**RE: Comments on Proposed Regulations to Establish Tobacco Product Standards for Menthol in Cigarettes, Docket Nos. FDA-2021-N-1349 and FDA-2021-N-1309**

Dear Commissioner Califf:

The undersigned State Attorneys General (“the States”) respectfully submit the following comments in response to Tobacco Product Management for Menthol in Cigarettes, 87 Fed. Reg. 26454, Docket No. FDA-2021-N-1349 (proposed May 4, 2022) and Tobacco Product Standard for Characterizing Flavors in Cigars, 87 Fed. Reg. 26396, Docket No. FDA-2021-N-1309 (proposed May 4, 2022), which included requests for comments on theproposed rules.

The undersigned urge the Food and Drug Administration (“FDA”) to act in the best interest of the public health by issuing final product standards to prohibit menthol as a characterizing flavor in cigarettes and to prohibit all characterizing flavors in cigars. There are no compelling reasons why these products should remain on the market. Menthol cigarettes disproportionately affect vulnerable populations, in particular Black smokers. Menthol cigarettes remain a major barrier to smoking cessation and reduction of smoking-related diseases. The prevalence of menthol smoking has remained constant in recent years, despite declines in non-menthol smoking. Menthol flavor in cigarettes increases youth initiation and addiction. Actions within the FDA’s control will smooth the transition to a menthol-free tobacco landscape. Overwhelming scientific evidence not only supports the prohibition of menthol cigarettes and extension of the prohibition of characterizing flavors to cigars to protect public health and save thousands of lives, but also indicates that a prohibition should be implemented urgently.

The comments that follow provide in more detail that (1) menthol cigarettes disproportionately harm Black communities, (2) prohibiting menthol cigarettes will not significantly increase illicit trade, (3) the lasting public health impact of banning menthol cigarettes will outweigh concerns about enforcement, (4) the rule with respect to cigars closes a loophole and benefits public health, (5) the product standards will not preempt state or local restrictions, and (6) the urgency of this issue weighs against delaying the effective date of the product standards.

1. **Menthol Cigarettes Disproportionately Harm Black Communities**

Disparities in menthol cigarette use demand action by the FDA. Eighty-nine percent of all Black smokers use menthol cigarettes, compared to 26% of White smokers.[[1]](#footnote-1) Over ninety-three percent of Black smokers initiated cigarette use with menthol cigarettes.[[2]](#footnote-2) Black female menthol smokers have the lowest quit rates among female smokers.[[3]](#footnote-3) In fact, “[t]he prevalence of menthol cigarette smoking is highest among [Blacks] across all socio‐demographic and smoking‐related categories, whether stratified by income, age, gender, marital status, region, education, age of initiation, and length of time smoking.”[[4]](#footnote-4) What is even more troubling is menthol’s popularity with Black youth: an anonymous school-based survey found that “80.6 percent of [Black] middle school smokers and 84.8 percent of [Black] high school smokers regularly smoke menthol cigarettes.”[[5]](#footnote-5)

This dire situation led the African American Tobacco Control Leadership Council and 19 other public health organizations to petition the FDA to prohibit menthol as a characterizing flavor in cigarettes, highlighting the devastating effects of menthol on the public health and particularly that of Black Americans. The attorneys general of 23 states and territories signed a letter dated January 22, 2021, in support of that petition.[[6]](#footnote-6)

