

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 918
(I-19)

Introduced by: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Subject: Banning Flavors, including Menthol and Mint, in Combustible and Electronic Cigarettes and Other Nicotine Products

Referred to: Reference Committee K

Whereas, In the United States, tobacco use remains the leading cause of preventable death and disease. Combustible cigarettes, when used as intended, cause the overwhelming majority of tobacco-related disease and are responsible for the death of half of all long-term users;¹ and

Whereas, Menthol cigarettes are at least as dangerous as other cigarettes; and

Whereas, Menthol includes mint, spearmint, and wintergreen; and

Whereas, There are menthol e-cigarette products, including e-cigarette products sold by the major tobacco manufacturers;² and

Whereas, The 2018 *National Youth Tobacco Survey*, a representative survey conducted of middle and high school students, showed a 78 percent increase in current e-cigarette use among high school students and a 48 percent increase among middle school students from 2017 to 2018. The total number of middle and high school students currently using e-cigarettes rose to 3.6 million, 1.5 million more children than the previous year. Additionally, 27.7% of high school current e-cigarette users are using the product regularly (on 20 or more days in the past month) and 67.8% are using flavored e-cigarettes;³ and

Whereas, A state-of-the-art review article on e-cigarette use published in August 2019 by the American Academy of Pediatrics describes that “[t]here are an estimated 15,000 e-cigarette flavors, including products with labels enticing to children and adolescents that imitate cookies, whipped cream, alcoholic beverages, and other dessert flavors” and recommends “[b]an all flavored tobacco products, including mint and menthol;”⁴ and

Whereas, Menthol is associated with higher youth initiation rates and lower quit rates;^{5,6} and

Whereas, The United States Food and Drug Administration (FDA) materials state “Menthol is a flavor additive with a minty taste and aroma that is widely used in consumer and medicinal

¹ Food and Drug Administration. Press announcement. Nov. 15, 2018. Available online: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm. Accessed Mar 15, 2019.

² Ibid.

³ Food and Drug Administration. Press announcement. Nov. 15, 2018. Available online: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm. Accessed Mar 15, 2019.

⁴ Walley, S, Wilson, K, et.al. “A Public Health Crisis: Electronic Cigarettes, Vape, and JUUL.” *Pediatrics* Vol 143 (6). August 2019. <https://pediatrics.aappublications.org/content/143/6/e20182741>

⁵ Campaign for Tobacco Free Kids; Impact of menthol cigarettes on youth smoking initiation and health disparities. Available online: www.tobaccofreekids.org/assets/factsheets/0390.pdf. Accessed Mar 17, 2019.

⁶ Truth Initiative: facts, stats, and regulations. Available online: <https://truthinitiative.org/news/menthol-facts-stats-and-regulations>. Accessed Mar 17, 2019.

products due to its reported cooling or painkilling properties. When used in cigarettes, menthol may reduce the irritation and harshness of smoking. However, research suggests menthol cigarettes may be harder to quit than non-menthol cigarettes, particularly among African American smokers.⁷ Menthol is also used in other tobacco products, such as cigars, hookah (waterpipe) tobacco, smokeless tobacco (dip, chew, snuff, and snus), and e-cigarettes and other electronic nicotine delivery systems (ENDS)⁸; and

Whereas, The FDA states that “In the United States:

- More than 19.5 million people are current smokers of menthol cigarettes.
- 85.8 percent of African American smokers, 46 percent of Hispanic smokers, 39 percent of Asian smokers, and 28.7 percent of White smokers smoke menthol cigarettes.
- Youth who smoke are more likely to smoke menthol cigarettes than older smokers.
- More than half of smokers ages 12–17 smoke menthols.”⁹ and

Whereas, Tobacco company marketing has targeted by race, with a focus on the black community for decades, which appears to have caused higher smoking rates of menthol tobacco products in the black community;¹⁰ and

Whereas, The NAACP passed a resolution in 2016 that supports restrictions on menthol sales;¹¹ and

Whereas, Tobacco companies also focus marketing on the lesbian, gay, bisexual, transgender, and queer/questioning community;¹² and

Whereas, In 2009, tobacco companies successfully lobbied to have menthol excluded from the Family Smoking Prevention and Tobacco Control Act which bans flavor cigarettes;¹³ and

Whereas, The U.S. First and Second Circuit Courts have ruled that the Food and Drug Administration has broad preemption language to allow for state and local regulation of flavors;¹⁴ and

Whereas, According to the Campaign for Tobacco Free Kids, at least two states and over 200 localities have passed restrictions on the sale of flavored tobacco products, some of which include restrictions on sales of menthol cigarettes;¹⁵ and

⁷ Ibid.

