



**Thomas A. Schatz, *President***  
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August 1, 2022

Commissoner Robert Califf  
Dockets Management Staff (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, MD 20852

*Re: Tobacco Product Standard for Menthol in Cigarettes (FDA-2021-N-1349)*

Dear Commissioner Califf,

On behalf of the more than one million members and supporters of Citizens Against Government Waste (CAGW), I respectfully submit these comments to the Food and Drug Administration (FDA) in response to its Solicitation for Public Comments on the Tobacco Product Standard for Menthol in Cigarettes (FDA-2021-N-1349).

The proposed rule to ban menthol flavoring in cigarettes will negatively impact state and federal budgets that rely on tobacco tax revenues, hurt small business, fail to reduce youth cigarette use even though youth cigarette use is currently at historic lows, and create a black market of unregulated menthol cigarettes. CAGW urges the FDA to halt its review of the proposed rules and instead focus its efforts on encouraging people to move away from combustible cigarettes through education and the use of tobacco harm reduction products.

According to the Centers for Disease Control and Prevention (CDC), menthol cigarettes are no more dangerous than any other cigarettes. Banning the sale of menthol cigarettes will mean lost tax revenues at all levels of government, which have used this money to fund various programs for decades. In 2019 and 2020, menthol-flavored cigarettes made up [37 percent](#) of all cigarette sales in the U.S., according to the CDC. If banned, the lost tax revenues will reduce government budgets and require either higher taxes or cuts in spending to make up for the financial loss. A March 2, 2022, Tax Foundation [analysis](#) estimated that state governments would lose \$4.7 billion and the federal government would lose \$1.9 billion annually if the FDA follows through on the proposed menthol ban.

The highest inflation in 40 years at [9.1 percent](#) is crushing families and small businesses that are still recovering from COVID-19 pandemic-related shutdowns. And with two consecutive quarters of negative GDP growth meeting the longstanding definition of a recession, a menthol ban will add to the economic pressure on further harm small businesses.

The menthol cigarette ban will also have an adverse effect on public health and safety due to higher black-market sales and illegal smuggling. Making a product illegal will not only fail to reduce demand, but also put smokers at increased risk by criminalizing smoking and enforcing strict penalties. States with high tobacco taxes are already at risk for illicit cigarette sales, like New York, which has a thriving black market for tobacco products. With its high tobacco taxes, which are intended to deter behavior, consumers don't smoke less, they merely purchase unregulated products at a lower cost to avoid the high taxes. In 2015, the state lost [\\$1.63 billion](#) due to untaxed tobacco sales. If smokers can't buy

menthol products in a regulated market, they will find a way to purchase the products elsewhere, meaning in an unregulated, dangerous market.

Despite claims that menthol cigarettes have a significant impact on young smokers, there has been a steady decline in youth smoking over the past decade, leading to [historic lows](#). There are [1.73 million fewer](#) current youth tobacco product users in 2020 (4.47 million) compared to 2019 (6.20 million). In 2021, two out of every 100 high school students (1.9 percent) reported having smoked cigarettes in the past 30 days. Menthol bans do not have a [net impact](#) on youth smoking cessation, as youth menthol smokers simply transition to non-menthol cigarettes.

A January 23, 2020, [Reason Foundation study](#) found that youth menthol smoking is less popular than non-menthol smoking. States with the highest rates of menthol smoking also had the lowest rates of youth smoking. Banning menthol cigarettes is a solution in search of a problem. It would be far more effective to enforce ID verification laws and hold retailers accountable for selling to minors instead of implementing an all-out ban that impacts everyone.

Instead of banning menthol cigarettes, the FDA should support and adopt more tobacco harm reduction policies. CAGW has [long argued](#) that the use of tobacco harm reduction products, like vaping, heat-not-burn, and similar electronic cigarettes, is the better course of action than raising taxes or implementing all-out bans.

Should the FDA proceed in implementing a ban on menthol-flavored cigarettes, the largest beneficiary would likely be China, which is the largest supplier of illicit menthol-flavored cigarettes. According to [Statista](#), in 2019, China produced 2.61 million metric tons of tobacco. Its closest competitors are India, which produced 804.4 thousand metric tons, Brazil with 769.8 thousand metric tons, Zimbabwe at 257.8 thousand metric tons, followed by the United States, which produces 212.3 thousand metric tons. In its 2014 book, "Intellectual Property: Making It Personal," CAGW [raised](#) the alarm about the potential importation of counterfeit products should further restrictions or bans be placed on various products, including tobacco after Australia imposed a restrictive labeling law that enabled counterfeiters to easily produce packaging identical to the real product. Unfortunately, the increased risk of counterfeit goods not only harmed the brands being illegally reproduced, but also significantly increased consumer harm. The publication noted that, "bootlegged cigarettes can contain caustic or toxic chemicals, including high levels of arsenic, due to fewer controls over manufacturing."

If the FDA proceeds to implement a menthol ban, the doors will open to an illegal, unregulated, and dangerous black market which increases the risk to public health and safety. This ban will also drain local, state, and federal governments of tax revenue streams. Small businesses that rely on tobacco sales will be subjected to lost revenues as a result of the menthol prohibition. CAGW urges the FDA to personal choice and public health, which will lead to the conclusion that a menthol cigarette ban should be rejected.

Sincerely,

A handwritten signature in black ink that reads "Thomas Schatz". The signature is written in a cursive, slightly slanted style. The name "Thomas" is written in a larger, more prominent script than "Schatz".