Menthol’s popularity in the Black community is not an accident; menthol cigarettes are, and have been, marketed disproportionately toward that community.[[7]](#footnote-7) Since the 1950s, the tobacco industry has inundated the Black community with marketing for menthol cigarettes through “sponsorship of community and music events, targeted magazine advertising, youthful imagery, price discounting and marketing in the retail environment.”[[8]](#footnote-8) In the 1960s, tobacco companies began advertising their menthol brands heavily in magazines popular in the Black community like *Ebony* and *Jet*, often featuring famous Black athletes.[[9]](#footnote-9) In the 1980s, Kool introduced a mobile sampling initiative that distributed free menthol cigarette samples around Houston; it would eventually expand to 50 cities around the country.[[10]](#footnote-10) “Sample distribution [was] targeted to: housing projects, clubs, community organizations and events where Kool’s black young adult target congregate.”[[11]](#footnote-11) Kool’s strategy was, “[t]o defend Kool’s strong black franchise and extend Kool’s advertising imagery to low readership quintiles and non-media users.”[[12]](#footnote-12) Newport and Salem had similar mobile sampling programs.[[13]](#footnote-13) Tobacco companies further partnered with retailers to implement targeted promotions in urban stores to “reach the core of Kool’s franchise (young, black, relatively low income and education).”[[14]](#footnote-14) These insidious techniques to hook Black youth continued into the 2000s, as tobacco companies sponsored concerts,[[15]](#footnote-15) street festivals, and promotional nights at clubs, all designed to appeal to Black smokers.[[16]](#footnote-16)

Other, more indirect, methods of increasing the appeal of menthol cigarettes to the Black community have been employed as well. Beginning in the 1950s, tobacco companies were forging relationships with organizations such as the National Urban League, the National Association for the Advancement of Colored People, and the United Negro College Fund.[[17]](#footnote-17) Tobacco companies also supported the Congressional Black Caucus, “sponsored mentoring [programs] in order to reach future African-American policymakers,” and used third-party allies to influence policy decisions.[[18]](#footnote-18)

The predatory targeting of menthol cigarettes towards Black consumers has not changed in recent years. Extensive research has repeatedly shown that not only are there a higher number of tobacco stores in Black neighborhoods, but there also is more menthol marketing.[[19]](#footnote-19) What’s more, the prices of certain menthol cigarettes are lower in these neighborhoods than in other neighborhoods.[[20]](#footnote-20) A 2013 study in St. Louis found, “[m]enthol and total tobacco product marketing was highest in areas with the highest percentages of black residents,” and that, “as the proportion of black children in a census tract increased, the proportion of menthol marketing near candy also increased.”[[21]](#footnote-21)

Tobacco companies have also kept up the practice of creating relationships with Black organizations to help maintain demand for their menthol brands. “Recently, R.J. Reynolds funded the National Action Network, a civil rights organization founded by Reverend Al Sharpton, to conduct community forums to build opposition to local action to prohibit menthol cigarettes.” The forums took place in three major cities in 2016 and 2017, and in 2019 a representative from the National Action Network testified against proposed legislation to restrict the sale of menthol cigarettes in New York City.[[22]](#footnote-22)

Banning menthol is “a major step toward preventing a new generation from becoming tobacco users and saving lives. For too long, tobacco companies have promoted menthol cigarettes to the Black community and preyed in particular on Black youth.”[[23]](#footnote-23) The FDA must act now to protect public health, advance health equity, and begin to right decades of damage to Black communities’ health.

1. **Prohibiting Menthol Cigarettes Will Not Significantly Increase Illicit Trade**

With respect to the FDA’s request for comment on “whether and to what extent this proposed rule would result in an increase in illicit trade in menthol cigarettes and how any such increase could impact the marketplace or public health,”[[24]](#footnote-24) States stress that the public health benefits of banning menthol as a characterizing flavor outweigh any concern about illicit trade.

Protecting the public from dangerous products, including tobacco products prohibited by the FDA, is one of the States’ utmost priorities and an area of enforcement in which the States have long and extensive experience. The States have decades of expertise with a wide breadth of tobacco enforcement tools to combat the tobacco industry’s predatory and fraudulent practices that have addicted millions to smoking and caused devastating health consequences.[[25]](#footnote-25)

