



**TO:** Office of Information and Regulatory Affairs; Office of Management and Budget

**FROM:** Thomas A. Briant, Executive Director and Legal Counsel, National Association of Tobacco Outlets, Inc. (NATO)

**SUBJECT:** Economic Impact of FDA Tobacco Product Standard for Menthol in Cigarettes (RIN: 0910-AI60) and FDA Tobacco Product Standard for Characterizing Flavors in Cigars (RIN: 0910-AI28)

**DATE:** April 12, 2022

## **1. Introduction**

The National Association of Tobacco Outlets, Inc. (NATO) is a national retail trade association with 65,000+ retail member stores nationwide, all of which sell tobacco products. The U.S. Food and Drug Administration (FDA) is expected to propose a tobacco product standard banning the use of menthol in cigarettes (likely including menthol-flavored roll-your-own cigarette tobacco) and a tobacco product standard prohibiting the use of characterizing flavors in cigars.

As explained in this memorandum, the proposed product standards will not eliminate menthol cigarettes and flavored cigars from the market place. Rather, the supply of these products will shift from licensed and regulated retailers to an existing illicit marketplace. Responsible retailers are far better equipped to promote the public health goals of the federal government by preventing sales to underage individuals, whereas illicit sellers will sell to anyone of any age who has cash.

Maintaining these tobacco products in the legal, regulated market rather than fostering an expansion of the illegal marketplace will mean that there are no incremental criminal enforcement costs that would otherwise be incurred by local and state law enforcement because all 50 states treat illicit tobacco sales as a serious crime. In addition, instead of tens of thousands of jobs lost in the retail sector under these proposed product standards, current employment levels in retail stores will be maintained.

The end result of the proposed product standards will be a less effective regulatory system and potentially enormous costs and unintended impacts including underage sales through the

illicit market, adulterated products from sources outside the United States, and a massive loss of federal, state and local tax dollars, retail sales revenue, and jobs in the legal market.

This memorandum provides specific data on menthol cigarettes, menthol-flavored roll-your-own tobacco, and flavored cigars as well as the estimated economic impacts and unintended consequences of these proposed tobacco product standards.

Specifically, the economic impacts that are discussed in this memo include the following:

- Federal excise tax impact.
- State excise tax, sales tax, and Master Settlement Agreement payment impacts.
- Retail impacts (sales and jobs).
- Foreign country impacts (jobs).
- Illicit market impacts (cross border, smuggling, and gray market).
- Major costs of an illicit cigarette market.

In addition, since the proposed tobacco product standards are aimed in part at curbing underage use of menthol cigarettes, menthol-flavored roll-your-own tobacco, and flavored cigars, the most up-to-date data on underage tobacco use as reported in the 2021 National Youth Tobacco Survey is summarized at the end of this memo. This data demonstrates that the underage use of these tobacco products remains at historic lows and usage continues to decline, calling into question the need to enact a nationwide prohibition on these tobacco products which retailers responsibly sell to legal age adults.

## 2. Data on Menthol Cigarettes and Flavored Cigars

### A. Federal Tax Data (FY 2020)

Cigarette Tax:	\$1.01 per pack of 20 cigarettes
Large Cigar Tax:	52.75% of price (\$0.4026 per cigar maximum federal excise tax)
Roll-Your-Own Tax:	\$24.78 per pound
Tax Collections:	Federal Cigarette Taxes: \$ 11,238,817,000 <sup>1</sup>
	Federal Tobacco Product Taxes: <u>\$ 1,114,757,000<sup>2</sup></u>
	Total Federal Tax Collections: <u>\$ 12,353,574,000</u>

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<sup>1</sup> Alcohol and Tobacco Tax and Trade Bureau, Statistical Release, Tax Collections Fiscal Year 2020.

<sup>2</sup> Ibid.

