

CAMPAIGN For TOBACCO-FREE Kids[®]

June 8, 2001

Federal Trade Commission
Office of the Secretary
Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Response to Federal Register/Vol. 66, No. 69/Tuesday, April 10, 2001/Cigarette and Smokeless Tobacco Reports: Request for Public Comment

Dear Chairman Muris:

We, the undersigned organizations, are writing to express our strong support of the continuation of the Federal Trade Commission's (FTC) reports on the cigarette and smokeless tobacco industries. These reports are virtually the only sources of accurate and reliable information on cigarette and smokeless tobacco marketing, sales and promotions in the United States. As a result, they play a vital role in enabling and empowering a number of organizations and professional communities to conduct their important work. These professional communities include (but are not limited to) public health, academia, law enforcement, the news media, federal and state government health agencies, as well as the general public. Due to the minimal level of federal oversight of the tobacco industry in general, these two FTC reports represent a large portion of the information that is available to the public and to the federal government on cigarette and smokeless tobacco manufacturers. These reports are critical and they must continue.

While the reports are a critical source of information to our organizations (both individually and collectively), they can be improved by reasonably expanding the scope of information the FTC provides in these important publications. The additional information that we are requesting be added to these reports includes:

- Breakdowns of data on a state-by-state basis.
- Breakdowns of promotional allowances information.
- Breakdowns of retail value-added information.
- Include data on a company-specific or brand specific basis.
- Information on smoke constituents contained in mainstream and sidestream tobacco smoke.
- Breakdown of information by conventional versus "reduced-risk" tobacco products.
- Need to include reporting of television advertising by cigarette companies (e.g., Philip Morris) touting charitable activities.

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- Need to include reporting of television advertising by cigarette companies (e.g., Philip Morris) of their “anti-tobacco” advertising.
- Information on magazine advertising in magazines with youth readership rates in excess of 15 percent or 2 million youth readers.
- Information on sales, marketing, and promotions in adult-only establishments, venues, and publications.
- Expanding the list of cigarette and smokeless tobacco companies subject to the submission of data for the FTC reports.

We believe that the changes we are recommending are reasonable and, based on the current level and configuration of industry spending are warranted and represent sound public policy. We appreciate the opportunity to respond to this Federal Register notice and look forward to seeing the reports continued and improved in the future.

Sincerely,

American Cancer Society
American Heart Association
American Lung Association
American Public Health Association
Alliance for Lung Cancer Advocacy, Support and Education
American College of Chest Physicians
American Dental Association
Campaign for Tobacco Free Kids
National Association of Local Boards of Health
National Association of School Nurses
Partnership for Prevention

Attachment

Response to Specific Questions Posed By The FTC

1. Who uses the cigarette and smokeless tobacco reports? For what purposes do they use them?

The types of organizations and individuals that use the FTC cigarette and smokeless tobacco reports are diverse and include, but are not limited to:

- public health organizations
- federal health agencies
- state health agencies
- national, state, and local health care advocacy groups
- national law enforcement organizations
- the news media
- the judiciary
- attorneys
- researchers and academics
- international health organizations

The purposes for which these groups and individuals use these two reports are varied – but most use them in order to educate and inform policy makers, elected officials, and the general public about how and where the tobacco industry is spending its advertising dollars.

The following are some examples of how different organizations use the information in the FTC reports (it also illustrates how these reports are used by large state and national organizations as well as by local community organizations and individuals):

- (a) The *Society for Research on Nicotine and Tobacco (SRNT)* and its membership has indicated that the FTC's annual reports are invaluable to the research community that they represent. Specifically, multiple studies conducted by SRNT and its members, of the nature and impact of tobacco advertising and promotion have utilized the data disseminated through the FTC reports. These studies permit public health researchers to evaluate how both the quantity of advertising and promotion in the aggregate and its distribution among print and other advertising and other promotional methods affect smoking and the use of smokeless tobacco. Interest in this research covers both children and adults. Many of the research studies that have used these data have been cited in reviews of the impact of advertising in the annual Surgeon General's reports on smoking and health, including, for example, the 25th anniversary report, published in 1989, the 1994 report on *Preventing Tobacco Use Among Young People*, and, most recently, in the two reports released within the past year, the 2000 report entitled *Reducing Tobacco Use* and the 2001 report on *Women and Smoking*. According to SRNT, they indicate that it is no exaggeration to say that if the FTC data were not collected and published, research on the implications of tobacco advertising and promotion would suffer a severe setback, one that would damage the public's interest in understanding the effects of such advertising and promotion.