For the last two decades the States have used the 1998 Tobacco Master Settlement Agreement (“MSA”) and federal and state authority to engage in efforts to stop youth targeting in advertising, marketing, and promotions; free sampling; tobacco product placement in the media; brand name sponsorships; brand name merchandise; outdoor advertising; and use of cartoons. The States established tobacco litigation and enforcement units in every state to ensure that the tobacco industry complies with the MSA and applicable laws. In addition, the Prevent All Cigarette Trafficking Act (“PACT Act”)[[26]](#footnote-26) enables federal and state enforcement officials to collaborate in order to detect and stop illegal sales of cigarettes and enforce stringent penalties against illegal sellers. The Contraband Cigarette Trafficking Act (“CCTA”)[[27]](#footnote-27) further imposes recordkeeping and reporting requirements and enables the States to enforce strict penalties for violators. Accordingly, robust enforcement mechanisms exist on federal, state, and multi-state levels to investigate and prosecute illicit trade in tobacco products.

This preexisting framework of federal regulation, enforcement, and collaboration with state law enforcement should be considered when considering the effects of a menthol ban. The States have longstanding collaborative working relationships with all of the federal agencies involved in regulating the tobacco industry. Thus, at all levels – manufacturing, importing, and selling – there are nationwide programs that make it unlikely that an illicit trade in menthol cigarettes will emerge. States maintain extensive and effective regulation over cigarettes; potentially illegal products will be monitored through a number of enforcement tools already in place.

Since the States’ January 22, 2021 letter, the number of state and local jurisdictions that have enacted bans on menthol cigarettes has increased to over 150.[[28]](#footnote-28) A national ban would address the problem of illicit trade in menthol cigarettes before they enter the lawful distribution chain, significantly reducing both the potential for mistake and the ease of access to illicit products for scofflaw sellers.

Moreover, there were no reports of significant increases of illegal sales of flavored cigarettes following the 2009 ban on flavored cigarettes. Rather, illicit trade in the United States comes in the form of smuggling cigarettes from states with a low tax rate to those with a high tax rate. Considering the States’ consistent, longstanding, and rigorous enforcement and the extensive state and federal tobacco enforcement regimes described above, it is unlikely that a national ban on menthol cigarettes will result in the creation of a significant illicit trade for these products.

Data from Canada since its 2017 prohibition on menthol cigarettes suggests its ban has not promoted illicit trade in menthol cigarettes. Nova Scotia’s tax data after the implementation of a menthol ban in that province did not reveal evidence of increased seizures of menthol as opposed to non-menthol cigarettes, suggesting Nova Scotia’s ban on menthol cigarettes did not result in an illicit market.[[29]](#footnote-29) Studies also indicate that tobacco manufacturers are likely to comply with the prohibition on menthol cigarettes in Canada.[[30]](#footnote-30) Canada’s national October 2017 menthol ban reduces the possibility of available product crossing borders, further limiting growth of an illicit market following a menthol cigarette ban in the United States.

Moreover, the vast majority of menthol smokers are likely to comply with the law. A recent study shows that up to 46% of adult menthol smokers and up to 65% of young adult menthol smokers would quit smoking in response to a menthol ban instead of turning to purchasing menthol cigarettes available through illicit trade.[[31]](#footnote-31) Studies analyzing the impact of the January 2017 Ontario, Canada ban on menthol cigarettes found that 29% of menthol smokers attempted to quit smoking one month after the ban was implemented.[[32]](#footnote-32) A year after the ban was implemented, 56% of all smokers had made at least one quit attempt and 19% reported no current tobacco use, and after two years, menthol smokers were more likely to report having quit smoking than were non-menthol smokers.[[33]](#footnote-33) Extrapolating from Canada’s data, researchers estimate that a menthol ban in the United States would result in 789,724 daily smokers (including 199,732 Black Americans) and 1,337,988 daily and non-daily smokers (including 381,272 Black Americans) quitting smoking.[[34]](#footnote-34)

Finally, as outlined in the States’ 2018 public comment on the FDA’s publication of a “Draft Concept Paper Illicit Trade in Tobacco Products After Implementation of the Food and Drug Administration Product Standard, and Request for Comments,”[[35]](#footnote-35) the States support a number of enforcement tools and collaborative efforts to reduce overall illicit trade practices. These include banning all internet and remote sales of tobacco products, a national tobacco brand directory, requiring cooperation and collaboration between branches of law enforcement, bolstering enforcement aimed at illegal importation and transportation of tobacco products, packaging field testing and tracking methods to ensure compliance, and others.[[36]](#footnote-36) A number of the recommendations made in the States’ 2018 public comment could be instrumental in stemming any illicit trade that might follow a menthol ban.