### **State Tax Data (FY 2020; All 50 States Combined)**

Tax Collections:	State Cigarette Taxes:	\$16,466,200,000 <sup>3</sup>
	State Tobacco Taxes:	\$ <u>2,337,309,000</u> <sup>4</sup>
	State Sales Taxes on Cigarettes:	\$ 3,906,612,772 <sup>5</sup>
	Total State Tax Collections:	\$ <u>18,803,509,000</u>

**B. Master Settlement Agreement Payments (FY 2020):** \$ 7,100,000,000<sup>6</sup>

### **C. City, Town and County Tax Data (FY 2020; All 50 States Combined)**

Tax Collections:	Local Cigarette Taxes (FY2020):	\$ 386,200,000 <sup>7</sup>
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### **D. Menthol Cigarette Sales and Market Share in United States**

Menthol Cigarette Market Share of All Cigarette Sales (FY 2020): 37%<sup>8</sup>

Menthol Sales to 18 Million Adult Consumers (CY 2021): \$28.3 Billion<sup>9</sup>

### **E. Cigar Data<sup>10</sup>**

Total Number of All Large Cigars (CY2021):	14,876,000,000
Less: Total Premium Cigars (Non-Flavored) (CY2021):	<u>(456,000,000)</u>
Net Popular Priced Large Cigars (CY2021):	14,420,000,000
Flavored Popular Priced Cigars (CY2021):	6,977,970,297
Flavored Popular Priced Cigars Market Share in the United States:	46.9%
Total Number of Small Cigars (CY2021):	361,160,000
Flavored Small Cigars Market Share in the United States:	36%
Total Number of Flavored Small Cigars (CY2021):	130,017,600
Combined Flavored Popular Priced and Small Cigars Percentage:	48.8%

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<sup>3</sup> The Tax Burden on Tobacco, Orzechowski and Walker (2020).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> [www.statista.com](http://www.statista.com), Statista (2022).

<sup>9</sup> Management Science Associates, Inc. (CY 2021 Data).

<sup>10</sup> Cigar Association of America (2022).

## F. Roll-Your-Own Cigarette Tobacco<sup>11</sup>

Domestic Roll-Your-Own Cigarette Tobacco (CY2020): 1,709,226 Pounds

Imported Roll-Your-Own Cigarette Tobacco (CY2020): 202,296 Pounds

## G. Retail Data

Number of retail stores that sell tobacco products

Convenience Stores (As of 12/31/2021): 150,274<sup>12</sup>

Cigarette, Cigar and Tobacco Stores (2020): 9,083<sup>13</sup>

Grocery Stores (2021): 36,200<sup>14</sup>

Tobacco sales percentages and amounts

Cigarette sales in convenience stores (2020): \$ 56.1 Billion<sup>15</sup>

Percent of in-store tobacco sales in convenience stores: 37%

Cigar sales in convenience stores (2020): \$ 3.84 Billion<sup>16</sup>

## 3. Federal Excise Tax Impact

According to a March 2022 report issued by The Tax Foundation, a ban on the use of menthol in cigarettes could result in a decline in federal cigarette excise tax revenue by \$1,877,312,548<sup>17</sup> in the first full year after the prohibition goes into effect, which is a 16.7% decrease from the \$11,238,817,000 in federal cigarette excise taxes collected in FY2020. Note that this reduction in revenue is only for cigarettes and would be greater when the loss of federal excise tax revenue from banned flavored cigars is factored into the impact.

The Tax Foundation report explains that this significant decline would be due to several factors. Citing the example of the State of Massachusetts, which enacted a statewide menthol cigarette and flavored tobacco sales ban in 2019, while cigarette sales declined 24% within a year of the menthol cigarette ban. However, 90% of the decreased sales moved to adjacent states due to cross-border purchases by consumers.

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<sup>11</sup> Alcohol and Tobacco Tax and Trade Bureau, Statistical Report, Tobacco Products, CY2020.

<sup>12</sup> [www.statista.com](http://www.statista.com), Statista (2022).

<sup>13</sup> [www.manta.com](http://www.manta.com), Manta (2020).

<sup>14</sup> [www.statista.com](http://www.statista.com), Statista (2021).

<sup>15</sup> [www.statista.com](http://www.statista.com), Statista (2020).

<sup>16</sup> Ibid.

<sup>17</sup> "Federal Menthol Cigarette Ban May Cost Governments \$6.6 Billion," <https://taxfoundation.org/federal-menthol-cigarette-ban>, The Tax Foundation (March 2, 2022).

Also, based on trends in the European Union (which enacted a regional ban on the sale of menthol cigarettes), the Tax Foundation found that approximately 90% of cigarette consumers continued to purchase and smoke cigarettes from various sources, including through cross-border transactions, from Internet websites, or switched to using other flavored tobacco products, or started smoking non-menthol cigarettes.<sup>18</sup> As the Tax Foundation points out, while cross-border transactions may be more challenging in a nationwide ban, illicit sales would not be hampered as discussed later in this memorandum.

The federal government funds a program called the State Children's Health Insurance Program (SCHIP), which provides health insurance to children in low income families. The federal cigarette tax was increased by 62 cents in 2009, along with increases in other tobacco tax rates, to fund the expansion of coverage under SCHIP. The projected decrease of almost \$1.9 billion in federal cigarette excise tax revenue could negatively impact funding for SCHIP and lead to a contraction of the program that lower income families rely to obtain health insurance for their children.

#### **4. State Excise Tax, Sales Tax, and Master Settlement Agreement Payment Impacts.**

According to the Tax Foundation report, a ban on the use of menthol in cigarettes could result in the following impacts:

- A. A decrease in state cigarette excise tax revenue by \$2.6 billion dollars.
- B. A decrease in state sales tax revenue by \$892 million dollars.
- C. A decrease in Master Settlement Agreement (MSA) payments to states by \$1.2 billion dollars.

This means that the total revenue loss to all 50 states could be as high as \$4.7 billion in the first year after a menthol cigarette prohibition is enacted.<sup>19</sup>

States utilize excise tax revenue for a number of purposes including general fund expenditures and also dedicated program funding. The dedicated funding is earmarked for various programs including health and medical expenditures, education and research costs, infrastructure and services spending, and substance control grants (including tobacco-related grants).

The revenue generated by the Master Settlement Agreement payments has a broader list of programs including health care (including children's health care), Medicaid, Medical Assistance, public health initiatives, state debt payments, dental and nursing grants, substance abuse prevention, biomedical research grants, women and infants support, family support services, and tobacco use prevention. NATO is in the process of compiling MSA payment data and the allocation of such payments to programs on a state-by-state basis. Accompanying these comments is the initial report in spreadsheet format of how the vast

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

majority of states distribute MSA payments.<sup>20</sup> With an estimated decline in MSA payments of \$1.2 billion (17%), each state will need to determine how much funding is decreased for each program currently supported by MSA dollars.

Many of these state programs and grants would be adversely impacted with the states expected to lose up to \$4.7 billion in excise tax, sales tax, and Master Settlement Agreement payments.

## 5. Retail Impacts

**A. Potential Lost Sales:** The 195,557 convenience stores, cigarette, cigar, tobacco stores, and grocery stores that sell tobacco products will experience a significant financial impact if the sale of menthol cigarettes and all flavored cigars are prohibited.

A calculation of the gross dollar amount of potential lost sales of menthol cigarettes and flavored cigars is shown below:

- \$56.1 billion in cigarette sales x 37% menthol market share: \$ 20.75 billion
- \$ 3.84 billion in cigar sales x 48.8% flavored cigar market share: \$ 1.87 billion
- Total potential gross sales loss of menthol cigarettes/flavored cigars: \$ 22.62 billion

The estimated total lost sales of menthol cigarette and flavored cigars would be reduced to some degree by those adult consumers who would switch to purchasing other flavored tobacco products, non-menthol cigarettes, or non-flavored cigars. However, several key factors that would result in a high level of lost sales would be cross-border sales and, more significantly, Internet purchases of menthol cigarettes and flavored cigars, compounded by illicit market sales. As explained in the section below on illicit trade impacts, foreign-based websites sell menthol cigarettes and flavored cigars at steeply discounted prices to anyone of any age with no federal and state excise taxes nor state sales taxes being collected by these foreign operated websites.

Using the Tax Foundation's estimate that approximately "20 percent of current menthol cigarette consumption will move to untaxed [illicit market] consumption,"<sup>21</sup> the sales loss alone from illicit market menthol cigarette sales would be \$4.15 billion (\$20.75 billion x 20% = \$4.15 billion). The Tax Foundation report goes on to state that "real illicit trade could be significantly higher in the U.S., since the size of the menthol market makes it a much more profitable market for illicit trade."<sup>22</sup>

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<sup>20</sup> John Dunham and Associates, Compilation of Master Settlement Agreement Payment Allocations Per State, 2022.

<sup>21</sup> "Federal Menthol Cigarette Ban May Cost Governments \$6.6 Billion," <https://taxfoundation.org/federal-menthol-cigarette-ban>, The Tax Foundation (March 2, 2022).

<sup>22</sup> Ibid.

**B. Estimate of Domestic Job Losses:** The U.S. Bureau of Labor Statistics reports that in 2021 convenience stores/gas stations employed a total of 765,000 individuals.<sup>23</sup> With billions of dollars in potential lost sales of menthol cigarettes, menthol roll-your-own tobacco, and flavored cigars, retailers will be forced to reduce employee hours and lay-off workers. This is the case because the convenience store/gasoline station business model relies on gasoline sales at the pumps and tobacco sales inside the store. Without both gasoline and tobacco sales, the convenience store/gasoline station business model is generally not viable.

In a study sponsored by the New York Association of Convenience Stores and compiled by New-York based economic research firm John Dunham & Associates, a menthol cigarette ban in New York City alone would result in economic loss to the city of \$270 million dollars. This economic impact would involve an estimated 1,230 jobs being eliminated (23%) out of the approximate 5,280 workers whose livelihoods depend on the production, distribution and sale of menthol cigarettes, which translates to \$88.4 million in lost local wages.<sup>24</sup>

In a separate economic impact study conducted in 2019 on legislation in New Jersey that would have banned the sale of all menthol cigarettes statewide,<sup>25</sup> the study estimated the following economic impacts:

- The annual sales loss per store in New Jersey ranged from \$86,000 to \$96,000 per store.
- Annual gross margin losses totaled \$12,000 to \$15,000 per store. [Note: Since the New Jersey study did not include estimates on the impact of a flavored cigar sales ban, the per store sales declines and gross margin losses would exceed the \$12,000 to \$15,000 gross margin losses estimated in the study].
- The average convenience store has 15 employees, split about evenly between full-time and part-time workers.
- At the 2018 prevailing minimum wage of \$8.60 per hour for small businesses in New Jersey, the annual gross margin loss is equivalent to 1,400 to 1,700 hours of employee wages.

It is important to note that both the New York City study and the New Jersey study found that banning menthol cigarettes would result in approximately 20% to 23% of convenience store employees losing their jobs.

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<sup>23</sup> 2021 Labor Force Statistics from the Current Population Survey, U.S. Bureau of Labor Statistics, [www.bls.gov/csp](http://www.bls.gov/csp).

<sup>24</sup> New York Association of Convenience Stores, New York City Menthol Ban Study, John Dunham & Associates (2019).

<sup>25</sup> Economic Impact Analysis, Proposed New Jersey Menthol Tobacco Ban, Management Science Associates, 2018.

Based on this economic impact data for New Jersey with total gross margin losses exceeding the \$12,000 to \$15,000 estimate per store when factoring in lost flavored cigar sales, the loss of hours of employee wages is as high as 2,000 hours of employee labor per store. This equates to one full-time employee position at each store and means that retailers may not be able to retain all of their employees. With 150,274 convenience stores nationwide, each store may face laying off at least one employee, resulting in upwards of 150,000 employees losing their jobs. This number represents approximately 20% of the workforce in convenience stores.

Since cigarette, cigar and tobacco stores have a higher percentage of sales in menthol cigarettes and flavored cigars than convenience stores due to the fact that tobacco products are the primary products sold, the total sales loss per cigarette, cigar and tobacco store will be significantly greater than for a convenience store. This means that there will likely be more than one employee terminated at each cigarette, cigar and tobacco store for an estimated loss of jobs between 9,000 and 18,000 employees.

## 6. Foreign Country Impacts

Several major cigar manufacturers have manufacturing facilities in both the United States and foreign countries, specifically the Dominican Republic. Swedish Match, N.A. is one of these major cigar manufacturers. According to Swedish Match production figures, 91% of the cigars manufactured in the company’s Dominican Republic facilities are flavored. Approximately 4,000 employees work at the Swedish Match manufacturing plants.

According to company estimates, if all flavored cigars are prohibited in the U.S. marketplace, the following job losses are estimated in the Dominican Republic:

<b>Cigar Production Level Reduction</b>	50%	40%	30%
<b>Estimated Job Losses</b>	1,379	1,099	819

Given that there are other major cigar manufacturers with similar operations in foreign countries, the job loss numbers could be substantially higher than the job loss estimates listed in the chart above.