- (b) ***Massachusetts Department of Public Health's Tobacco Control Program***, one of the leading state tobacco control programs in the nation, uses the FTC reports for a number of purposes, including: using the data to justify their funding requests for the state's tobacco control program (currently funded at a level estimated at one-third of tobacco industry's spending on marketing, sales, and promotions in the state); using the data from the cigarette report to develop consumer protection regulations banning tobacco advertising within 1,000 feet of schools or playgrounds; and, the FTC reports also help the state monitor the tobacco industry's compliance with the multistate tobacco settlement agreement.
- (c) ***Jack Henningfield, Ph.D. and Christine Rose, MS (through funding by the Robert Wood Johnson Foundation's Innovators Combating Substance Abuse Program)*** work on a program that focuses on ensuring that tobacco policy issues are grounded on science and guided toward the improvement of public health. To this end, Dr. Henningfield and Ms. Rose have a critical need for accurate and accessible reporting on the distribution of the billions of dollars spent each year on tobacco product marketing. According to Dr. Henningfield and Ms. Rose, this information [from the FTC] is necessary to help guide the relatively small amount of government expenditures on counter-marketing and public education efforts and is critical in monitoring marketing activities that are directed at or potentially attractive to children.
- (d) ***The Campaign for Tobacco Free Kids*** uses the FTC reports to compare and contrast industry spending on advertising versus Federal and State commitments at tobacco control. For example, based on the most recent FTC report on cigarette sales, the Campaign was able to determine that the tobacco industry spends approximately \$22.5 million a day on advertising, sales, and promotion. In contrast, this daily spending figure by the tobacco industry exceeds the annual spending on tobacco control and prevention efforts of 34 states (based on data from "Special Reports: State Tobacco Settlement," www.tobaccofreekids.org/reports/settlements/). Such stark comparisons are powerful reminders to elected officials and advocates about the need for information on the tobacco industry.

In addition, the Campaign uses the FTC data to bolster its case for the need for regulation of the tobacco industry by the Food and Drug Administration. The lack of sufficient budgetary and staffing resources at the FTC dedicated to tobacco issues has resulted in a diminished capacity to monitor the spending and accuracy of tobacco industry marketing, sales, and promotions campaigns. Due to the absence of effective FDA regulation of tobacco products, the Campaign believes the FTC reports are amongst the most vital public documents available on trends within the tobacco industry.

- (e) ***The Texas Division of the American Cancer Society (ACS)*** uses the FTC reports to monitor tobacco companies' marketing activities and to make the case for why government investments in tobacco control (including public education and counter-marketing efforts) are needed to reduce the toll of tobacco in the United States. With information from the latest FTC report, the Texas ACS was able to establish important facts (that were also shared extensively with the public and members of the Texas Legislature), including that since Texas' tobacco lawsuit settlement agreement, approximately \$1.2 billion has been spent in

Texas by tobacco companies to advertise and market their products. The Texas ACS believes this data was critical in the legislature's recent decision to allocate additional state resources toward Texas' tobacco prevention and cessation programs.

