

## UNDERSTANDING POTENTIAL MENTHOL TOBACCO BANS AND THEIR IMPACT ON COMMUNITIES OF COLOR



### Overview

On April 29, 2021, the U.S. Food and Drug Administration announced that it [would issue proposals](#) within the next year to ban menthol cigarettes and all characterizing flavors in cigars. On Wednesday, July 21, 2021, the Alliance for Health Policy hosted a [briefing](#) titled “Understanding Potential Menthol Tobacco Bans and their Impact on Communities of Color” that explored this issue. The event outlined the latest science on nicotine initiation, addiction, and cessation, the use of flavorings in tobacco products, as well as the disparate impact of menthol tobacco products on various populations, especially communities of color. Expert panelists also discussed key milestones of tobacco and nicotine-related policies at the state and federal level and outlined the opportunities and challenges of implementing the FDA’s forthcoming menthol bans.

### Key Lessons

- Menthol tobacco products contribute to disparities in smoking rates, particularly among communities of color.
  - “Major tobacco companies perniciously targeted the African American community with menthol. As a result, today, over 80% of African American smokers smoke mentholated cigarettes and over 90% of Black youth smokers initiate with menthol.” – Carol McGruder, Founding Member and Co-Chair, African American Tobacco Leadership Council

#### African Americans-Menthol

- Perniciously targeted by all major tobacco companies
- "Urban" programs included
  - Co-optation of Black leadership, heavy media campaigns, free giveaways to children, van programs, retailers programs, event sponsorship
- Over 80% of African Americans smoke mentholated cigarettes
- Over 90% of Black youth initiate with menthol cigarettes
- Addiction is about science and opportunity
- Menthol is a human rights and social justice issue

*Source: McGruder, C. “Understanding Potential Menthol Tobacco Bans and their Impact on Communities of Color.” Alliance for Health Policy Webinar. July 21, 2021. Available [here](#).*

- Some [cities and states](#) have already begun implementing restrictions on the sale of flavored tobacco products, paving the way for national policy.
  - “Chicago was the first local jurisdiction to include menthol in its flavored tobacco product restrictions... Two states, Massachusetts and California, address mentholated tobacco products through statewide legislation, which delivers health equity and health benefit advancements to all corners of the state... tribal governments have also been active in addressing menthol and other flavors in e-cigarettes.” – Joelle Lester, J.D., Director, Commercial Tobacco Control Programs at Mitchell Hamline School of Law Public Health Law Center

## State Flavor Restrictions

### Massachusetts

- In effect June 2020
- Limits sale of flavored cigarette and tobacco products, including menthol and e-cigarettes
- Exempts on-site consumption in licensed smoking bars

### California

- Legislation passed August 2020
- Prohibits sale of flavored cigarette and tobacco products
- Exempts hookah and shisha, premium cigars, and pipe tobacco
- Tobacco industry response:
  - Gathered signatures to send to ballot
  - Sued in federal court
- Current status: stayed

*Source: Lester, J. "State & Local Menthol Tobacco Sales Restrictions." Alliance for Health Policy Webinar. July 21, 2021. Available [here](#).*

- At the federal level, the FDA's announcement to ban menthol is the first step in a process to remove menthol from the market.
  - "While it didn't ban menthol, the 2009 Family Smoking Prevention and Tobacco Control Act gave the FDA the authority to address these issues on its own, without congressional approval. Today we come together at a critical juncture, because on April 29 the U.S. Food and Drug Administration announced its intention to advance a product standard to eliminate mentholated cigarettes, but "working toward a standard" means that many steps must occur in order to finally achieve the promise of finally banning menthol." – Matt Myers, President and CEO, Campaign for Tobacco-Free Kids

## What to Expect Now

- Next Step – FDA must issue a Notice of Proposed Rulemaking (NPR).
  - FDA said it would act within one year, a long time, but there is no formal deadline.
- Once FDA issues an NPR, there will be at least 60 to 90 days for formal public comment, perhaps more.
  - The tobacco industry will generate hundreds of thousands of comments to counter FDA and to counter comments from groups that support the Proposed Rule.
- FDA must then consider and address every different substantive comment it receives. Supportive comments are critical to support a positive decision.
  - FDA does not face a legal deadline to finish – industry will push for delay; proponents must push for quick action and keep the issue in the spotlight.
- Once FDA issues a Final Rule, a ban will not take effect in less than one year. Supporters must then be prepared to help FDA defend a Rule because it is inevitable the industry will sue.

