettes and flavored cigars, as recently reported by the Tax Foundation, an independent tax policy nonprofit.

This total ban would shift products to illegal sellers, at a heavy cost to retailers and their employees:

- Convenience stores support 2.38 million jobs²
- Tobacco is the top revenue generator: 34.7% of in-store sales nationwide³
- Menthol cigarettes make up 37% of all retail cigarette sales⁴
- Menthol cigarettes generate \$29 billion in annual retail sales⁵

¹ ALCS analysis of National Survey on Drug Use and Health 2002-2020 combined; state is 12- to 17-year-olds who report past 30-day use.

² NACS, "Convenience Store Sales Return to Record Level," at <https://www.convenience.org/Media/Press-Releases/2022-Press-Releases/US-Convenience-Store-Sales-Performance-at-Pre-Pand#.Yl6xUtvMI2x>

³ NACS State of the Industry Report – 2020, National Association of Convenience Stores, 34th Edition

⁴ Federal Trade Commission Cigarette Report for 2020, p. 29, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report-2020/p114508fy20cigarettereport.pdf>

⁵ Calculation based on volume and price data in Orzechowski & Walker, "Tax Burden on Tobacco," FY2021, p.43, 223; menthol share from FTC supra note 4 May 2022

- Flavored cigars generate \$4 - 5 billion in annual retail sales⁶
- For every \$1 an adult smoker spends on cigarettes, they spend an additional 25¢ on ancillary sales⁷
- Retailers could be forced to cut as many as 150,000 jobs⁸
- Retailers that sell tobacco are small businesses: of 253,000 convenience stores, grocery stores, and other outlets selling tobacco, 136,000 are single-store owners (54%).⁹

“The Ask”

Encourage lawmakers to submit comments by July 5, 2022 on the FDA proposed rule highlighting that a ban on menthol cigarettes and cigars with characterizing flavors will likely lead to an illicit market that will put small business convenience stores out of business and lead to billions in lost government revenue.

(Committees: House Energy and Commerce Committee, Senate Commerce Science and Transportation Committee, All Lawmakers)

EMA Staff Contact: Rob Underwood, runderwood@emamerica.org, Sherri Stone, sstone@emamerica.org;

⁶ Calculation for large cigar market. Based on volume and flavored share data from Cigar Association of America; retail price data from MSAi

⁷ Path to Purchase, 2017 Adult Tobacco Consumer Experience.

⁸ Estimate of the National Association of Tobacco Outlets.

⁹ Store Tracking and Analytical Reporting System (STARS) FY2020 data.