⁸ Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS). U.S. Food and Drug Administration Website. www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm456610.htm. Updated March 13, 2019. Accessed March 17, 2019.

⁹ Menthol and other flavors in tobacco products. U.S. Food and Drug Administration Website. www.fda.gov/tobaccoproducts/labeling/productingredientscomponents/ucm2019416.htm#reference. Updated March 13, 2019. Accessed March 18, 2019.

¹⁰ Ibid.

¹¹ NCAAP delegates endorse push to say no to menthols. Truth Initiative Website. <https://truthinitiative.org/news/naacp-delegates-endorse-push-say-no-menthols>. Published July 21, 2016. Accessed March 18, 2019.

¹² BIG TOBACCO TARGETS LGBT COMMUNITY WITH MENTHOL CIGARETTES AND PREDATORY ADVERTISING. THINK PROGRESS WEBSITE. [HTTPS://THINKPROGRESS.ORG/BIG-TOBACCO-TARGETS-LGBT-COMMUNITY-WITH-MENTHOL-CIGARETTES-AND-PREDATORY-ADVERTISING-1B059E4E1CDE/](https://thinkprogress.org/big-tobacco-targets-lgbt-community-with-menthol-cigarettes-and-predatory-advertising-1b059e4e1cde/). PUBLISHED MAY 12, 2011. ACCESSED MARCH 16, 2019.

¹³ Public Law 111-31 Congress (2009-2010) Family smoking prevention and tobacco control and federal retirement reform. Congress Website. www.congress.gov/bill/111th-congress/house-bill/1256/text?overview=closed. Published June 22, 2009. Accessed March 18, 2019.

¹⁴ Preemption: The biggest challenge to tobacco control. Tobacco Control Legal Consortium Website. <https://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-preemption-tobacco-control-challenge-2014.pdf>. Published October 2014. Accessed March 17, 2019.

¹⁵ States and localities that have restricted the sale of flavored tobacco products. Campaign for Tobacco Free Kids, August 14, 2019. <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>.

1 Whereas, Last year the FDA issued an advance notice of proposed rulemaking (ANPRM) and
2 called upon all stakeholders to share data, research, and information to inform their process for
3 examining the role that flavors--including menthol--play in initiation, use, and cessation of
4 tobacco products, but fell short of recommending banning all flavors in electronic cigarettes;¹⁶
5 and
6

7 Whereas, According to draft guidance issued in March 2019, the FDA expects manufacturers of
8 all flavored ENDS products (other than tobacco-, mint-, and menthol-flavored) that remain on
9 the market under these new conditions to submit premarket applications to the agency by Aug.
10 8, 2021;¹⁷ and
11

12 Whereas, A genetic variant found only in people of African descent significantly increases a
13 smoker's preference for cigarettes containing menthol, an FDA and NIH-funded study found.
14 The variant of the specific gene is five to eight times more frequent among smokers who use
15 menthol cigarettes than other smokers;¹⁸ and
16

17 Whereas, The American Academy of Pediatrics policy statement dated February 2019
18 recommends that the FDA "Ban all characterizing flavors, including menthol, in e-cigarettes;¹⁹
19 and
20

21 Whereas, Our AMA has consistent policy advocating FDA regulation of tobacco products (FDA
22 Regulation of Tobacco Products, H-495.988) and policy that "recognizes the use of e-cigarettes
23 and vaping as an urgent public health epidemic" and "will actively work with the Food and Drug
24 Administration and other relevant stakeholders to counteract the marketing and use of addictive
25 e-cigarette and vaping devices "(Sales and Distribution of Tobacco Products and Electronic
26 Nicotine Delivery Systems (ENDS) and E-cigarettes, H-495.986); and
27