- (f) ***The Combined Tobacco Community Coalitions of Gifford Medical Center and West Central Supervisory Union in Central Vermont*** use the FTC reports to conduct community outreach and to educate staff members who apply for grants to help fund local public health initiatives, including tobacco control efforts.
- (g) ***Dr. David Lewis, Director of the Health Advocacy Group of Southside Virginia*** (a 150 member non-profit children's tobacco control organization) uses the FTC reports when he attends annual tobacco company shareholder meetings. The information is useful at these meetings since, absent the FTC reports, data on marketing and sales is not available to shareholders of these companies or to the general public. Additionally, Dr. Lewis notes that the FTC information is critical in his role as a health care professional to talk candidly and truthfully to his patients about tobacco products.
- (h) ***The Wisconsin Initiative on Smoking and Health*** has used the data contained in the FTC reports for a variety of purposes. For example, in 1998 the Wisconsin program worked on the passage of an ordinance in the city of Milwaukee restricting outdoor tobacco advertising and the availability of information on industry spending was very important to the success of that effort. In addition, the Wisconsin Initiative has conducted a broad range of school-based prevention programs and the information provided to students and teachers on tobacco industry spending patterns has been a very important aspect of the education process.
- (i) ***Elva Yanez***, a California-based tobacco control policy specialist and a librarian, finds the FTC reports to be invaluable reference tools that provide public health specialists, researchers, government agencies, non-governmental organizations, elected officials and the general public timely, accurate and authoritative data on tobacco industry marketing expenditures.
- (j) ***The Delaware IMPACT Tobacco Coalition*** recently used the FTC reports to increase tobacco control funding in the State of Delaware. The Delaware Health Fund Advisory Committee recently completed its recommendations to the Delaware General Assembly for fiscal year 2002 spending of Delaware's share of the master tobacco settlement. In year one, they had allocated only \$2.8 million for tobacco control from an available total of \$17.4 million. This year, the same Committee recommended an increase of tobacco control and prevention expenditures to \$5 million. The Coalition distributed the FTC report on tobacco industry marketing to all committee members when it came out earlier this year. The data in the FTC report was considered to be a very useful piece of information by the Advisory Committee as they made their funding decisions.

2. What are the costs to the industries to provide the FTC with the data included in the cigarette and smokeless tobacco reports?

We do not have access to industry cost data that would give us a precise indication of what their costs are in collecting and reporting the data for the FTC report. However, the fact that the data for these reports has been collected and reported for more than 30 years and 15 years (cigarettes and smokeless, respectively) and are relatively unchanged in terms of their content, the industry has long since past the time when establishing an infrastructure and process for submitting this information should be anything more than a nominal cost of doing business.

We believe that the main issue in relation to the costs of the reports is not an issue of the cost to the tobacco industry of providing the data, but rather it is more an issue of the FTC having the [staffing and budgetary] resources it needs to produce these reports. With one exception (see response to Question #5 related to constituent information), we believe the FTC already receives all the information necessary to address our requests for more information.

In addition, for an industry where the two biggest companies (Philip Morris and RJ Reynolds) have annual profits (based on their 2000 SEC Filings and Shareholders Reports) in excess of \$7.5 billion for their tobacco products alone, the “cost” of providing the data for this report is trivial in comparison to the human cost of cigarettes and smokeless tobacco. The issue of cost or burden upon the industry should not be viewed as a barrier to continuing the report. Rather, the issue of assuring adequate, annual budgetary and staffing resources to the FTC to publish these reports and to provide additional analytical work is the issue we feel is more important and relevant.

3. Should the FTC continue to collect and publish data regarding cigarette and smokeless tobacco sales, advertising and promotion? Why or why not?

Yes. The data collected and published by the FTC regarding cigarette and smokeless tobacco sales, advertising and promotion is critical information that organizations and individuals from a wide range of business, governmental, and public health organizations rely upon to educate and inform a variety of audiences. The information contained in the FTC reports, while not comprehensive or overly detailed, represents the only reliable and sustained effort by the federal government to collect and report information from the tobacco industry on its broad range of marketing, sales, and promotional activity. No other federal agency or entity has access to this specific information from the industry. Stopping these reports would lock the doors completely on information from the industry. And, in the continuing absence of meaningful [FDA] regulation of the tobacco industry by the federal government, it is critical from an accountability perspective to maintain the publication of these reports.

4. What data or other information contained in the reports are useful and should be continued in any future reports? Why? What data or other information in previous reports are of little or no use, and could be omitted in future reports? Why?

All of the data contained in the current FTC reports are critical and useful and must be continued in future reports. The only “problem” with the data in the current report is the fact that it is

reported by the industry by brand variety yet it is reported by the FTC in the aggregate without any breakdown into basic subcategories (by state, by brand, by company). This aggregation of data makes it difficult to use the information in tobacco control efforts at the national, regional, state, and local level where more detailed information would be helpful.

5. Is there information about cigarette and smokeless tobacco sales, advertising and promotion that has not been included in the reports, but that would be of use? If so, what additional information would be of use, and why would it be useful?

