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# Major Stanford O. Franklin

June 4, 2022

Food & Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

RE: Proposed FDA Rule – Tobacco Products Standards for Menthol in Cigarettes

To whom it may concern:

I am a 34-year Maryland police veteran. Retiring from the Maryland State Police as a major, I spent the majority of my career in criminal and narcotics investigation, focusing upon organized crime and illicit markets. I have also been accepted as an expert witness in Maryland circuit courts and federal district courts in police policy, practices, training, use of force, and criminal and narcotics investigations.

Throughout my extensive career, using history has become a valuable technique for analyzing crime trends, cycles and motives. One of the most important periods in history for studying organized crime syndicates and illicit markets is the early 20th century during alcohol prohibition. Banning the manufacture, transporting and selling of alcohol in the United States proved extremely disastrous. Crime syndicates made millions of dollars making them extremely powerful. They were extremely violent, responsible for this nation's dramatic murder increase in the 1920s, caused political and police corruption, recruited children in large numbers, and flooded our communities with poisoned products. Although alcohol is one of our most problematic drugs, it only took our nation 13 years to repeal the 18th Amendment, removing alcohol from the hands of criminals and placing it into a regulated marketplace.

Profitable illicit markets are commonly managed by organized crime syndicates, cartels and "gangs." Trafficking routes and local distribution markets are attained and controlled by using force, fear and violence, and as such, the use of firearms have become common management tools. We in law enforcement have also recognized the use of minors (children) by the aforementioned organizations in transporting and selling illicit goods. The reasons for using minors are they cost less, they are easier to manage, and when caught the penalties are far less severe.

Another key consequence of illicit markets is the inferior products produced and sold. As with the illicit drug market, we have found that every drug sold illicitly contains ingredients unknown to the unsuspecting consumer. Additionally, the potency of that drug is also unknown. As we have seen within the illicit drug marketplace, overdoses have become extremely common due to the above facts. Therefore, illicit markets are not only problematic relative to crime and violence, but also health.

This proposed FDA rule to ban the manufacturing and selling of menthol cigarettes in the United States, if placed into effect, would undoubtedly give birth to yet another very profitable illicit market and all of its harms. History clearly teaches us this.

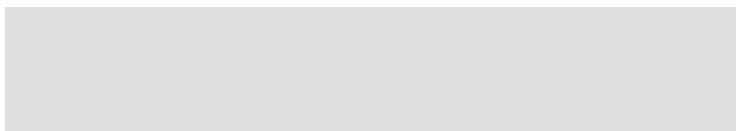
Obviously, there needs to be a thriving market for the products being manufactured and sold. In 2020, of the 203 billion cigarettes sold in the United States, 37% (75 billion) were mentholated. This is a significant number of cigarettes (3.75 billion packs) that would easily transition from a licit to illicit market. And at an average cost of \$8 per pack, that translates to a \$30 billion per year illicit market; very profitable.

I also believe that there is another unforeseen consequence. Although the proposed FDA rule does not criminalize a person for possessing menthol tobacco products, it would be illegal in every state to manufacture, sell or transport for sale menthol tobacco products. State laws are already in effect for selling untaxed tobacco products and banned menthol tobacco products would obviously be untaxed.

Of Black adult smokers, 85% prefer and use menthol cigarettes. Most report that if available via an illicit market, they would buy and use from that market, especially since they believe that they would not be criminally charged and prosecuted. This translates to a robust trafficking and selling network within Black communities. As such, law enforcement would have no option other than to aggressively enforce smuggling and selling prohibitions (bans). At a time when communities are struggling to reduce their policing footprint within communities of color, this would be an unwelcome enforcement initiative. It has the potential to undermine the many police reform efforts currently underway.

If we ban the sale of menthol cigarettes, here's what to expect:

1. Once announced along with the timeline, there will be a relative rush to buy up all available legal menthol cigarettes and banned tobacco products.
2. Cartels and organized crime syndicates will be the first to plan their smuggling networks of menthol cigarettes into the country, from the north, south and by sea.
3. Workarounds will be developed (methods to infuse regular cigarettes with menthol - special filters, chemicals, etc.). This is a health nightmare certain to occur.
4. Declining tax related revenue, which will bolster smuggling enforcement efforts.
5. Store owner complaints regarding street corner sales will also bolster enforcement efforts (Eric Garner).
6. Law enforcement task forces created to tamp down smuggling. Emphasis on "tamp down," because you can't stop it.
7. Increased penalties for smuggling and selling untaxed and prohibited products.
8. Violent neighborhood skirmishes for territorial control. Many people fail to draw the distinct correlation between gun trafficking, gun violence and illicit markets.
9. Increased interaction between police and black citizens due to smuggling and violence.
10. The proceeds from illicit tobacco markets will help to bolster other crimes, such as human trafficking.

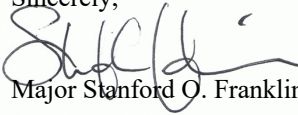


A final note is that although menthol users cannot be arrested for simply possessing menthol products, in an effort to identify smugglers, police will creatively interact with citizens for minor crimes (jaywalking, loitering, trespassing, traffic violations, etc.), using those crimes as leverage for information on their tobacco source. This is the very same tactic we use for locating guns and drugs. This will prove very disastrous within communities of color.

And if children are a concern, the current national regulated retail rate for not selling cigarettes to minors is close to or at 97%. In an illicit street market, that percentage is zero. Every child buys and many children sell.

I recommend that we conduct a proper adverse impact study to include all stake holders, especially law enforcement. As stated above, law enforcement will be a crucial tool used in suppressing illicit tobacco markets and there will be a significant fiscal note in addition to community relations challenges. Bolster smoking cessation efforts. Education and treatment programs have been extremely successful in reducing smoking among adults and children. Let's keep the pressure on and refrain from attempting to solve a health condition with cops, courts and prisons. People are struggling to make ends meet and they will not hesitate to smuggle and sell tobacco products within their communities. Let's not cause another criminal condition, mainly in economically challenged communities of color.

Sincerely,



Major Stanford O. Franklin (Ret)

