

Telephone Testimony of Peter Krueger, State Executive, Nevada Petroleum Marketers and Convenience Store Association to the White House Office of Management and Budget regarding the Proposed Ban on the Sale of Menthol Cigarettes and Flavored Cigars, January 8, 2024.

Good morning, I am Peter Krueger, State Executive for the Nevada Petroleum Marketers and Convenience Store Association. We are a statewide trade group that represents Nevada liquid fuel distributors and convenience store owners. Our mission is to advance the role of our members as positive contributors to the economic, social, and the philanthropic well-being of the communities they serve.

Convenience stores and fuel distributors are critical components of Nevada's economy with stations and stores in every county. Nevada has more than 1,200 C-stores employing more than 18,000 employees. Annual gross sales are more than \$4.7 billion. In addition to selling cigarettes and mass market cigars, many of our stores have small humidors and sell premium cigars as well.

State associations, such as ours, help prevent the sale and use of age restricted products. With the help and resources of the National Association of Convenience Stores, We Card Program, and state and local health agencies we provide retail awareness and training for our members. Printed and digital materials, such as **'We Card'**, train employees in proper age verification techniques, how to store and safely stock tobacco products, and have the proper signage. Electronic age verification such as **'TruAge'** are designed to help C-store employees detect and stop underage customers from buying tobacco products. Nationally, and in Nevada, our efforts are helping to reduce underage purchase of

tobacco products. Our members are making a difference everyday in the fight to prevent the sale of tobacco products to underage youth. Today according to the *National Survey of Drug Use and Health*:

- Youth cigarette smoking rate is at 1.3%, the lowest in a generation
- The rate is even lower for menthol cigarette which is less than 1%, also the lowest in a generation
- Youth use of cigars is also less than 1% at 8/10%, also a record low for more than a generation

Youth smoking of premium cigars is not even reported in the lasted PATH Study Waves

None of this progress could be made without responsible retailers checking ID's and stopping kids' access to tobacco products. That's why it's so important to keep these products for sale in licensed and regulated stores.

The FDA proposal to ban the sales of menthol cigarettes and flavored cigars makes no economic and logistical sense. Listed are the reasons why based on our member's perspective.

Across the board the state of Nevada and local governments stand to lose more than \$85 Million Dollars in tax revenue¹ with a ban on menthol sales. That doesn't include the lost revenue to the federal government.

¹Estimates based on Orzechowski & Walker, *The Tax Burden on Tobacco*, FY2021 ed.; Management Science Associates Inc (MSAi), FY2021 data

Nevada tobacco retailers derive approximately \$217 Million Dollars² from the sale of legal and age verified menthol cigarettes and flavored cigar sales annually. While this may not seem like a lot of money it is especially hard on our rural stores which account for about a one quarter of our total Nevada tobacco retail outlets. It is these rural locations that can least afford a significant loss of revenue if menthol cigarettes and flavored cigars are banned. Please keep in mind that it is our rural stores in many cases which are the only source of dairy, fresh food items and the Women, Infants and Children (WIC) Program. These rural locations are critical to the communities they serve and many of these stores will be placed in financial jeopardy should the menthol cigarette and flavored cigar ban be approved.

This proposed ban on menthol cigarettes and flavored cigars like so many other prohibitions will likely fail because the FDA and state and local governments do not have the resources to enforce. For example, to date the FDA has not published a list of e-vapor tobacco products authorized for sale; a resource badly needed by retailers.

Nevada as a border state with California is already a hot spot for storage and shipment of menthol cigarettes, flavored cigars, and other tax avoided products. This is especially true in southern Nevada. Federal and state law enforcement agencies have had little success in stopping these black and gray market activities. International smuggling is already an epidemic with fentanyl and other illicit drugs, and will only grow with a ban on menthol cigarettes.

²Estimates based on Orzechowski & Walker, The Tax Burden on Tobacco, FY2021 ed.; Management Science Associates Inc (MSAi), FY2021 data

In 2022, California implemented a Flavored Tobacco Ban. This has not worked. An August 2023 Empty Discarded Pack Survey showed that menthol products and menthol work-around products continue to make up over 21% of their marketplace. We have also seen international smuggling emerge to meet demand, as: non-domestic products make up over 27% of the marketplace. And a Non-domestic brand known to be trafficked by Mexican cartels comprised over 5% of the sample. This is suggesting that tens of millions of packs are in the state illegally.

I have been working with tobacco issues for more than 30 years, and the evidence we are seeing out of California, tells me that current menthol cigarette and flavored cigars users will seek other outlets and, in the process, hurt themselves and many small tobacco retailers who have made significant investments to sell these legal products.

I am asking you to not move forward with the proposed menthol cigarette and flavored cigar sale ban. Harm Reduction is the better path forward for U.S. Adult Menthol smokers. I urge you to support underage prevention and cessation instead of prohibition.

Thank you for hearing to my concerns on behalf of Nevada's legal and regulated tobacco retailers.