## 7. Illicit Market Impacts

The economic incentives for a new illicit market in menthol cigarettes are enormous. As noted above, menthol cigarettes represent 37% of the entire cigarette market. This market is comprised of 18 million adult consumers generating \$28.3 billion in retail sales. By comparison, total retail revenue of carbonated beverages in the U.S. was \$29 billion in 2020<sup>26</sup>.

There is already a large illicit cigarette market in the U.S. primarily incited by high tobacco product excise taxes which have created economic incentives for large scale cigarette

<sup>26</sup> Euromonitor Data (52-week trailing data); May 17, 2020. <https://www.bevindustry.com/articles/93231-state-of-the-beverage-industry-carbonated-soft-drinks-sees-value-sales-up>.



smuggling. The Institutes of Medicine estimates that between 8.5% to 21% of the current cigarette market consists of smuggled cigarettes<sup>27</sup>.

In 2015, a report titled “The Global Illicit Trade in Tobacco: A Threat to National Security”<sup>28</sup> was issued by five federal government agencies including the Department of State, Department of Justice, Department of the Treasury, Department of Homeland Security, and the Department of Health and Human Services. One of the key conclusions of this report is that “consumers, retail outlets, manufacturers, and governments are all harmed by the illicit trade in tobacco products.”

The federal Family Smoking Prevention and Tobacco Control Act defines the term “illicit trade” as “any practice or conduct prohibited by law which relates to product, shipment, receipt, possession, distribution, sale, or purchase of tobacco products, including any practice or conduct intended to facilitate such activity.” A ban on all menthol cigarettes and flavored cigars will create the conditions for the illegal trafficking and the illegal sale of these flavored tobacco products to supply the continued demand by consumers.

The methods used in illicit trafficking include smuggling across a country’s borders, illegal importation through a nation’s ports of entry, and unlawful sale through foreign-based and foreign-owned websites.

According to this 2015 federal government agency report, illegal cigarette trafficking methods have already resulted in the following impacts:

- Reducing federal, state and local excise taxes and sales taxes. Estimates for the annual state and local tax losses caused by illicit trade in tobacco products ranges from \$3 billion to \$7 billion.
- Facilitating crime and providing funding for additional criminal activities, including money laundering, bulk cash smuggling, and trafficking in humans, weapons, drugs, and counterfeit goods.
- Funding terrorist groups as a potential revenue source to finance acts of terror.
- Undermining government health policy objectives by increasing the use of tobacco products and deprives funds for anti-smoking campaigns and healthcare costs.

With the federal report concluding that “the illicit trade in tobacco products remains a lucrative revenue stream for many criminal actors and illicit networks,” a ban on menthol cigarettes and flavored cigars will exacerbate the existing illicit market in the United States, magnifying each of the impacts outlined above as identified by the five federal agencies.

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<sup>27</sup> National Research Council and Institute of Medicine, “Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences,” 2015.

<https://nap.nationalacademies.org/catalog/19016/understanding-the-us-illicit-tobacco-market-characteristics-policy-context-and>.

<sup>28</sup> The Global Illicit Trade in Tobacco: A Threat to National Security,” 2015.

One key illicit source for contraband cigarettes will be the “gray market.” According to an in-depth article titled “Gray Market Cigarettes” published in the DePaul University Journal of Health Care Law, gray market cigarettes are defined as “cigarettes manufactured for sale overseas” which are then “re-imported and sold without the manufacturer’s permission.”<sup>29</sup> Numerous gray market websites “market low cost, brand-name cigarettes to Americans and are often owned by foreign nationals and operated outside the borders of the United States.”<sup>30</sup>

One example of a gray market cigarette website is [www.cigoutlet.net](http://www.cigoutlet.net), which is specifically referenced in the DePaul University article. Today, this website continues to offer low cost American brand cigarettes, including menthol cigarettes, to anyone who wishes to purchase these products. The prices on [www.cigoutlet.net](http://www.cigoutlet.net) are very low, with many menthol cigarette brands being offered for sale at \$4.00 to \$4.50 per pack. Such low prices are made possible by the fact that “federal, state, and local governments do not receive any tax revenue from the sale”<sup>31</sup> of gray market cigarettes.

While most states and the federal government have enacted laws prohibiting the sale of gray market cigarettes, efforts to block the re-importation of these cigarettes have not been successful. With many of these websites owned and operated outside of the United States, enforcing state and federal laws, let alone bringing criminal charges, is exceptionally difficult.

