

Health Canada's Proposal to Amend the Tobacco Act Schedule of Prohibited Additives

A Submission from the Non-Smokers' Rights Association

26 May 2016

The Non-Smokers' Rights Association (NSRA) is Canada's oldest national tobacco-specific non-governmental organization. Through advocacy, public policy research and education, the NSRA has worked for over 40 years to protect the public health of Canadians by seeking to eliminate the illness and death caused by tobacco industry practices and products. We welcome the opportunity to provide the Government of Canada with our comments on the proposed amendments to the Schedule of prohibited additives found in the *Tobacco Act*.

Health Canada's proposed amendments would prohibit the use of menthol in cigarettes, blunt wraps and most cigars in order to make them less appealing to youth. The NSRA fully supports this important tobacco control measure and calls on the government to expand its proposal to ban all flavours for all tobacco products.

1. Banning menthol flavouring will achieve the goal of making tobacco less appealing to youth and young adults.

Flavoured tobacco is favoured by young people—flavourings encourage experimentation, reduce the harshness of tobacco and help to discourage cessation. Menthol flavouring not only masks the taste of tobacco, making it more palatable for new users, but is also a mild pain reliever with anti-irritant properties that provide a cooling sensation in the mouth and throat. New filter technology that features crushable menthol capsules is also attractive to young people, who are easily tempted by novelty and innovation. Recent research suggests that the popularity of these menthol capsule cigarettes is growing, and that the use of capsule technology is an important brand differentiation strategy for Big Tobacco to grow the industry and create an image of “premiumization.” Consumer perception about filters and menthol also helps to retain smokers, as filters reassure some smokers about health risks, and menthol cigarettes are often perceived as being less harmful than regular ones.¹ Prohibiting menthol in cigarettes, blunt wraps and most cigars will eliminate the pleasurable effect it provides, reducing the enticement to try these tobacco products and the significant

¹ Thrasher JF et al. Cigarette brands with flavour capsules in the filter: trends in use and brand perceptions among smokers in the USA, Mexico and Australia, 2012–2014. *Tob Control* 2015;0:1–9. doi:10.1136/tobaccocontrol-2014-052064. <http://tobaccocontrol.bmj.com/content/25/3/275.full.pdf+html?sid=650d375d-34c1-4db1-a801-eca0c002a004>.

concomitant risk of addiction.

Although cigarette smoking prevalence among the population as a whole continues to decline in Canada, data show that the rate of decline has been slowing, and in fact has somewhat flatlined among young adults in recent years. This is worrisome and emphasizes the importance of prevention efforts to make all tobacco products less appealing to keep young people from starting to smoke. Among younger Canadians, Youth Smoking Survey data show that among students in grades 9-12 who reported using a tobacco product in the past 30 days, fully half (50%) reported using a flavoured product. Of those who reported smoking cigarettes in the past 30 days, 29% reported smoking menthol.²

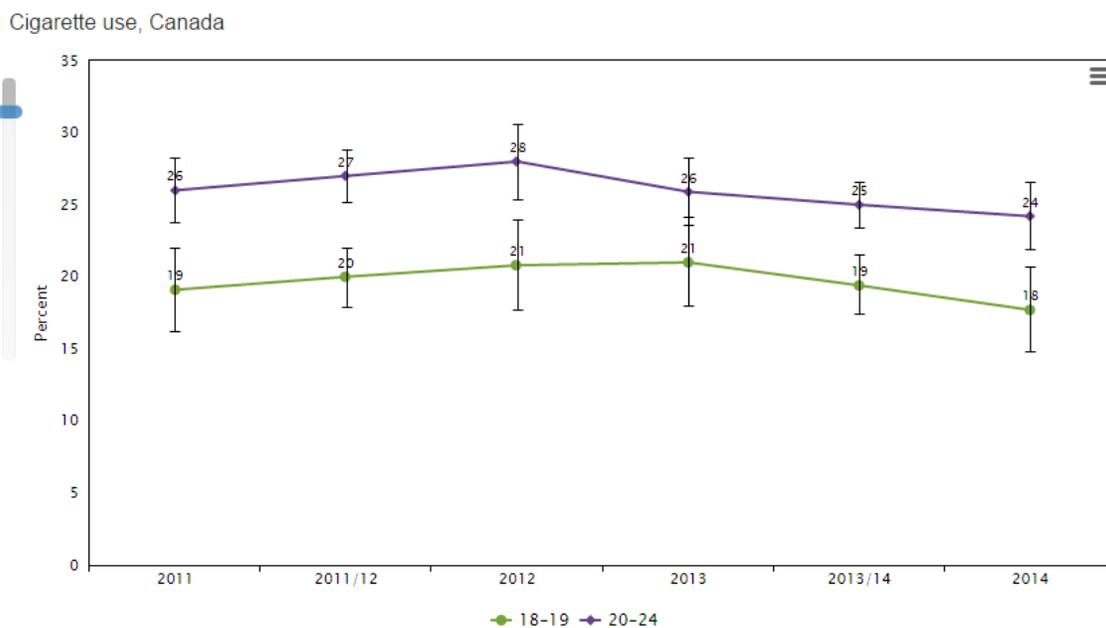


Chart Notes

Source: Canadian Community Health Survey (Master File), 2011, 2011/12, 2012, 2013, 2013/14, 2014

Among other measures, the 2009 *Cracking Down on Tobacco Marketing Aimed at Youth Act* banned the use of most flavourings in tobacco, but excluded menthol. The graph below shows the reported use of cigarillos by young people ages 15 – 24 before and after the *Act* came into effect. Although it is difficult to attribute the immediate drop in reported use of cigarillos after 2009 to this single measure, it is reasonable to assume that the ban played a role. Given this assumption, it might also be reasonable to assume that the proposed

² Manske SR, Rynard VL, Minaker LM. 2014 (September). Flavoured Tobacco Use among Canadian Youth: Evidence from Canada's 2012/2013 Youth Smoking Survey. Waterloo: Propel Centre for Population Health Impact, 1-18. cstads.ca/reports. Accessed 24 May 2016.

menthol ban could lead to a reduction in cigarette use among youth and young adults.

