

Emerging Illicit Markets Related to the Manufacturing, Sale, or Distribution of Prohibited Tobacco Products

The fact remains that the illicit market for cigarettes is large and growing; it now accounts for between 8.5% and 21% of cigarette sales in the United States. These percentages represent roughly 10 to 25 billion cigarettes traded on the illicit market and \$3 billion in tax losses for the U.S. at the state and federal levels.¹ These markets are adaptable and dynamic, and have the ability to rapidly adjust to prohibitions, as well as to consumer desires.

In fact, the Government Accountability Office (GAO) has characterized the illicit market trade in tobacco products as a “whack-a-mole” problem, as illustrated by examples from New York City, Massachusetts, and other jurisdictions. These markets come in many forms, including smuggling or bootlegging, illegal domestic manufacture, illegal international manufacture and smuggling, illicit markets, counterfeiting, and internet sales, each with their own unique problems and harms to consumers and local, state, and federal governments.

After the Massachusetts flavor ban went into effect, adult consumers shifted their flavored tobacco purchases to neighboring states. The ban also fueled the already robust illegal market. In the 6 months immediately following the implementation of their total flavor ban, Massachusetts excise tax stamp revenues decreased, but neighboring state border counties’ tax stamp revenues saw a proportional increase. Statewide, Rhode Island saw an increase of 29% in menthol cigarette sales and, because of the proximity between major population centers, New Hampshire’s statewide increase was nearly 90%.² In other words, rather than decreasing availability of cigarettes, the market shifted so that cigarette volumes in the region stayed at trend, but there is now an increase in [reports](#) of new [criminal activity](#) in Massachusetts while the state loses excise tax revenue.

Looking back at the catastrophic failures of Prohibition in the 1920s, we know that illicit markets are caused by excessively restrictive public policies. When it comes to tobacco, the case is no different.

Recent calls to ban menthol cigarettes or flavored tobacco, which would criminalize the sale of products that make up over a third of all cigarettes, and as much as two-thirds of all cigars and smokeless tobacco, would have the same effect.

While regulatory enforcement can be effective as to people and businesses operating within the legitimate supply chain — using, for example, the warning letters mentioned in the FDA Illicit Trade Paper — that same type of enforcement is completely ineffective against criminal enterprises.

¹ National Academies of Sciences, Engineering, and Medicine. 2015. Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences. Washington, DC: The National Academies Press. Date Accessed: 06/23/2022. [Source]

² NECSEMA Speaks Out on Massachusetts’ ‘Increasingly Absurd’ Flavored Tobacco Ban. Date Published: 01/14/2021. Date Accessed: 06/29/2022. [Source]