The FDA should disregard the tobacco industry’s self-serving doomsday predictions of an increase in illicit trade. There is little reason to believe that prohibiting menthol cigarettes will cause the emergence of a serious illicit market, or that state and federal authorities will be unable to counter such illicit activity. Most importantly, the harms associated with any such market would not override the dramatic public health gains that will come from prohibiting menthol cigarettes.

1. **The Lasting Public Health Impact From Prohibiting Menthol Cigarettes Outweighs Misplaced Concerns About State of Local Enforcement**

The FDA has requested comments on “the existence, nature and degree of any change in police activity or community encounters with State or local law enforcement within a State, locality or other jurisdiction following implementation of a prohibition of menthol cigarettes.”[[37]](#footnote-37) The States provide the following response.

For years, the tobacco industry has asserted that banning menthol cigarettes would increase policing in Black communities and lead to potential abuse and discrimination. The States take police misconduct seriously and recognize some have expressed concern that a ban could be used as a pretext to confront individuals possessing menthol products. However, we emphasize that the FDA’s proposed menthol cigarette ban does not criminalize individual purchase, possession, or use.[[38]](#footnote-38) As the FDA states in its proposed rule, “State and local law enforcement agencies do not independently enforce the FD&C Act. These entities do not and cannot take enforcement actions against any violation of chapter IX of the Act or this regulation on FDA’s behalf.”[[39]](#footnote-39)

The tobacco industry’s specious claim that the danger to Black communities would be over-enforcement of a menthol ban and not the lethal product they aggressively market to those communities ignores the plain truth: “for decades, the tobacco companies have used predatory practices aimed to push their deadly product on to the Black community, practices that contribute to the approximately 45,000 Black people who will die every year from tobacco-related diseases.”[[40]](#footnote-40) Groups such as the African American Tobacco Control Leadership Counsel and the NAACP support a menthol ban because the public-health impact and millions of lives saved by eliminating a major contributor to the three leading causes of death among Black Americans outweigh the potential risk of over-enforcement.[[41]](#footnote-41) “The story of Big Tobacco and menthol is a rolling tragedy where the violence occurs off camera. It is a slower extraction of health and wealth, playing out not over minutes but decades and generations.”[[42]](#footnote-42) Proponents of the ban do not want spurious concerns over potential enforcement abuse to overshadow the fact that “most impactful on Black lives and saving Black lives would be getting menthol cigarettes and flavored cigars straight out of the Black community.”[[43]](#footnote-43)

Simply put, the FDA’s proposed menthol ban does not prohibit individual purchase, possession or use of menthol cigarettes.[[44]](#footnote-44) Instead, the FDA’s action is needed to help counteract the years of racial targeting and resulting health inequities caused by the tobacco industry. The FDA should implement this product standard because it will result in the betterment of the public health.

1. **The FDA’s Proposed Rule With Respect To Cigars Closes A Loophole And Benefits Public Health**

The States recognize and applaud the efforts of the FDA to close a loophole that could enable certain types of cigars to continue to evade flavor bans.[[45]](#footnote-45) Youth and young adults are significantly more likely to use flavored tobacco products than any other age group, and flavored tobacco products are normally the first tobacco products used by youth and young adults. Little cigars and cigarillos are nearly identical to flavored cigarettes: some are sold in packs of twenty and all three come in similar sizes and can be filtered. The main distinction is that little cigars and cigarillos have small amounts of tobacco added to the wrapper. Whereas flavored cigarettes and flavored Electronic Nicotine Delivery System (“ENDS”) products have been banned, little cigars and cigarillos evade such regulation and are currently sold in a variety of flavors including candy and fruit flavors such as coastal cocktail, blueberry, cherry dynamite, and berry.[[46]](#footnote-46) It is partly for this reason that cigars are currently more popular with high school students than cigarettes.[[47]](#footnote-47)