28 Whereas, Our AMA's policy on FDA Regulatory Jurisdiction over tobacco products (FDA to
29 Extend Regulatory Jurisdiction Over All Non-Pharmaceutical Nicotine and Tobacco Products, H-
30 495.973) and Opposition to Addition of Flavors to Tobacco Products (H-495.971) lack sufficient
31 breadth, specificity and urgency to accomplish the goal of removing all flavors from all tobacco
32 products, including ENDS immediately; therefore be it

¹⁶ Regulation of flavors in tobacco products. Federal Register. The Daily Journal of the United States Government Website. <https://www.federalregister.gov/documents/2018/03/21/2018-05655/regulation-of-flavors-in-tobacco-products>. Published March 15, 2018. Accessed March 17, 2019.

¹⁷ MODIFICATIONS TO COMPLIANCE POLICY FOR CERTAIN DEEMED TOBACCO PRODUCTS. US FOOD AND DRUG ADMINISTRATION WEBSITE. WWW.FDA.GOV/TOBACCO/PRODUCTS/LABELING/RULESREGULATIONS/GUIDANCE/UCM633280.HTM. PUBLISHED MARCH 2019. ACCESSED MARCH 17, 2019.

¹⁸ Kozlitina et al, "An African-specific haplotype in *MRGPRX4* is associated with menthol cigarette smoking." *PLOS Genetics*. February 15, 2019 <https://doi.org/10.1371/journal.pgen.1007916>. Accessed March 16, 2019.

¹⁹ Jennsen and Walley, "E-Cigarettes and Similar Devices." *Pediatrics* Vol143(2). February 2019. <https://doi.org/10.1542/peds.2018-3652>.

1 RESOLVED, That our American Medical Association amend Policy H-495.971, "Opposition to
2 Addition of Flavors to Tobacco Products," by addition as follows:

3
4 Our AMA: (1) supports state and local legislation to prohibit the sale or distribution of
5 all flavored tobacco products, including menthol, mint and wintergreen flavors; (2)
6 urges local and state medical societies and federation members to support state and
7 local legislation to prohibit the sale or distribution of all flavored tobacco products;
8 and (3) encourages the FDA to prohibit the use of all flavoring agents in tobacco
9 products, which includes electronic nicotine delivery systems as well as combustible
10 cigarettes, cigars and smokeless tobacco (Modify Current HOD Policy); and be it
11 further

12
13 RESOLVED, That our AMA amend Policy H-495.976, "Opposition to Exempting the
14 Addition of Menthol to Cigarettes," by addition and deletion as follows:

15
16 Our AMA: (1) will continue to support a ban on the use and marketing of menthol in
17 cigarettes all tobacco products as a harmful additive; and (2) encourages and will
18 assist its members to seek state bans on the sale of menthol cigarettes, electronic
19 nicotine delivery devices and other tobacco products. (Modify Current HOD Policy)

Fiscal Note: not yet determined.

Received: 10/02/19

RELEVANT AMA POLICY

Opposition to Addition of Flavors to Tobacco Products H-495.971

Our AMA: (1) supports state and local legislation to prohibit the sale or distribution of flavored tobacco products; (2) urges local and state medical societies and federation members to support state and local legislation to prohibit the sale or distribution of flavored tobacco products; and (3) encourages the FDA to prohibit the use of flavoring agents in tobacco products, which includes electronic nicotine delivery systems.

Citation: CSAPH Rep. 01, A-18; Modified: Res. 916, I-18;

Opposition to Exempting the Addition of Menthol to Cigarettes H-495.976

Our AMA: (1) will continue to support a ban on the use and marketing of menthol in cigarettes as a harmful additive; and (2) encourages and will assist its members to seek state bans on the sale of menthol cigarettes.

