



NATIONAL FRATERNAL ORDER OF POLICE®

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The Honorable Margaret A. Hamburg, M.D.
Commissioner
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 21244

Dear Commissioner Hamburg,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our serious concerns regarding the potential impact on crime and public safety if the U.S. Food and Drug Administration (FDA) were to enact a ban on menthol in cigarettes.

Historically, the FOP has been very engaged in matters of public policy which impact the trafficking in illegal tobacco products. As a result, we have endured significant criticism in the past because we questioned the wisdom of government policies which, while designed to combat youth smoking or reduce smoking overall, also greatly contributed to a rise in tobacco smuggling and a huge loss in revenue from taxes on tobacco products.

Earlier this year the FDA's Tobacco Products Scientific Advisory Committee began deliberations on menthol in cigarettes. As part of this study, the new Federal tobacco law mandates that the FDA consider whether a menthol standard would create a "significant demand for contraband or other tobacco products". The FOP is an organization of law enforcement professionals, so we cannot assess the merits and soundness of the FDA's scientific concerns, but we are greatly concerned about the impact that a prohibition on menthol cigarettes would have on public safety.

Even without a ban of menthol, trafficking in illicit tobacco products is a significant problem for law enforcement right now. The Federal government is losing between \$500 million and \$1.5 billion annually in uncollected taxes and, under the new tax rate adopted in April 2009, these losses could go as high \$4.5 billion in the coming years. The budgets and authority of the Alcohol and Tobacco Tax and Trade Bureau (TTB) within the U.S. Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) within the U.S. Department of Justice (DOJ) are already overburdened. The magnitude of the current contraband problem is described in a recent analysis, "Department of Treasury Report to Congress on Federal Tobacco Receipts Lost Due to Illicit Trade and Recommendations for Increased Enforcement." The report, dated 4 February 2010, states that the "diversion of tobacco products occurs for two principal reasons: the potential for illicit gains is high and the risk to illegal operators is low." Enforcement mechanisms, it said, are "insufficient to countervail the lure of high profit potential."

—BUILDING ON A PROUD TRADITION—

Black markets emerge when bans or high taxes inflate the price of a product and create consumer demand for a cheaper alternative. If menthol cigarettes are banned, anyone who can find a way to obtain and sell these cigarettes at a considerable profit may do so and, when the profit potential is significant enough, organized crime moves in, using its in-place smuggling networks for distributing the contraband. The current black market for cigarettes is very profitable and the smuggling of tobacco products provides considerable income for organized crime groups both internationally and domestically. These black markets are controlled almost exclusively by organized crime, who smuggle the contraband into the country and provide the distribution structure necessary to maximize their profits.

Black markets and illegal trade in cigarettes may appear to be a minor, victimless crime but that is not the reality. Otherwise law abiding citizens will come into contact with criminals and criminal activity, breeding disrespect for the law and eroding respect for the rule of law. Underground or illegal activity weakens the social contract by reducing the respect for legal modes of behavior. The willingness to buy contraband tobacco is made easier by hard feelings against the government by citizens who feel that their personal freedoms have been impinged. The average citizen also does not consider how lost taxes on a few packs of cigarettes are multiplied into millions of packs and billions of lost tax dollars, nor does he or she think about the money feeding and strengthening organized crime operations. In addition, the systems and structures developed for tobacco smuggling allow for the development of other criminal activity and provide training grounds for new criminals of all trades. "Spin-off" crime will develop in firearms, extortion rackets, fencing, money laundering, bookmaking and violent crime. The more criminal activity created, the greater the burden on law enforcement.

Given these factors, it behooves us all to recognize and acknowledge that banning menthol cigarettes, which now constitute nearly one-third of domestic cigarette sales, would greatly exacerbate the illicit trade of tobacco. Law enforcement in the United States would be affected in three fundamental ways. First, tobacco product evasion is a revenue issue for local, State and Federal governments because trafficking in tobacco products evades taxes that support law enforcement agencies and their mission. Second, if the scope of tobacco diversion multiplies, as logic dictates it would in the wake of such a large scale ban, it will add to the burden of law enforcement agencies at all levels to monitor and enforce all types of tobacco activities from diversion schemes to Internet sales. Thirdly, the Treasury report mentioned above also notes that illicit trade has already been linked to organized and violent crime. Here again, logic dictates that a larger black market in tobacco will presumably lead to even more violence as organized criminal enterprises strive to attain and the maintain control of their trafficking operations.

There are serious law enforcement concerns with respect to the FDA's potential for action on menthol cigarettes which we do not believe has been examined. At a time when Federal assistance to State and local law enforcement is being radically slashed, it is counter to common sense to implement a policy that would have such a profound negative impact on public safety. In addition, the loss of revenue to government at all levels is also of great concern. We do not need Federal regulations that will have the net effect of increasing the number of criminals on the streets, undercutting the achievements of law enforcement in their efforts to reduce illegal trafficking in tobacco products and exploding the ranks and profits of organized crime. The understaffed and underfunded law enforcement authorities nationwide are not equipped to handle

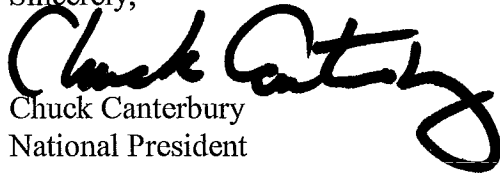
additional problems of this magnitude without significantly increasing Federal, State and local law enforcement resources—resources which are being reduced across the board.

The Fraternal Order of Police certainly supports the goal of reducing youth smoking, but we strongly believe that the Food and Drug Administration must commit to an honest, thorough assessment of the impact of banning menthol on the contraband market and the resulting cost to law enforcement agencies and personnel. Unfortunately, the Tobacco Products Scientific Advisory Committee has not, to date, reached out to any members of the law enforcement community or, as far as we know, to law enforcement components within the Federal government to examine the public safety impact of a ban on menthol tobaccos products.

On behalf of the more than 330,000 members of the Fraternal Order of Police, I urge you to assure the public safety community that the FDA will comply with the law and comprehensively assess the ramifications on black markets and tobacco smuggling if the FDA bans menthol cigarettes. We respectfully request that you identify the specific studies, hearings, actions and procedures that the FDA and the Advisory Committee will undertake to study this issue and would strongly encourage your outreach to the law enforcement community as a whole.

Thank you for your consideration of the views of the members of the Fraternal Order of Police on this matter and I look forward to your response. If I can provide any additional assistance on this issue, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,



Chuck Canterbury
National President

cc: The Honorable Patrick J. Leahy, Chairman, Committee on the Judiciary, United States Senate
The Honorable Charles E. Grassley, Ranking Member, Committee on the Judiciary, United States Senate
The Honorable Lamar S. Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives
The Honorable John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives