

## QUESTIONS TO ASK ABOUT A MENTHOL BAN

June 2021

**T**he Biden administration has announced a plan to ban menthol cigarettes, though the specifics have yet to be articulated. Given the serious negative health consequences of combustible cigarettes, the ban will likely benefit public health somewhat. For instance, [the Food and Drug Administration \(FDA\) estimates almost 925,000 people would quit smoking as a result of the ban](#), while academic meta-analysis suggests [even more would try to do so](#). However, this does not mean that the ban will be easy to implement or lack problems. In investigating the ban, policymakers should pay careful attention to uncertainties and act deliberately. Some questions that policymakers may want to ask include:

### Will a ban result in a larger black market?

Since [about 11 percent](#) of cigarettes (roughly 275 million) in the United States are already sold through black market channels, it is likely that at least a few more menthol cigarettes will contribute to this number following a ban. In Canada, researchers [found that somewhere between 7 and 10 percent of menthol smokers](#) bought menthols after the ban, though sample sizes were too small to derive exact numbers. Because menthol smoking [is far more popular in the United States than in Canada](#), the prospect for a black market would be bigger. If 7 to 10 percent of American menthol smokers switched to the illicit market, illegal cigarette sales would increase from 11 to about 13 or 14 percent. This would represent nearly 100 million cigarettes and result in massive revenue for people involved in the illicit trade. Many smokers now purchase a mix of legal and illicit cigarettes, but since all menthol cigarettes would be illicit, a person with a strong preference for menthols would likely purchase more illicit cigarettes following a ban.

### Will a ban have negative implications for law enforcement-community relations?

Groups like the [American Civil Liberties Union](#) and Law Enforcement Action Partnership have opposed menthol bans because, as a [coalition letter](#) explains, they might “create yet another reason for armed police to engage citizens on the street based on pretext or conduct that does not pose a threat to public safety.” They also argue that the ban might have a significant negative impact on Black and Latino smokers. On the other hand, civil rights groups like [the National Association for the Advancement of Colored People \(NAACP\)](#) have generally supported these same bans and argue that they will not have negative impacts. Since the bans are untested in the United States, it is very difficult to know what will happen, but it would be foolish to blithely assume they will have only positive or only negative impacts. Therefore, the benefits to public health need to be weighed against the potential costs for communities that have a high rate of interactions with the police.

### How will a menthol ban impact the 21-to-smoke age or other tobacco control measures?

The United States’ national change of the purchase age for combustible cigarettes from 18 to 21 is the most important new tobacco control mechanism of the past several years. Since we know that the [overwhelming majority of youth smokers get their cigarettes from social sources](#)—friends and relatives—rather than retailers, the 21-to-purchase requirement is important in large part because it essentially ends legal social sources for high school students. If a menthol ban grows the black market significantly, it is possible that it could also grow illegal social cigarette sources. Nonetheless, the net growth of the illegal market combined with the slight preference of youth who begin smoking for menthol products suggests the counteraction of

eliminated social sources. Canada, which began its menthol ban in 2016, saw [overall smoking rates rise](#) the next year before they resumed a long-term decline and fell to new lows. A one-year increase doesn't prove that menthol bans are ineffective in reducing smoking—nearly all credible studies say that they do at least a little—but it does show that other factors can outweigh them.

### **What specifically will be banned and how will the ban be enforced?**

The specific products a menthol ban prohibits and the way the ban is implemented determines how effective it is. The FDA has not announced the specifics of a ban and those will have to be analyzed carefully. Nearly all popular, commercially sold cigarettes use menthol [along with other flavorings](#) to make them more pleasant for smokers and to differentiate brands. Those marketed as “menthols” simply use menthol as a “characterizing” flavor. The European Union's menthol ban actually allows cigarettes that contain some menthol to continue to be sold as before and, in both the European Union and Canada, [manufacturers have produced](#) new styles with [packaging, marketing and flavor combinations](#) that mimic brands that once had characterizing menthol flavors. It is possible that they may produce similar products in the United States. Since [the U.S. menthol market consists of more than a quarter of the nation's total smokers](#) and menthol use rates [are dramatically lower](#) in other places that have implemented bans, the commercial incentives to develop more attractive products targeted at towards menthol smokers would increase following any U.S. menthol ban.