Citation: BOT Action in response to referred for decision Res. 436, A-08; Modified: CSAPH Rep. 01, A-18;

FDA Regulation of Tobacco Products H-495.988

1. Our AMA: (A) acknowledges that all tobacco products (including but not limited to, cigarettes, smokeless tobacco, chewing tobacco, and hookah/water pipe tobacco) are harmful to health, and that there is no such thing as a safe cigarette; (B) recognizes that currently available evidence from short-term studies points to electronic cigarettes as containing fewer toxicants than combustible cigarettes, but the use of electronic cigarettes is not harmless and increases youth risk of using combustible tobacco cigarettes; (C) encourages long-term studies of vaping (the use of electronic nicotine delivery systems) and recognizes that complete cessation of the use of tobacco and nicotine-related products is the goal; (D) asserts that tobacco is a raw form of the drug nicotine and that tobacco products are delivery devices for an addictive substance; (E) reaffirms its position that the Food and Drug Administration (FDA) does, and should continue to have, authority to regulate tobacco products, including their manufacture, sale, distribution, and marketing; (F) strongly supports the substance of the August 1996 FDA regulations intended to reduce use of tobacco by children and adolescents as sound public health policy and opposes any federal legislative proposal that would weaken the proposed FDA regulations; (G) urges

Congress to pass legislation to phase in the production of reduced nicotine content tobacco products and to authorize the FDA have broad-based powers to regulate tobacco products; (H) encourages the FDA and other appropriate agencies to conduct or fund research on how tobacco products might be modified to facilitate cessation of use, including elimination of nicotine and elimination of additives (e.g., ammonia) that enhance addictiveness; and (I) strongly opposes legislation which would undermine the FDA's authority to regulate tobacco products and encourages state medical associations to contact their state delegations to oppose legislation which would undermine the FDA's authority to regulate tobacco products.

2. Our AMA: (A) supports the US Food and Drug Administration (FDA) as it takes an important first step in establishing basic regulations of all tobacco products; (B) strongly opposes any FDA rule that exempts any tobacco or nicotine-containing product, including all cigars, from FDA regulation; and (C) will join with physician and public health organizations in submitting comments on FDA proposed rule to regulate all tobacco products.

3. Our AMA: (A) will continue to monitor the FDA's progress towards establishing a low nicotine product standard for tobacco products and will submit comments on the proposed rule that are in line with the current scientific evidence and (B) recognizes that rigorous and comprehensive post-market surveillance and product testing to monitor for unintended tobacco use patterns will be critical to the success of a nicotine reduction policy.

Citation: CSA Rep. 3, A-04; Reaffirmed: BOT Rep. 8, A-08; Appended: Res. 234, A-12; Reaffirmation A-13; Modified: Res. 402, A-13; Modified: Speakers Rep., A-14; Appended: Res. 420, A-14; Reaffirmation A-15; Modified: CSAPH Rep. 05, A-18; Reaffirmed in lieu of: Res. 412, A-19; Modified: CSAPH Rep. 03, A-19;

Sales and Distribution of Tobacco Products and Electronic Nicotine Delivery Systems (ENDS) and E-cigarettes H-495.986

H-495.986 Tobacco Product Sales and Distribution

Our AMA:

(1) recognizes the use of e-cigarettes and vaping as an urgent public health epidemic and will actively work with the Food and Drug Administration and other relevant stakeholders to counteract the marketing and use of addictive e-cigarette and vaping devices, including but not limited to bans and strict restrictions on marketing to minors under the age of 21;

(2) encourages the passage of laws, ordinances and regulations that would set the minimum age for purchasing tobacco products, including electronic nicotine delivery systems (ENDS) and e-cigarettes, at 21 years, and urges strict enforcement of laws prohibiting the sale of tobacco products to minors;

(3) supports the development of model legislation regarding enforcement of laws restricting children's access to tobacco, including but not limited to attention to the following issues: (a) provision for licensure to sell tobacco and for the revocation thereof; (b) appropriate civil or criminal penalties (e.g., fines, prison terms, license revocation) to deter violation of laws restricting children's access to and possession of tobacco; (c) requirements for merchants to post notices warning minors against attempting to purchase tobacco and to obtain proof of age for would-be purchasers; (d) measures to facilitate enforcement; (e) banning out-of-package cigarette sales ("loosies"); and (f) requiring tobacco purchasers and vendors to be of legal smoking age;

(4) requests that states adequately fund the enforcement of the laws related to tobacco sales to minors;

