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ISSUE BRIEF

Impact of Tobacco Regulations on the Illicit Market

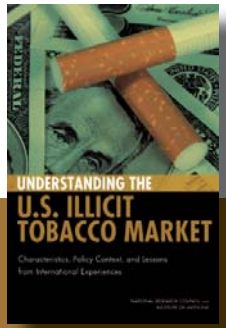
Although tobacco use has declined in recent decades, worldwide there are still more than one billion people who regularly use tobacco, including many who purchase cigaretttes outside legal markets. Illicit tobacco markets can deprive governments of revenue and undermine public health efforts to reduce tobacco use. To answer a number of questions about the illicit tobacco market, a committee of experts appointed by the National Research Council and Institute of Medicine conducted a study and released its findings in the report *Understanding the U.S. Illicit Tobacco Market*.

As the Food and Drug Administration considers possible regulations for cigarettes, it is important to understand how such regulations could affect illicit tobacco markets—an issue examined in the committee's report. While there is insufficient evidence to draw firm conclusions about how any new regulations that modify cigarettes—for example, by lowering nicotine content or eliminating menthol—would affect the illicit market, the limited available evidence suggests that demand for illicit versions of current cigarettes would likely be modest.

Potential Effects of Product Changes

Currently the U.S. illicit tobacco market consists mostly of bootlegging from Native American reservations and states with low cigarette taxes such as Virginia to high-tax states such as New York. This market is largely driven by smokers' desire to avoid paying high taxes on cigarettes and smugglers' desire to make money by meeting that demand.

In the future, if regulations are placed on how cigarettes are designed, formulated, packaged, or marketed, illicit markets could be very different from current markets in terms of what is driving demand. One key question when trying to assess the possible effects of regulations is how modifying cigarettes might affect the appeal they have for consumers. If the modifications reduce cigarettes' appeal, consumers might respond in any number of ways—by continuing to smoke the modified cigarettes, by quitting, or by seeking illicit versions of cigarettes with the qualities they miss.



Some studies in several countries have examined cigarette modifications and their impacts.

- Experimental studies have found that **reducing ignition capacity** (requiring that cigarettes extinguish when not actively puffed) and **decreasing filter ventilation** have only modest impact on product appeal among U.S. smokers.
- **Reducing nicotine levels and mentholation** has been shown in experimental studies to have a stronger effect on reducing product appeal. Existing studies have shown mixed results on smokers' use and preferences: Some studies have found that most smokers intend to quit rather than seek alternative products. Other studies have found that smokers are able to tolerate substantial reductions in nicotine with little to no change in individual cigarette consumption. Several new research initiatives are under way on this issue, and more definitive findings are anticipated. Studies are also needed to examine the relationship between e-cigarette use and the use of conventional tobacco products and on the role of e-cigarette use as an alternative to participation in the illicit tobacco market.
- **Cigarette packs with large graphic warning labels or in plain packaging** have also been shown to reduce product appeal. In countries that have required these, it has promoted quitting behaviors. Some who continue to smoke have used stickers or branded containers to conceal graphic health warnings—strategies that subvert the intent of the law, but which are an alternative to purchasing illicit products.

Because aggressive policies to modify tobacco products are new in the countries that have issued them, there have been few studies of their effects on the illicit market. Research on the emerging effects of regulatory actions in other countries, such as Brazil's pending ban on tobacco additives (including menthol), could provide guidance for the United States.

Overall, the limited evidence that exists suggests that if current cigarettes are modified through regulations, the demand for illicit versions of them is likely to be modest. Nevertheless, there is insufficient evidence to draw strong conclusions about how the illicit market would adapt in response to permanent modifications to tobacco products.

Another relevant policy question is whether and how quickly, if FDA did regulate product features and if a substantial demand for the original product resulted, an illicit supply would emerge to meet that demand. Little research has attempted to understand what factors contribute to the mobilization of supply networks. The existing illicit market in the United States consists largely of bootlegging—buying cigarettes from low-tax jurisdictions and selling them in high-tax jurisdictions. If certain characteristics of cigarettes are prohibited at the federal level, bootlegging across state borders would not be a way to supply illegal products. The illegal products would have to come from domestic illegal production, counterfeits, or countries in which such products are legal. Currently, the legal supply of tobacco products includes a range of controls on manufacturers and distributors that would inhibit illegal production, and with regard to international smuggling, general customs enforcement appears to be robust.

Overall, the likelihood that a large-scale illicit supply will develop in response to product regulations will be influenced by the potential profitability of supplying smokers with illicit products. The profit potential may be limited by the development of close substitutes—such as liquid nicotine capsules to supply the e-cigarette market—that are likely to remain legal.

This issue brief is based on the report *Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences*, available from the National Academies Press (http://www.nap.edu). The study was sponsored by the U.S. Food and Drug Administration. Any findings, conclusions, or recommendations expressed in this publication are those of the study committee and do not necessarily reflect those of the sponsor.