The FDA has made considerable progress in curtailing the youth nicotine epidemic by prohibiting the use of flavored cigarettes and ENDS, as well as bringing ENDS under their regulatory authority through the deeming rule.[[48]](#footnote-48) But more is needed. The States support the proposed rule because it imposes similar restrictions on cigars, which have for too long skirted the much more rigorous restrictions of their white-papered cousins.

Eliminating this disparity is a huge step in curtailing youth tobacco initiation and the nicotine epidemic. The States appreciate and support the actions taken by the FDA to close this loophole.

1. **The FDA’s Proposed Product Standards Do Not Preempt State Or Local Restrictions On The Sale Of Menthol Cigarettes Or Flavored Cigars**

According to the FDA’s proposed Tobacco Product Standard for Menthol in Cigarettes, “[s]tate and local prohibitions on the sale and distribution of flavored tobacco products, such as menthol cigarettes, would not be preempted by this rule, if finalized, because such prohibitions would be preserved by” the preemption provision of the Food, Drug & Cosmetic Act, Section 916.[[49]](#footnote-49) We agree with the FDA’s assessment, which is consistent with recent Federal Circuit Court decisions.

On March 18, 2022, the Ninth Circuit Court of Appeals found that Section 916 distinguishes between “tobacco product standards and state or local regulation of the final sale of tobacco products, preempting the former while allowing the latter,”[[50]](#footnote-50) and that a state can place restrictions on the retail sale of a tobacco product, including banning its sale altogether.”[[51]](#footnote-51) Moreover, the law “explicitly preserves local authority to enact “more stringent” regulations . . . .”[[52]](#footnote-52) Similarly, in 2013 the Second Circuit, in a case involving flavored smokeless tobacco, found that Section 916 “reserves regulation at the manufacturing stage exclusively to the federal government, but allows states and localities to continue to regulate sales and other consumer-related aspects of the industry in the absence of conflicting federal regulation.”[[53]](#footnote-53)

States and localities enacted laws restricting tobacco product sales long before Congress passed the Tobacco Control Act in 2009, and Section 916 was intended to preserve to the states broad power to regulate the conditions for such sales, independent of any new federal tobacco product standard. Therefore, we support the FDA’s conclusion that Section 916 would not preempt state and local actions on these fronts.

1. **The Comment Period For The FDA’s Proposed Rules Prohibiting Menthol Cigarettes And Characterizing Flavors In Cigars Should Not Be Extended**

The States request that the deadline for comment submissions, as well as any effective date of the proposed product standards, not be extended. This issue has already been subjected to close and lengthy scrutiny, and there is no reason to further delay rules that will have an immediate beneficial impact on the public health.

In 2011, the Tobacco Products Scientific Advisory Committee conducted a survey assessing the public health impacts of menthol in cigarettes and concluded that, “Removal of menthol cigarettes from the marketplace would benefit public health in the United States.”[[54]](#footnote-54) The FDA conducted its own survey in 2013, which found that menthol cigarettes cause substantial harm to public health beyond that of non-flavored cigarettes. In 2009 – at the time the Tobacco Control Act was enacted – menthol cigarettes represented over 25% of all cigarettes smoked in the United States.[[55]](#footnote-55) Today, the most recent data shows that figure has increased to 37%.[[56]](#footnote-56) Any delay in taking action on the product standard will contribute to more smoking initiation and addiction, reduce the likelihood of cessation, and further increase health disparities.

