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### Menthol Ban = Black Market

Lorillard, NACS, others speak out on potential ban's side effects

By Linda Abu-Shalback Zid

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**SILVER SPRINGS, Md.** -- The majority of speakers at a public hearing on menthol cigarettes had a consistent message: Banning menthol would likely lead to a black market.

The hearing was part of a regularly scheduled Tobacco Products Scientific Advisory Committee (TPSAC) meeting, and of the seven people who spoke, four cautioned about the potential black market.

In a surprising testimony, Gilbert Ross, executive director and medical director of the New York-based American Council on Science and Health, said his organization initially was puzzled as to why menthol wasn't included in the FDA's initial flavored-cigarette ban and commissioned a review of literature "to find out what was the real deal with menthol in cigarettes."

"We were quite surprised to find out that it's not quite so easy to say, 'Let's ban menthol,'" Ross said. The council's research found no physiological toxicities associated with menthol in cigarettes, beyond what is already contained in cigarettes.

"It seems quite clear to me that people who smoke menthol cigarettes are really quite devoted to smoking menthol cigarettes, and that if you ban menthol, the chances of creating a black market are substantial," he said, adding that a black market would allow for more under-aged smoking and tax evasion.

Bruce Levinson, a senior staffer of Washington-based Center for Regulatory Effectiveness, cautioned further about harm that could be caused by a black market, citing a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) filing on the federal register about how contraband is likely to not have standards of production, be sold to people who are underage and have ties to organized crime and terrorist groups. He asked that TPSAC view an upcoming contraband paper from the center, as well as invite the ATF to brief the committee on potential impacts of a menthol ban on the contraband market and the public.



Chicago-based Compass Lexecon was retained by Greensboro, N.C.-based Lorillard Inc. to conduct economic analyses on the subject. Fredrick Flyer, senior vice president at Compass, acknowledged that his company therefore only had access to Lorillard's Newport brand data, but said that his company found low elasticity in preference for the brand.

"What that implies in terms of the black market is that there is sufficient demand out there for menthol cigarettes that shows strong preferences for menthol, and hence, would likely source from the black market should a black market emerge," he said.

Lyle Beckwith, senior vice president of government relations at NACS, said that thus far tobacco products have gone to the black market because of price. "I firmly believe that if there were to be a ban on menthol, that would be the spark that the black market in tobacco needs to push it into a more burgeoning problem for our country." He added, "My membership loses sales when people go to the black market."

Not all participants were focused on potential black market effects, however. Gary Giovinco of the School of Public Health and Health Professions, State University of New York at Buffalo, said, "Mentholated cigarettes are at least as dangerous as their non-mentholated varieties, and there is concern about menthol sweetening the poison."

He shared results on The National Youth Smoking Cessation Survey of smokers, which found that 12-17-year-olds were more likely to smoke menthol than 18-25-year-olds. He speculated that banning menthol likely would help contribute to the continuing reduction in smoking by adolescents. "I think the most harm-reducing product is one that's not smoked, so I would hope that prevalence of smoking in young people continues to decline at least as rapidly if not more rapidly than it has been," he said.

Jonathan P. Winickoff spoke on behalf of the American Academy of Pediatrics. "The role of menthol in facilitating smoking initiation is greatly concerning," he said, adding that the nation's youth smoke menthol cigarettes at higher rates than older smokers. "While a child's first cigarette is usually an unpleasant experience, menthol can make it less so, partially by anesthetizing the throat against the harshness of tobacco smoke."

Winickoff also pointed out that 82.6% of African American smokers smoke menthol. Despite the finding, the academy's research found that 20.6% of menthol smokers supported banning menthol, and 47% of African Americans supported such a ban.

Mike Little, former chair of National Black Chamber of Commerce, addressed the fact that many of the statistics shared during the meeting pointed to data that African Americans tend to prefer

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smoking menthol. But he added, "I think that there certainly seems to be some business implications associated with the banning of menthol."

A former cigarette smoker himself, Little said, "I would be glad to come back if the agency would like to have support in banning all cigarettes. But if cigarettes are going to be a legal item, I don't think that race should ever be used to differentiate and give advantage to some cigarette makers as opposed to others."

The TPSAC's report on menthol is due March 23, 2011.

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