While the current reports do provide useful information, they only provide data in aggregate form and the reality is that tobacco control – like tobacco marketing, advertising and promotions – is largely a local activity. As a result, getting more detailed information at a subnational (state-by-state) and subindustry (by company, by brand) level would be helpful. Also, since two of the FTC's existing reporting categories account for more than ¾ of all spending by the industry (promotional allowances and retail value-added), it is important to get more details on what the constituent pieces are of these broad categories. To simply say that 75 percent of all spending is found in two generic categories does not inform the general public in any meaningful sense about how and where those dollars are being spent by the tobacco industry.

Specifically, we recommend the following additional elements be added to the FTC's reports:

- Breakdown of data on a state-by-state basis.
- Breakdown of promotional allowances information.
- Breakdown of retail value-added information.
- Subject to relevant trade secret and confidentiality provisions, include data on a company-specific or brand specific basis¹.
- Information on smoke constituents contained in mainstream and sidestream tobacco smoke. This is the same information that is currently provided to the State of Massachusetts by cigarette manufacturers and made available to the public (see list below or refer to the Massachusetts Tobacco Control Program's website (<http://www.state.ma.us/dph/mtcp/report/smokereg.htm>) for more details.

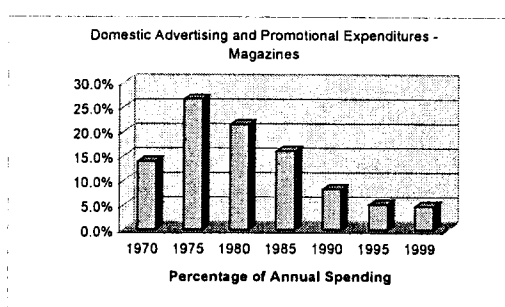
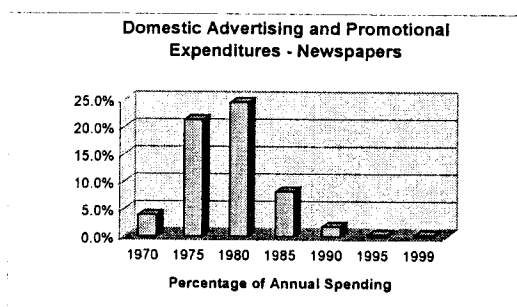
The following is a listing of the mainstream smoke constituents that must be tested and reported to the State of Massachusetts: ammonia, aromatic amines (1-aminonaphthalene, 2-aminonaphthalene, 3-aminobiphenyl and -aminobiphenyl), benzo[a]pyrene, volatile carbonyls (formaldehyde, acetaldehyde, acetone, acrolein, propionaldehyde, orotonaldehyde, methyl ethyl ketone and butyraldehyde), hydrogen cyanide, mercury, toxic trace metals (nickel, lead, cadmium, chromium, arsenic, and selenium), nitric oxide, tobacco specific nitrosamines (N-nitrosonornicotine (NNN), 4-(N-nitrosomethylamino)-1-(3-pyridyl)-1 butanone (NNK), N-nitrosoanatabine (NAT) and N-nitrosoanabasine (NAB)), selected basic semi-volatiles (pyridine and quinoline), phenolic compounds (hydroquinone, resorcinol, catechol, phenol, m+p-cresol, and o-cresol), tar and carbon monoxide.

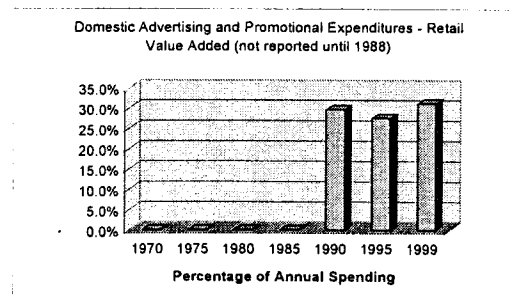
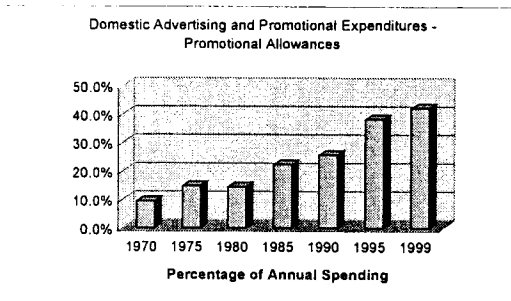
The following is a listing of the sidestream smoke constituents that must be tested and reported to the State of Massachusetts: s emitted from the burning end of a cigarette between puffs, shall be tested for the following smoke constituents: ammonia, aromatic amines (1-

