[Date]

Dockets Management Staff (HFA-305)

Food and Drug Administration

5630 Fishers Lane, Rm. 1061

Rockville, MD 20852

**RE:   Docket No. FDA-2021-N-1349 for “Tobacco Product Standard for Menthol in Cigarettes” and Docket No. FDA-2021-N-1309 for “Tobacco Product Standard for Characterizing Flavors in Cigars”**

To Whom It May Concern:

I am with [name of business], which operates [number] stores in [states or other geographic areas]. [Other relevant facts about your business i.e. how long have you been in business, is it family-owned, etc.]

I write to express my concerns with the recently proposed rules from the Food and Drug Administration (FDA) that would ban menthol cigarettes and flavored cigars. Given the current user base for these products, I am concerned that each of these prohibitions will push current users to the illicit market, creating an issue for society as a whole and undermining the compliance efforts and investments made by tobacco retailers like myself.

Selling legal, age-restricted products responsibly is my top priority as a retailer of tobacco products. It is my responsibility to ensure these products do not get into the hands of minors and that my employees only sell tobacco products to adults over the age of 21 years old. In fact, I spend numerous hours training employees in how to properly check IDs, and other age verification protocols like how to stock and store the product. [Mention any other details on employee training like if you use WeCard, if you use scanning technology to verify driver’s licenses and if you have someone conduct stings of your stores to check compliance. If you have cost figures for your compliance efforts, that is good information to include].

For convenience stores like mine, menthol cigarettes account for 34 percent of cigarette sales and flavored cigars account for 51 percent of cigar sales. These numbers demonstrate a significant user base for these products in the tobacco category. As FDA acknowledges in its proposals, these products are addictive in nature. To remove them from shelves means that current users who cannot quit or switch to other tobacco products will search for the products from illegal sources. I am extremely concerned that FDA did not fully consider the effects a prohibition of these products will have on the illicit market nor suggest steps in curtailing the current illicit market. As a tobacco retailer, I am responsible for verifying the age of the purchaser before the sale, for selling regulated products authorized by FDA and for collecting and remitting the appropriate taxes. These critical elements of tobacco retailing will be completely undermined by the illicit market as I’ll explain.

First, removing menthol cigarettes and flavored cigars from our shelves, where you must be an adult to purchase them, will increase the likelihood of minors accessing them. My employees and I are a critical line of defense in preventing tobacco products from getting in the hands of minors. Prohibition will lead to an influx of these products on the illicit market and illicit sellers do not discriminate based on age. They sell products to anyone with money to buy them.

Second, illicit purveyors will sell unregulated products often imported from outside of the U.S. and containing more harmful ingredients. The tobacco products I sell in my store today are all authorized by FDA, meaning they have undergone intense scrutiny by the agency to ensure they meet appropriate standards under the Family Smoking Prevention and Tobacco Control Act. Counterfeit cigarettes avoid this scrutiny. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) states, “While all cigarettes are dangerous and are known to cause disease, counterfeit cigarettes often contain higher levels of tar, nicotine and carbon monoxide than genuine cigarettes, and may contain contaminants such as sand and packaging materials. Counterfeit cigarettes pose a greater health risk to consumers and cost taxpayers millions in lost revenue.”[[1]](#footnote-1) While the proposals argue that prohibition will lead to greater health benefits, it did not consider the impact of the “greater risk to consumers” who buy counterfeit products from the illicit market.

Third, as sellers of tobacco products, convenience retailers collect and remit federal, state and local taxes. This is a key part of being a tobacco retailer and we have long valued our partnership with the government as revenue collectors. Illicit sellers, on the other hand, don’t collect taxes. They operate completely outside of the law.

Fourth, a regulation that causes legal retailers to lose sales to illegal sellers causes economic burdens that are not justified. These regulations do not seem to account for those losses, in particular the losses of sales of non-tobacco items that are purchased when people buy cigarettes or cigars. Moving a large number of sales to illegal sources hurts my business without helping anyone.

In closing, I urge you to not move forward with the proposed bans on menthol cigarettes and flavored cigars because illicit sellers pose a much greater threat to our customers and our communities. Thank you for considering my views on this important topic.

Sincerely,

1. (Bureau of Alcohol, Tobacco, Firearms and Explosives, 2018) [↑](#footnote-ref-1)