**Conclusion**

The compelling and consistent scientific evidence shows that removing menthol cigarettes from the U.S. market and prohibiting characterizing flavors in cigars is likely to reduce youth smoking initiation, improve smoking cessation outcomes in adult smokers, advance health equity, and benefit public health. Every year of inaction on these fronts costs thousands of lives and adversely affects the health of the public. Prohibiting menthol cigarettes is unlikely to significantly increase illicit trade but, if it does, enforcement authorities are well-equipped to address that result. The FDA’s proposed product standards will not preempt state and local governments from enacting laws and regulations designed to address any specific community concerns about the sale and distribution of menthol cigarettes and flavored cigars. For all these reasons, the FDA should finalize its rulemaking in the above-referenced dockets as promptly as possible.

Respectfully submitted,

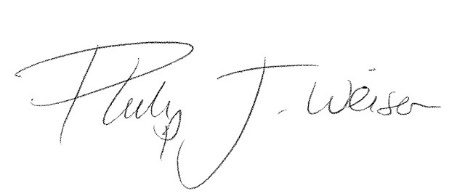
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Rhode Island Attorney General South Dakota Attorney General

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5. TPSAC Report at 42. [↑](#footnote-ref-5)
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7. TPSAC Report at 92. [↑](#footnote-ref-7)
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22. Marketing Menthol at 5. [↑](#footnote-ref-22)
23. Quote by American Medical Association President, Beverly R. Bailey, MD. “FDA agrees to ban menthol to protect African Americans”, *AMA Press Release*, 29 April 2021, https://www.ama-assn.org/press-center/press-releases/fda-agrees-ban-menthol-protect-african-americans. [↑](#footnote-ref-23)
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25. *See* aforementioned attachedJanuary 22, 2021 multistate letter. [↑](#footnote-ref-25)
26. *See* 15 U.S.C. §§ 375-378 and 18 U.S.C. § 1716E. [↑](#footnote-ref-26)
27. *See* 18 U.S.C. §§ 2341-2346. [↑](#footnote-ref-27)
28. Since the States’ (2018 comment), there have been over 50 jurisdictions to pass menthol bans. *See* “Impact of Menthol Cigarettes on Youth Smoking Initiation and Health Disparities” *Campaign for Tobacco Free Kids*, https://www.tobaccofreekids.org/assets/factsheets/0390.pdf. [↑](#footnote-ref-28)
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35. *See* attached July 3, 2018 letter “Comments to “Draft Concept Paper Illicit Trade in Tobacco Products After Implementation of the Food and Drug Administration Product Standard, and Request for Comments” Docket No. FDA-2018-N-0529, Federal Register col.83, no. 52, March 16, 2018, 11754-55. [↑](#footnote-ref-35)
36. *Id*. [↑](#footnote-ref-36)
37. Tobacco Product Standard in Menthol Cigarettes, *supra* note 26, at 26435. [↑](#footnote-ref-37)
38. The FDA is authorized to enforce the tobacco product standards, including prohibiting menthol as a characterizing flavor. *See* 21 USCA § 387a(a). This authority provided in the Federal Food, Drug and Cosmetic Act (FD&C), extends to the manufacture, distribution and marketing of tobacco products, not individual purchase, possession or use. *See* 21 USCA § 387, *et al.* If menthol were banned as a characterizing flavor, menthol products would be considered adulterated and/or misbranded and the FDA would have the authority to stop the manufacturer, distribution and marketing of these products. *See* 21 U.S.C.A. § 387b(5) and 21 USCA § 387c(9). [↑](#footnote-ref-38)
39. 87 Fed. Reg. 26486. [↑](#footnote-ref-39)