Use of Little Cigar or Cigarillo (Past Month), Canada, 15-24

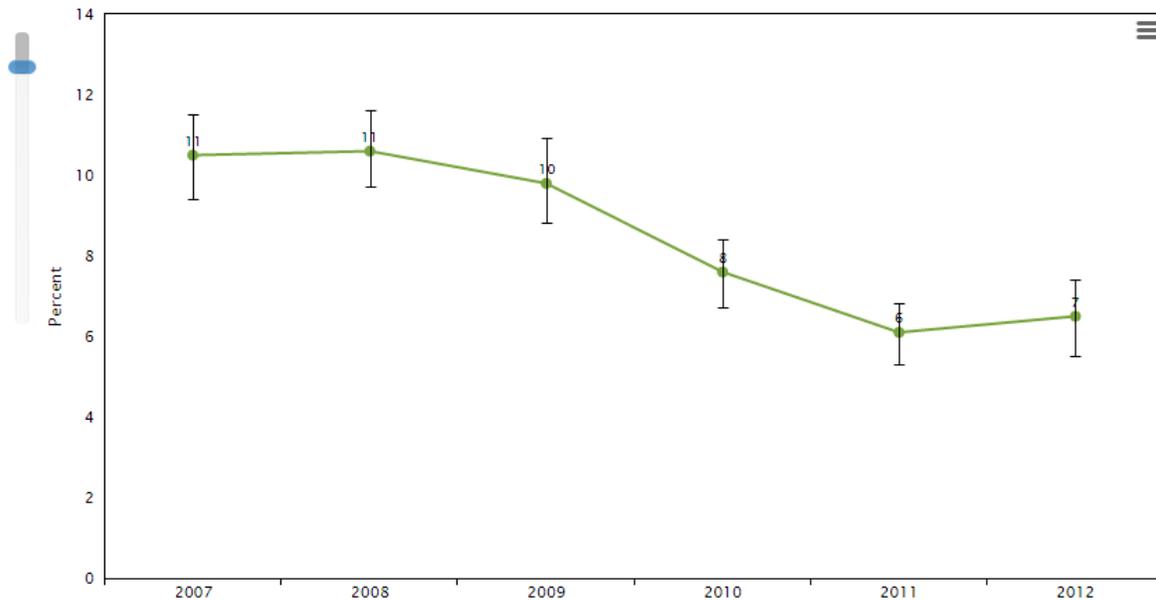


Chart Notes

Source: Canadian Tobacco Use Monitoring Survey, 2007, 2008, 2009, 2010, 2011, 2012

Unfortunately, cigarillo manufacturers responded to the legislation by slightly increasing the size and weight of their products, removing the filter and changing the label from cigarillo to cigar to make them immune to the new rules, which is possibly part of the explanation for the slowing decline and the slight upswing in 2011. The current proposal follows the 2015 Schedule amendment that saw the definition of cigarillo tightened, and closes the menthol loophole that exists for cigarettes, blunt wraps and most cigars.

2. Banning menthol flavouring demonstrates federal leadership and strengthens compliance with the FCTC

In May 2015 Nova Scotia set a Canadian precedent by becoming the first jurisdiction to ban flavoured tobacco including menthol (some exemptions exist). Alberta followed suit, as did New Brunswick and Quebec (no exemptions), Ontario (sunset exemption for menthol until January 1, 2017) and Prince Edward Island (regulations in development). Signalling the efficacy of flavour bans that include menthol, Imperial Tobacco is suing the governments of Alberta, Quebec, Nova Scotia and New Brunswick, calling the measures unconstitutional and beyond provincial legislative authority.

While provincial flavouring bans are a welcome and positive development, a comprehensive federal ban is preferable as it provides a baseline regulation that is consistent across the country, assuring that all Canadians, not just those living in leading jurisdictions, benefit from this important tobacco control measure. It also provides a uniform foundation on which provinces and territories can build even stronger measures, such as banning flavouring for all tobacco and tobacco-like products including herbal shisha.

Canada is also a Party to the Framework Convention on Tobacco Control (FCTC) and as such is legally bound to adhere to the treaty's measures. Partial guidelines for *Article 9, Regulation of the Contents of Tobacco Products*, state that "Parties should regulate, by prohibiting or restricting, ingredients that may be used to increase palatability in tobacco products."³ However, the proposed amendment should not be cause for the FCTC to recognize Canada as having fully accomplished the measure, as this proposal does not apply to all tobacco products and only addresses menthol flavouring.

Recommendation: This proposed amendment only applies to menthol, and only to cigarettes, blunt wraps and most cigars. We encourage Health Canada to expand the scope of this important measure and prohibit the use of any flavourings (including those that are also exempted: port, wine, whisky and rum) in all tobacco products, including all cigars, cigarette papers, and roll-your-own, smokeless, waterpipe and traditional pipe tobacco.

³ WHO Framework Convention on Tobacco Control. *Partial Guidelines for Implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control*. http://www.who.int/fctc/guidelines/Guidelines_Articles_9_10_rev_240613.pdf?ua=1. Accessed 25 May 2016.