(5) opposes the use of vending machines to distribute tobacco products and supports ordinances and legislation to ban the use of vending machines for distribution of tobacco products;

(6) seeks a ban on the production, distribution, and sale of candy products that depict or resemble tobacco products;

(7) opposes the distribution of free tobacco products by any means and supports the enactment of legislation prohibiting the disbursement of samples of tobacco and tobacco products by mail;

(8) (a) publicly commends (and so urges local medical societies) pharmacies and pharmacy owners who have chosen not to sell tobacco products, and asks its members to encourage patients to seek out and patronize pharmacies that do not sell tobacco products; (b) encourages other pharmacists and pharmacy owners individually and through their professional associations to remove such products from their stores; (c) urges the American Pharmacists Association, the National Association of Retail Druggists, and other pharmaceutical associations to adopt a position calling for their members to remove tobacco products from their stores; and (d) encourages state medical associations to develop lists of pharmacies that have voluntarily banned the sale of tobacco for distribution to their members; and

- (9) opposes the sale of tobacco at any facility where health services are provided; and
(10) supports that the sale of tobacco products be restricted to tobacco specialty stores.

Citation: CSA Rep. 3, A-04; Appended: Res. 413, A-04; Reaffirmation A-07; Amended: Res. 817, I-07; Reaffirmation A-08; Reaffirmation I-08; Reaffirmation A-09; Reaffirmation I-13; Reaffirmation A-14; Reaffirmation I-14; Reaffirmation A-15; Modified in lieu of Res. 421, A-15; Modified in lieu of Res. 424, A-15; Reaffirmation I-16; Appended: Res. 926, I-18;

FDA to Extend Regulatory Jurisdiction Over All Non-Pharmaceutical Nicotine and Tobacco Products H-495.973

Our AMA: (1) supports the U.S. Food and Drug Administration's (FDA) proposed rule that would implement its deeming authority allowing the agency to extend FDA regulation of tobacco products to pipes, cigars, hookahs, e-cigarettes and all other non-pharmaceutical tobacco/nicotine products not currently covered by the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act; (2) supports legislation and/or regulation of electronic cigarettes and all other non-pharmaceutical tobacco/nicotine products that: (a) establishes a minimum legal purchasing age of 21; (b) prohibits use in all places that tobacco cigarette use is prohibited, including in hospitals and other places in which health care is delivered; (c) applies the same marketing and sales restrictions that are applied to tobacco cigarettes, including prohibitions on television advertising, product placement in television and films, and the use of celebrity spokespeople; (d) prohibits product claims of reduced risk or effectiveness as tobacco cessation tools, until such time that credible evidence is available, evaluated, and supported by the FDA; (e) requires the use of secure, child- and tamper-proof packaging and design, and safety labeling on containers of replacement fluids (e-liquids) used in e-cigarettes; (f) establishes manufacturing and product (including e-liquids) standards for identity, strength, purity, packaging, and labeling with instructions and contraindications for use; (g) requires transparency and disclosure concerning product design, contents, and emissions; and (h) prohibits the use of characterizing flavors that may enhance the appeal of such products to youth; and (3) urges federal officials, including but not limited to the U.S. Food and Drug Administration to: (a) prohibit the sale of any e-cigarette cartridges and e-liquid refills that do not include a complete list of ingredients on its packaging, in the order of prevalence (similar to food labeling); and (b) require that an accurate nicotine content of e-cigarettes, e-cigarette cartridges, and e-liquid refills be prominently displayed on the product alongside a warning of the addictive quality of nicotine.

Citation: Res. 206, I-13; Modified in lieu of Res. 511, A-14; Modified in lieu of Res. 518, A-14; Modified in lieu of Res. 519, A-14; Modified in lieu of Res. 521, A-14; Modified: CSAPH Rep. 2, I-14; Reaffirmation A-15; Reaffirmed in lieu of Res. 412, A-15; Reaffirmed in lieu of Res. 419, A-15; Reaffirmed: Res. 421, A-15; Reaffirmation A-16; Appended: Res. 429, A-18; Modified: CSAPH Rep. 05, A-18;