



CITIZENS' COMMISSION
TO PROTECT THE TRUTH

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January 24, 2011

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2002 - 2009

Caryn Cohen, M.S.
Office of Science
Center for Tobacco Products
Food and Drug Administration
9200 Corporate Blvd.
Rockville, MD 20850

RE: Tobacco Products Scientific Advisory Committee's February 10, 2011 Meeting and Consideration of the Impact of the Use of Menthol in Cigarettes on the Public Health

Dear Ms. Cohen,

Pursuant to the announcement of the Tobacco Products Scientific Advisory Committee's February 10 meeting, enclosed please find 20 paper copies of comments from the Citizens' Commission to Protect the Truth presented to assist the Committee in its consideration of the impact of the use of menthol in cigarettes on the public health. An electronic copy of this submission also is being sent to your email address, as per the announcement.

Thank you for the opportunity to comment on the issue of menthol in cigarettes. Should you have any questions regarding this submission, please contact Cathleen Woods-King at (212)841-5285 or cwoods-king@casacolumbia.org.

Sincerely,

Joseph A. Califano, Jr.
Chairman of the Citizens' Commission to Protect the Truth

Louis W. Sullivan, M.D.
Vice-Chairman of the Citizens' Commission to Protect the Truth

Cathleen A. Woods-King
Special Assistant for Public Policy & General Counsel,
Citizens' Commission to Protect the Truth

January 24, 2011

Division of Dockets Management (HFA-305)
Food and Drug Administration
Department of Health and Human Services
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

The Impact of the Use of Menthol in Cigarettes on the Public Health

The Citizens' Commission to Protect the Truth (the "Commission") respectfully submits these comments to the Tobacco Products Scientific Advisory Committee (the "Committee") in support of a tobacco product standard banning the use of menthol as a flavoring in cigarettes.

The Commission has been formed to promote public education to discourage smoking by children and teens. The Commission has assembled, for the first time in the nation's history, all of the living former United States Secretaries of Health, Education, and Welfare, United States Secretaries of Health and Human Services (except Michael Leavitt), United States Surgeons General, and Directors of the Centers for Disease Control and Prevention from every administration, Republican and Democrat, since that of President Lyndon B. Johnson, to support this single cause. They have so united because keeping our children and teenagers tobacco-free is the single most effective way to prevent death and disease in this country.

The Commission urges the Committee to recommend that menthol flavoring in cigarettes be banned so that menthol cigarettes can no longer be used by the tobacco industry as a product to entice young people and minority groups—especially African Americans—to smoke.

With or without menthol, we know that smoking tobacco is dangerous; it causes a multitude of diseases such as lung cancer, heart disease, and emphysema, and the adverse health effects from smoking cigarettes account for approximately 443,000 deaths, or nearly 1 of every 5 deaths, each year in this country.¹ Our concern, however, is that the minty flavor and cooling sensation of menthol serves as a powerful facilitator that makes tobacco more palatable, particularly to young people.

Indeed, the most recent Surgeon General's Report acknowledges the connection between flavorings and the increased risk of tobacco addiction, specifically using as examples menthol and chocolate: "Tobacco product design and ingredients contribute to the risk of addiction by reducing noxious effects such as the unpleasant taste of nicotine and unpleasant sensory effects [chapter reference omitted]. Such designs include ventilation to cool the smoke and ingredients such as menthol and chocolate that make nicotine inhalation more pleasant."²

¹ Centers for Disease Control and Prevention. (2009). *Health effects of cigarette smoking*. [Online.] Retrieved March 15, 2010 from the World Wide Web:

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² U.S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report for the Surgeon General*, page 181. Atlanta, GA: U.S.

National survey data point to the popularity of menthol cigarettes among young people, which is particularly troubling given that 90 percent of adult smokers are hooked as teens.³ Nearly one-third (32%) of past month smokers aged 12 or older smoked menthol cigarettes in the past month, and the prevalence of the use of menthol cigarettes among past month smokers decreased with age (44.8% among smokers 12 to 17, 36.5% percent among smokers 18 to 25, and 30.1% among smokers 26 or older).⁴

Moreover, targeted marketing efforts by the tobacco industry over many decades have made menthol cigarettes a favorite within the African American community. More than 80 percent of black smokers in the United States use menthol cigarettes compared to approximately 24% of white smokers.⁵ More than 47,000 blacks die each year from smoking-related diseases⁶ and thousands more are crippled by smoking-related ailments. More black women get lung cancer than breast cancer and black men are 50 percent more likely to get lung cancer than white men.⁷

From 1964, when the first Surgeon General's report alerted the nation to the dangers of smoking, right up to the present, it appears that the tobacco industry has effectively done little to end its marketing to young people and minorities. It is no secret that both youth and African Americans have long been targeted by marketing campaigns for menthol cigarettes, a strategy that has proven disturbingly effective.

