



September 16, 2010

VIA ELECTRONIC MAIL/

TPSAC@fda.hhs.gov

20 COPIES VIA HAND DELIVERY

Ms. Cristi Stark
Office of Science
Center for Tobacco Products
Food and Drug Administration
9200 Corporate Boulevard
Rockville, MD 20850

Dear Ms. Stark:

Please accept the following comments of the National Association of Convenience Stores (“NACS”) in connection with the Tobacco Product Safety Advisory Committee’s (“TPSAC’s”) proceedings related to menthol in cigarettes. These comments were originally submitted to TPSAC on July 15, 2010. In an abundance of caution to ensure their full and appropriate consideration, NACS now resubmits them in connection with the TPSAC’s Menthol Subcommittee meeting to be held on September 27, 2010.

NACS is an international trade association representing more than 2,200 retail company members. Our member companies do business in nearly 50 countries worldwide, with the majority of members based in the United States. The U.S. convenience store industry, with some 145,000 stores across the United States, posts approximately \$624 billion in total sales on an annual basis. The majority of our members are small, independent operators. Indeed, more than 70 percent of our total membership is companies that operate 10 stores or less. Over 60 percent are owned and operated by someone who only has one store.

The number one in-store item for the industry is by far tobacco products. This is also one of the most regulated products that the industry sells. As a result, NACS has played a prominent role in the development of United States tobacco policy for the last two decades; its membership has a deeply vested interest in the outcome of the policy choices that FDA makes.

NACS is therefore very concerned about the Food and Drug Administration’s (“FDA’s”) activity generally, and the TPSAC’s proceedings specifically, with respect to menthol in cigarettes.

NACS appreciates that the FDA and the TPSAC are under a direct statutory mandate to review and evaluate safety, dependence, and health issues relating to tobacco products. In its work in this regard on menthol, however, the TPSAC must consider the real-world consequences that a ban on menthol cigarettes would have.

First, it is impossible to assume that a menthol ban will reduce underage smoking, the announced objective of, and justification for virtually every provision of the Tobacco Control Act. The FDA’s final rule restricting the sale, distribution and use of cigarettes and smokeless

Indeed, if anything, a ban on menthol will aggravate, not mitigate, underage smoking problems. As discussed below, a menthol ban will undoubtedly lead to a black market in menthol cigarettes because of the broad consumer base that exists among adult smokers. The purveyors of menthol cigarettes, operating outside of the law, will not discriminate among their customers based on age.

NACS believes that a ban on menthol in cigarettes risks giving rise to an entire industry of unregulated cigarette products. It is simply not reasonable to expect that the menthol market, which accounts for roughly 30% of cigarette sales today, will vanish overnight, or could be phased out over time. Combined with the relative ease of obtaining menthol flavorings, black market manufacturers will sprout up very quickly.

That black market creates health concerns, first and foremost. Current manufacturers operate within the full scrutiny of the FDA in satisfying customer demand. Illegal manufacturers, obviously, will not, meaning that cigarette contents, purity, nicotine and tar levels, to name just a few issues, all will subject to their whims. Congress specifically recognized in the Tobacco Control Act that the FDA should play a role in regulating the manufacture of cigarettes; banning menthol will eliminate the important public health safeguards that Congress intended in that Act.

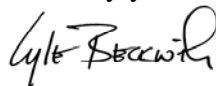
A ban also will create a “grey” market in menthol cigarettes that are manufactured legally abroad, but imported under dubious legal circumstances. Without a domestic source for menthol cigarettes, smokers will simply purchase them over the Internet, when they travel abroad (including Canada and Mexico), or rely on bulk importers/distributors. Again, these products will be wholly unregulated by the FDA, and therefore lose whatever health protections that Congress mandated in the Tobacco Control Act. Such a course is therefore counter-productive at best.

A menthol ban will also lead to reduced tax revenues for the federal and state governments. By eliminating 30% of the legal cigarette market, the FDA would concomitantly reduce revenues derived from those sales. The FDA must conduct a thorough review of the wisdom – indeed, its ability – to eliminate these revenues by administrative action.

NACS urges the TPSAC to include these concerns in its deliberations. Only by doing so will it fulfill its mission to provide the FDA with appropriate and necessary recommendations on whether to ban menthol in cigarettes.

Thank you for the opportunity to present NACS’ views on this important proceeding for the retail community. Please do not hesitate to contact me if we may be of any assistance to the TPSAC on this matter or other issues.

Sincerely yours,



Lyle Beckwith
Senior Vice President, Government Relations