40. Mondy l., *“Black Lives Black Lungs”*, https://linconlnmody.com/black-lives-black-lungs [↑](#footnote-ref-40)
41. “NCAAP Letter Urging FDA to Ban Menthol Flavored Cigarettes and Flavored Cigar Products.” 20 April 2022, *NCAAP*, https://naacp.org/articles/naacp-writes-letter-urging-fda-ban-menthol-flavored-cigarettes-and-flavored-cigar-products; *See* Smoking and Tobacco Use: African Americans and Tobacco Use: https://www.cdc.gov/tobacco/disparities/african-americans/index.htmhttps://www.cdc.gov/tobacco/disparities/african-americans/index.htm. [↑](#footnote-ref-41)
42. Wailoo K., “How Tobacco Industry Hooked Black Smokers on Menthol” *New York Times,* 11, May 2022 https://www.nytimes.com/2022/05/11/opinion/cigarettes-tobacco-black-americans.html; Truth Initiative, “Tobacco industry has fueled false claims that eliminating menthol cigarettes will put black Americans at greater risk from law enforcement” 23 May 2022, https://truthinitiative.org/research-resources/targeted-communities/tobacco-industry-has-fueled-false-claims-eliminating?utm\_source=Truth+Initiative+Mailing+List&utm\_campaign=bf570126d1-Newsletter\_2022\_05\_27&utm\_medium=email&utm\_term=0\_c91fd8a5c5-bf570126d1-70901981. [↑](#footnote-ref-42)
43. Quote by Phillip Gardiner, the co-chair of the African American Tobacco Control Leadership Council. Foley, Katherine Ellen and Daniels, Eugene, “Proposed menthol ban divides Black leaders” *Politico*, 28 April 2022, https://www.nytimes.com/2022/05/11/opinion/cigarettes-tobacco-black-americans.html. [↑](#footnote-ref-43)
44. Romeo-Stuppy K., et al, “Why menthol bans protect African Americans.” Tobacco induced diseases vol. 19 87. 8 Nov. 2021, DOI:10.18332/tid/142932. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8573534/ [↑](#footnote-ref-44)
45. By The FDA makes clear in their Flavored Cigar Proposed Rule, that while their definition of cigar includes little cigars, cigarillos, and premium cigars; premium cigars would not be covered by these restrictions because they do not include a “characterizing flavor”. *See* Tobacco Product Standards for Characterizing Flavors in Cigars. 87 FR 26396. May 4, 2022. Docket No. FDA-2021-N-1309. [↑](#footnote-ref-45)
46. Swisher International Inc. Products https://swishersweets.com/pages/our-cigarillos. Accessed 5/25/2022. [↑](#footnote-ref-46)
47. Morbidity and Mortality Weekly Report, March 11, 2022. Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021. Available at: https://www.cdc.gov/mmwr/volumes/71/ss/ss7105a1.htm. [↑](#footnote-ref-47)
48. *See* 21 USC § 387, et al*.* [↑](#footnote-ref-48)
49. Tobacco Product Standard in Menthol Cigarettes, *supra* note 26, at 26491. [↑](#footnote-ref-49)
50. *See* *R.J. Reynolds Tobacco Company v. County of Los Angeles*, 29 F.4th 542, 558 (9th Cir. 2022). *See also, Natl’ Ass’n of Tobacco Retailers v. City of Providence, RI*, 731 F.3d 71 (1st Cir. 2013). [↑](#footnote-ref-50)
51. *Id.* at 560. [↑](#footnote-ref-51)
52. *Id.* at 548. [↑](#footnote-ref-52)
53. *U.S. Smokeless Tobacco Mfg. Co. v. City of New York*, 708 F.3d 428, 434 (2d Cir. 2013). [↑](#footnote-ref-53)
54. TPSAC Report at 225. [↑](#footnote-ref-54)
55. H. Rept. 111-58, Part 1, Tobacco Control Act, 111th Congress (2009–10), 38 (Energy and Commerce Comm.) (“H. Rept., Part 1”). Available at https://www.congress.gov/111/crpt/hrpt58/CRPT-111hrpt58-pt1.pdf. [↑](#footnote-ref-55)
56. *See* Fed. Trade Commission, Cigarette Rept. for 2020, Table 7B (issued 2021). Available at https://www.ftc.gov/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report-2020. [↑](#footnote-ref-56)