

# Prohibition of Menthol Cigarettes

BY DONALD S. KENKEL, ALAN D. MATHIOS, REVATHY SURYANARAYANA, HUA WANG, AND SEN ZENG, CORNELL UNIVERSITY; AND GRACE N. PHILLIPS, UNIVERSITY OF MEMPHIS

**A**fter more than a decade of public discussion, the US Food and Drug Administration (FDA) has proposed a prohibition on menthol cigarettes. Menthol cigarettes contain tobacco with natural menthol from mint or synthetic menthol added as a flavoring. Menthol and nonmenthol cigarettes contain similar amounts of nicotine and tar.

A prohibition on menthol could have significant implications for public health policy. According to the FDA, almost 19 million people smoke menthol cigarettes, and if they continue to smoke, many of them will die from heart disease, lung cancer, or other smoking-related diseases. The FDA sees the prohibition of menthol cigarettes as a targeted step to prevent young people from smoking, help more current smokers quit, and address tobacco-related health disparities.

However, there could be unintended consequences if illegal markets for menthol cigarettes emerge as a result of the prohibition. These illegal markets could not only undermine the intended goal of reducing smoking but also raise concerns about racial justice. Almost 85 percent of black smokers primarily use menthol cigarettes, compared with 30 percent

of white smokers. The World Bank has cited a consensus estimate that 10 percent of global cigarette consumption comes from illegal trade, and a National Academy of Sciences study concludes that illicit sales make up between 8.5 percent and 21 percent of the total US cigarette market.

In the United States, illicit cigarette sales reflect two significant forms of tax avoidance. First, smokers in states with high cigarette excise taxes purchase cigarettes in states with lower taxes or from Native American reservations that are exempt from state taxes. Second, smokers in some large cities purchase cigarettes from illegal retail or street markets, where most of the supply comes from jurisdictions with lower taxes. The existence of illegal cigarette markets has raised concerns that unequal enforcement will lead to racial injustice, especially after the death of Eric Garner, who was killed by police while being arrested for selling illegal single cigarettes. If a national prohibition of menthol is implemented, consumers will no longer be able to avoid the ban by purchasing cigarettes across state lines. The FDA, therefore, concluded in its preliminary regulatory impact analysis that the impact of menthol prohibition on the illicit



Editor, **JEFFREY MIRON**, Harvard University and Cato Institute.

cigarette market would not be significant.

We tested the FDA’s claim by conducting an online experiment in which adult menthol smokers made hypothetical decisions about smoking. Participants could choose among consuming menthol or nonmenthol cigarettes, consuming menthol or nonmenthol electronic cigarettes, or attempting to quit smoking. Our experiment presented subjects with three scenarios: in the first, menthol cigarettes are legal; in the second, menthol cigarettes are prohibited but available either under the counter or from online retailers; in the third, menthol cigarettes are prohibited under a strictly enforced ban and only available from illegal dealers. This experiment allowed us to estimate the impact of menthol prohibition on adult consumers’ choices. However, it did not evaluate the impact of menthol prohibition on smoking initiation among young people.

Menthol prohibition has the potential to improve public health and reduce health disparities if menthol smokers switch to less-harmful electronic cigarettes or quit tobacco use entirely. However, our research finds that some menthol smokers are still willing to switch to nonmenthol cigarettes or even illegal menthol cigarettes, so the prohibition’s impact on public health and health disparities may be blunted. Based on the results of our experiment, we predict that prohibition would increase the fraction of menthol smokers attempting to quit tobacco use by 14–28 percent.

At the same time, our findings predict that prohibition would lead to a substantial rise in consumer demand for illegal menthol cigarettes, especially if menthol e-cigarettes were also illegal. Though menthol e-cigarettes are widely available, the FDA has issued marketing denial orders for all but four brands of the product. Additionally, our findings suggest that if menthol e-cigarettes remain legal, the number of menthol cigarettes demanded per year in an illegal market could reach 59–92 percent of the number currently demanded, depending on the impact of illegality on product prices. But if menthol e-cigarettes also become illegal, the size of the illegal market could reach 69–100 percent of the size of the current market. These results are similar for the subgroups of black and nonblack participants.

Finally, we performed a partial cost–benefit analysis of menthol prohibition. Specifically, we compared the benefits that prohibition would bring through reduced secondhand-smoke deaths with the costs it would impose on menthol users and suppliers. Our experiment estimated the costs that prohibition would place on users by determining the average amount of money that consumers would be willing to pay per pack to avoid resorting to an illegal market for menthol cigarettes. Additionally, our study estimates the costs to suppliers that illegality imposes on the manufacture, distribution, and sale of menthol cigarettes. Our results suggest that the costs of menthol prohibition to users and suppliers exceed the value of the reduction in mortality risks from secondhand smoke by \$15.4 billion.

## NOTE

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