A published peer reviewed study conducted by researchers at Harvard's School of Public Health revealing the tobacco industry's manipulation of menthol flavoring to hook teenagers and keep adults smoking - especially African American teens and adults--underscores the importance of banning menthol flavoring.

The study found that "[f]or decades, tobacco manufacturers have controlled levels of menthol in commercial cigarettes to promote smoking among adolescents and young adults. Manufacturers have marketed brands to this vulnerable population by manipulating sensory elements of cigarettes to promote initiation and dependence." Menthol

Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.

³ Campaign for Tobacco-Free Kids. (2009). *The path to smoking addiction starts at very young ages*. [Online] Retrieved March 15, 2010 from the World Wide Web:

<http://www.tobaccofreekids.org/research/factsheets/pdf/0127.pdf>.

⁴ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (2009). *The NSDUH report: Use of menthol cigarettes*. [Online] Retrieved March 16, 2010 from the World Wide Web:

<http://www.oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.

⁵ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (2009). *The NSDUH report: Use of menthol cigarettes*. [Online] Retrieved March 16, 2010 from the World Wide Web:

<http://www.oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.

⁶ Robinson, R.G., Sutton, C.D., James, D.A. & Orleans, C.T. (2003). *Pathways to freedom: Winning the fight against tobacco*. [Online] Retrieved March 15, 2010 from the World Wide Web:

http://www.cdc.gov/TOBACCO/quit_smoking/how_to_quit/pathways/pdfs/pathways.pdf

⁷ *Id.*

is an important additive because it "masks the harshness and discomfort of inhaling smoke enough to allow delivery of an effective dose of nicotine." Further, the predominance of menthol cigarette use among African American smokers is a consequence of the tobacco industry's ruthless use of "advertising and marketing to promote menthol products to African Americans for the past 3 decades."⁸

We note that Congress authorized the Secretary to take action with respect to menthol if "appropriate for the protection of the public health." Such a finding is to be determined by reference to: the risks and benefits to the population as a whole, both users and nonusers of tobacco products; the increased or decreased likelihood existing users will stop using tobacco products; and the increased or decreased likelihood that those who do not use tobacco products will start using such products.⁹ Given that menthol's minty flavor and cooling sensation are designed to make tobacco more palatable, can it be doubted that banning its use would serve to protect the public health of the population as a whole by increasing the likelihood that existing users will stop and those who do not use will not start?

We acknowledge that the Secretary also must consider the technical achievability of a menthol ban and countervailing effects such as the creation of an underground market for menthol cigarettes.¹⁰ Opponents of a menthol ban will argue that the prevalence of menthol cigarettes among smokers makes it impractical to ban them. The fact that menthol is such a successful lure for initiating and sustaining cigarette smoking is precisely why it should be banned; such ignominious success should not serve as a rationale to prevent a ban. With respect to the anticipated illicit trade in tobacco products, numerous provisions of the Food, Drug and Cosmetic Act are designed to prevent just that. Neither of these considerations outweighs the public health benefits to the population as a whole of a menthol ban. Moreover, this is the same tired argument the tobacco companies use to oppose increasing taxes on cigarettes, an argument that has been repeatedly rejected by federal, state and local governments as they have raised such taxes in order to discourage smoking, especially the initiation of smoking by teens and children.

We urge this Committee to (1) recognize the pervasive effect that menthol cigarettes have on public health, particularly with respect to children and African-Americans and (2) recommend banning of menthol as a flavoring in cigarettes.

⁸ Jennifer M. Kreslake, Geoffrey Ferris Wayne, Hillel R. Alpert, Howard K. Koh, and Gregory N. Connolly. *Tobacco Industry Control of Menthol in Cigarettes and targeting of Adolescents and Young Adults*, Am J Public Health, Sep 2008; 98: 1685-1962.

⁹ Food, Drug, and Cosmetic Act ("FDCA"), as amended by the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"), Section 907(a)(3)(B)(i).

¹⁰ FDCA, as amended by the Tobacco Control Act, Section 907(b).