



NATIONAL FRATERNAL ORDER OF POLICE®

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23 September 2013

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

RE: Docket No. FDA-2013-N-0521; Menthol in Cigarettes, Tobacco Products; Request for Comments

Dear Commissioner Hamburg,

I am writing on behalf of the members of the Fraternal Order of Police (FOP) in response to an Advance Notice of Proposed Rulemaking (ANPRM) published on 24 July 2013 in the Federal Register by the U.S. Food and Drug Administration (FDA) relating to the potential regulation of menthol in cigarettes.

The FOP has long been engaged in matters of public safety policy that relate to the adverse effects of trafficking in illegal tobacco products. While the FOP is an organization of law enforcement professionals and cannot assess the merits and soundness of the FDA's scientific concerns, we are greatly concerned about the impact that a prohibition on menthol cigarettes would have on public safety and its potential impact on crime. We communicated many of these concerns in our letter of 21 September 2011.

The FOP believes that the FDA must commit to an honest and thorough assessment of the impact a ban on menthol tobacco products would have on the contraband market and the resulting cost to law enforcement agencies and public safety. Unfortunately, neither the FDA nor the Tobacco Products Scientific Advisory Committee has 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 such a ban. It cannot be said, then, that the serious law enforcement concerns regarding the potential impact of taking action against menthol cigarettes have been thoroughly examined. At a time when Federal assistance to State and local law enforcement is being significantly reduced, the FOP believes it is counter to common sense to implement a policy that would have such a profoundly negative impact on public safety.

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 expanding the ranks and profits of organized crime. The understaffed and underfunded law enforcement authorities in every region of our country do not have the resources to combat an entirely new enforcement challenge caused by a prohibition on menthol tobacco products without significantly increasing Federal, State and local law enforcement resources.

Even without such a ban, trafficking in illicit tobacco products is currently a significant problem for law enforcement. Because of the secretive nature of this illegal tobacco market, we do not know precisely how much the Federal, state and local governments are losing in revenues. But we know it is likely in the billions of dollars in uncollected taxes. At the same time, 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) along with State and local police budgets are already overburdened. Earlier this year, our nation focused on reducing firearms violence and illegal gun trafficking. How can we now ask the ATF to redirect its resources to enforce a ban on a simple tobacco product which has been on the market since the 1920s?

The magnitude of the current contraband problem has been analyzed in the report, "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 4 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."

Illegal cigarette markets emerge when government actions affecting a consumer product (such as high taxes, restrictions or a ban) create consumer demand and a profit incentive for traffickers. The current black market for cigarettes is a prime example of such an illegal market. This underground market is very profitable and the smuggling of tobacco products provides considerable income for organized crime groups, both internationally and domestically. Organized crime groups largely control the illegal market, providing a distribution structure necessary to maximize profits. If menthol cigarettes are prohibited, anyone who can find a way to obtain and sell these cigarettes may do so and, because the profit potential is significant enough, organized crime will utilize its in-place smuggling networks to distribute the contraband.

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 foster other criminal activities and provide a training ground for new criminals of all trades. "Spin-off" crime will develop in firearms, extortion

rackets, fencing, money laundering, bookmaking and violent crime, as noted by a report earlier this year by the Virginia Crime Commission and other studies. The more criminal activity created, the greater the burden on law enforcement.

Given these factors, 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.

- Tobacco product evasion means lost revenues for local, State and Federal governments because trafficking in tobacco products evades taxes that support law enforcement agencies and their mission.
- 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.
- The Treasury report mentioned above notes that illicit trade has already been linked to organized and violent crime. Logic dictates that a larger black market in tobacco will lead to more violence as organized criminal enterprises strive to attain and the maintain control of their trafficking operations.

On behalf of the more than 330,000 members of the Fraternal Order of Police, I urge the FDA 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 seeks to outlaw menthol tobacco products. The questions asked by the FDA as part of this process are just a beginning. We respectfully request that you identify specific studies, hearings, consultations, actions and procedures that the FDA will undertake to study this issue. As part of that rigorous assessment, we strongly encourage that you reach out to the FOP and the law enforcement community as a whole to learn more about the illegal tobacco trade and to establish a comprehensive research agenda.

Thank you for your consideration of the views of the members of the FOP on this matter. 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,

A handwritten signature in black ink that reads "Chuck Canterbury". The signature is stylized and includes a large, downward-pointing arrow at the end.

Chuck Canterbury
National President