



Congress of the United States
House of Representatives

June 2, 2022

The Honorable Robert M. Califf, MD
Commissioner
Food and Drug Administration
10903 New Hampshire Avenue
Building 32, Room 2346
Silver Spring, MD 20993

Dear Commissioner Califf:

As Members of Congress who care about protecting the rights of small business owners in this country, we urge the Food and Drug Administration (FDA) to reassess its proposed rule prohibiting menthol as a characterizing flavor in cigarettes.

The FDA's rule titled "Tobacco Product Standard for Menthol in Cigarettes" (RIN 0910-AI60) proposed on April 28th would decimate businesses operated by hardworking men and women who responsibly and legally sell tobacco products to adults in compliance with state and federal laws. While we will always prioritize the health of our children, banning legal products from our regulatory system for consenting adults has never and will never be good policy. A rigorous ban on menthol cigarettes will likely lead to an illicit market that puts children at risk and has the potential to financially decimate manufacturers, distributors, wholesalers, importers, and retailers.

Menthol cigarettes generate \$29 billion in annual sales and account for 34% of all cigarette sales today.¹ Forgoing these sales to the black market will adversely affect businesses that are already struggling to stay afloat during rampant inflation, skyrocketing gas prices, and a post-COVID-19 economy. Not to mention, a nationwide tobacco ban of this nature stands to cost the federal government \$1.9 Billion in lost excise tax revenue in its first year of implementation alone.² These are critical dollars that could be used for lifesaving programs such as the Children's Health Insurance Program (CHIP).

Furthermore, we feel that the FDA has overlooked that the derivative underground market for unregulated and unsafe menthol products this rule fosters will cause significant harm to the community. According to the Center for Disease Control (CDC) over 7 out of 10 African American youth ages 12-17 years who smoke use menthol cigarettes.³ Therefore, children and

¹ https://www.convenience.org/Media/Daily/2021/Apr/30/1-FDA-to-Ban-Menthol-Cigarettes-Cigars_GR

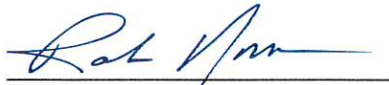
² <https://taxfoundation.org/federal-menthol-cigarette-ban/>

³ <https://www.cdc.gov/tobacco/disparities/african-americans/index.htm>

minorities are most vulnerable to the danger posed by the increased accessibility of unsafe, counterfeit alternatives. This not only poses dire health concerns, but also increases the likelihood of law enforcement interactions with the black community.

All in all, consenting adults should have the freedom to make their own health decisions devoid of government intervention. Moreover, putting over 136,000 single-store business retailers, that millions of consumers have come to rely on everyday, out of business is not the answer.⁴ As such, we strongly advise the FDA to reconsider implementation of this rule and go back to the drawing board.

Sincerely,



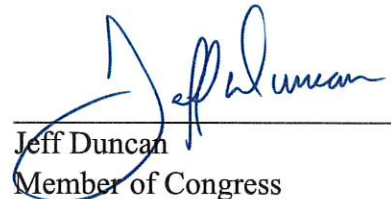
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⁴ https://www.energymarketersofamerica.org/pdfs/issuebriefs/Tobacco_Issues_2022.pdf

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