aminoapthalene, 2-aminoapthalene, 3- aminobiphenyl and 4-aminobiphenyl), benzo[a]pyrene, selected volatile carbonyls (formaldehyde, acetaldehyde, acetone, acrolein, propionaldehyde, crotonaldehyde, and butyraldehyde), hydrogen cyanide, mercury, toxic trace metals, nitric oxide, tobacco specific nitrosamines (N-nitrosornicotine (NNN), 4-(N-nitrosomethylamino)- 1-(3-pyridyl)-1-butanone (NNK), N-nitrosoanatabine (NAT) and N-nitrosoanabasine (NAB), selected basic semi-volatiles (pyridine and quinoline), phenolic compounds (hydroquinone, resorcinol, catechol, phenol, m+p-cresol, and cresol), tar, selected volatiles (1, 3-butadiene, isoprene, acrylonitrile, benzene, toluene, styrene), carbon monoxide.

- Breakdown information by conventional versus “reduced-risk” tobacco products. While the FTC does report information based on nicotine and tar content, these categories reflect only a portion of the products being sold and marketed by the industry as so-called “reduced risk” tobacco products. Examples of these types of products (often with unsubstantiated health claims) include RJ Reynolds’ Eclipse, Brown & Williamson/Star Scientific’s Ariva (tobacco lozenges), and Vector’s soon to be released low nicotine tobacco cigarette, Omni Free.
- Information on magazine advertising in magazines with youth readership rates in excess of 15 percent, or 2 million, youth readers.
- Information on sales, marketing, and promotions in adult-only establishments, venues, and publications.
- Need to include reporting of television advertising by cigarette companies (e.g., Philip Morris) touting charitable activities.
- Need to include reporting of television advertising by cigarette companies (e.g., Philip Morris) of their “anti-tobacco” advertising.
- Expanding the list of cigarette and smokeless tobacco companies subject to the submission of data for the FTC reports to the top 9 companies (based on market share) for cigarette sales and smokeless tobacco sales, respectively.

Also, providing access to researchers to the FTC report data in spreadsheet format so that data are searchable and can be plotted and analyzed further would be very helpful. Further, adding graphics to the report would be helpful rather than page after page of tables of data that do not show the reader in any clear manner what the trends over time are in the various categories being reported (see examples below). Examples:





6. If the FTC decides to continue issuing reports, how frequently should they be issued (e.g., annually, and biennially)? Why?

The current report frequency is sufficient. The only issue with respect to timing of the reports is the time lag in the information. For example, the cigarette sales report issued in 2001 was reporting on data for 1999. While the information is helpful, a two-year time lag in data reporting is not helpful to users of this information in trying to track, monitor and respond to industry sales trends and developments.

7. What other information should the FTC consider in deciding whether to continue reporting on the sales and advertising and promotion of cigarettes and smokeless tobacco products? If the FTC decides to issue future reports, what formats would be useful?

Most importantly, the FTC needs to consider the following question: Where else is the information they publish in these reports available to the public? The answer is ... no where else in such a reliable and accurate format. This is virtually the only information available on the marketing, sales, and promotional spending patterns of the cigarette and smokeless tobacco industries collected by the federal government (with the exception of Securities and Exchange Commission filings). Without this information, the public health community would be working completely in the dark.

Finally, as noted above, the current format for the report is sufficient, although making data from the reports available in formats that could be further analyzed by researchers (e.g., spreadsheets, databases) and enhancing the reports with graphics would substantially increase their relevance and meaning to the broad range of audiences that use the information in contained in them.

¹ We recognize that the FTC is constrained from releasing certain data due to trade secret or confidentiality reasons as detailed in U.S.C. 15 Section 46(f). However, we believe that the data provided by the tobacco industry for this report does not fall into the category of trade secrets or confidentiality, particularly since much of it is already available to other private sector entities that track and report on industry sales, marketing and promotion trends (e.g., Simmons, MRI, Maxwell).