*Source: Myers, M. "Understanding Potential Menthol Tobacco Bans and their Impact on Communities of Color." Alliance for Health Policy Webinar. July 21, 2021. Available [here](#).*

## Questions & Answers

### What makes tobacco with menthol more dangerous?

“Menthol is an anesthetic, so it numbs your throat. So where your body would normally reject the smoke, it helps to numb that affect. Menthol also dilates the lungs so the toxins go deeper and people can hold the smoke longer.” – Carol McGruder

“There have also been studies that document that nicotine delivered through a menthol cigarette interacts with the brain in a more powerful, rapid way. Menthol smokers of all demographics have a more difficult time trying to quit. And it’s not because they aren’t strong-willed. It’s because of the chemical interaction of menthol that combines with tobacco smoke that creates a more powerful addiction.” – Matt Myers

### Have bans been successful for other tobacco products, at the state-level or in other countries?

“Canada has banned the sale of menthol cigarettes, and they [found](#) that this ban did not lead to a significant black market. It did, however, lead to a dramatic increase in the number of individuals who previously smoked menthol cigarettes quitting altogether... We also know that [flavors hook kids](#): close to 50% of kids who start smoking start with mentholated cigarettes. The elimination of these products will have the most dramatic impact on reducing the number of young kids who start smoking.” – Matt Myers

### What are some of the potential effects on other stakeholders, particularly potential revenue loss to local businesses?

“Money not spent on products that kill you still gets spent, so there is a revenue shift – not a revenue loss. Another thing we often ignore when we talk about revenue is the health care cost that a community suffers from menthol products – which is alleviated when people quit or don’t become addicted.” – Matt Myers

### What interventions and supports can be used to facilitate cessation, especially among those who prefer menthol products?

“There are cessation services available, but as we work on this new policy, states and communities will need better outreach to make sure people know what services are available. Many of us are also supporting legislation in Congress to expand cessation coverage for everybody on Medicaid and inform beneficiaries of the cessation products on the market.” – Matt Myers

“We want nicotine addiction to be seen as a chronic disease. There has been little innovation on cessation recently, so let’s put our focus on creating better cessation strategies to liberate those who are addicted.”  
– Carol McGruder

### What are the opportunities and challenges for states creating laws and regulations around tobacco versus the federal government?

“State and local governments have some authority that the federal government doesn’t have, like creating use-restrictions such as smoke-free laws. The federal government, on the other hand, has authority over tobacco product standards (like removing menthol from tobacco products). It will take all levels of government to solve this problem, but the FDA’s authority and reach is a powerful tool that cannot be left on the table.” – Joelle Lester

## Experts

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*\*Served as panelist for the July 21, 2021 event, "Understanding Potential Menthol Tobacco Bans and their Impact on Communities of Color."*

## Resources

"Impact of Menthol Cigarettes on Youth Smoking Initiation and Health Disparities." Bach, L. Campaign for Tobacco-Free Kids. April 14, 2021. Available at <http://allh.us/PAP7>.

"Family Smoking Prevention and Tobacco Control Act - An Overview." U.S. Food and Drug Administration. June 3, 2020. Available at <http://allh.us/JrCe>.

"Tobacco-Related Disparities." Centers for Disease Control and Prevention. February 3, 2020. Available at <http://allh.us/4rxt>.

"Use of Mentholated Cigarettes and Likelihood of Smoking Cessation in the United States: A Meta-Analysis." Smith, P., Assefa, B., Kainth, S., et al. Nicotine & Tobacco Research. June 17, 2019. Available at <http://allh.us/rGmb>.

"Black Lives / Black Lungs." Black Lives/Black Lungs. August 6, 2017. Available at <http://allh.us/bBWE>.

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