Both the existence and size of the illegal gray market cigarette channels will provide American consumers a ready source of American brand menthol cigarettes at very low prices in the event that the FDA’s proposed ban on the sale of menthol cigarettes goes into effect. With such easy on-line access to menthol cigarettes, the health-related goals of the FDA’s menthol ban product standard will unlikely be met while, at the same time, negatively impacting law-abiding retailers who sell legitimate menthol cigarettes to American consumers and forcing adults to turn to illicit sources of cigarettes to purchase their preferred brands.

## **8. Major Costs of an Illicit Menthol Cigarette Market**

It is unclear if it is even possible to constrain a large illicit menthol market. The bulk of the responsibility will fall on other government agencies, mainly state and local law enforcement authorities. However, to the best of our knowledge, the FDA has not undertaken any inter-government engagement with these other government agencies. This raises a fundamental paradox of banning menthol cigarettes:

- For the public health to benefit from the proposal, there cannot be a large illicit market that would supply continued demand for menthol cigarettes.
- Unregulated sales of menthol cigarettes defeats the entire purpose of prohibitory regulations.

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<sup>29</sup> “Gray Market Cigarettes,” DePaul Journal of Health Care Law, DePaul University, October, 2015.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

- Any effort to suppress this alternative market will carry potentially enormous financial and social costs, without any guarantees of success.

For an illicit market to not arise at scale, the FDA must have a plan for a massive new investment in state and federal law enforcement – which will carry a whole range of costs. These actual costs are not known, but the best authority are the law enforcement agencies confronted with this new problem. Again, this is why inter-government consultation is so important with THIS regulatory proposal in particular. A list of potential costs includes the following:

- Funding for more police, expanded capacity for the courts, expanded prison costs, and for all of the other elements of the criminal justice system – and the costs of inter-state and federal-state coordination.
- The downstream costs of an expanded market in criminally distributed products are very substantial, even if hard to quantify.
  - Other criminal behavior as outlined in the Global Illicit Trade In Tobacco study cited earlier.
  - An increased likelihood of adverse police-community interactions including negative impacts on the efforts under way today to build trust between police and the communities they serve which represents a potential big step backward in the effort to address crime and incarceration.

## 9. Youth and Adult Cigarette and Cigar Use Data

With underage youth use of cigarettes and cigars declining and at historic low levels, in addition to a continuing decrease in adult cigarette smoking smokes, there is questionable justification to enact a nationwide ban on the use of menthol in cigarettes and characterizing flavors in cigars. According to the 2021 National Youth Tobacco Survey (NYTS) released in March of 2022, the following 2021 NYTS data is informative regarding the FDA’s proposed ban on menthol in cigarettes and characterizing flavors in cigars:<sup>32</sup>

- 1.9% of high school students reported past 30-day cigarette use
- 2.1% of high school students reported past 30-day cigar use

Adult tobacco use has also been declining for years. Specifically, there has been a significant shift in cigarette use among adults that smoke daily. The trend looking back to 2005 through 2020 has adults smoking less per day than ever before<sup>33</sup>. The Morbidity and Mortality Weekly Report, in conjunction with the CDC’s data, shows that the percentage of adults who

<sup>32</sup> 2021 National Youth Tobacco Survey, CDC and FDA, at Results <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>.

<sup>33</sup> U.S. Tobacco Use at Lowest Level in Decades ([www.webmd.com](http://www.webmd.com)).

smoke cigarettes dropped from 14% to 12.5%.<sup>34</sup>

## 10. Conclusion

With both underage and adult use of cigarettes and cigars at record lows and year-over-year decreases continuing, a serious question is raised about the necessity for such a broad and sweeping prohibition of legal tobacco products. The answer to this question, when considered in light of the estimated economic impacts at the local, state and federal levels on retailers and governments, should be that the menthol and flavored cigar product standards are unnecessary and will result in unnecessary and unwanted significant negative impacts on many levels of the U.S. economy. Moreover, the FDA should undertake a much deeper assessment of the costs and benefits of the proposed bans, including whether alternative regulatory options could achieve the intended outcomes but without the costs explained in this memorandum.

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<sup>34</sup> Cornelius ME, Loretan CG, Wang TW, Jamal A, Homa DM. Tobacco Product Use Among Adults-United States, 2020. MMWR Morbidity and Mortality Weekly Report 2022; 71:397–405.