



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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COMMISSIONER

June 5, 2001

Federal Trade Commission
Office of Secretary
Room 159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Response to Federal Register/Vol.66/Tuesday, April 10, 2001/Cigarette and
Smokeless Tobacco Reports: Request for Public Comment

Dear Chairman Pitofsky:

The Massachusetts Department of Public Health wishes to go on record in strong support of continuing the Federal Trade Commission's (FTC) Cigarette and Smokeless Tobacco Reports. The Department urges the FTC to have a much more detailed breakout of the data contained in the Reports as well as including new questions that relate to the tobacco industry's compliance with the Massachusetts Settlement Agreement (MSA) and use of new electronic technologies to advertise and market their tobacco products. We believe that these reports are unique and provide vital information to federal and state public health officials in their efforts to curb tobacco-related death and disease in our nation.

Our response to your questions is enclosed.

Sincerely,

A handwritten signature in cursive script, reading "Gregory N. Connolly".

Gregory N. Connolly, D.M.D., M.P.H.
Director
Tobacco Control Program

Massachusetts Department of Public Health's Response to the Federal Drug Administrations Questions on Cigarette Smoking and Smokeless Tobacco Reports:

June 7, 2001

1.) Who uses the Reports and for what purposes?

The reports are used by a number of groups and individuals and are essential to national and state efforts to curb tobacco use. The reports are used by federal, state and local public health agencies as well as advocacy organizations. They are also used by members of Congress and state legislatures to formulate policies on tobacco advertising. The Attorney Generals' used the reports in crafting the Massachusetts Settlement Agreement (MSA) They are extremely for monitoring industry compliance with MSA provisions. Private lawyers and the judiciary also rely upon the FTC Reports. The news media and the research community have made wide use of the reports in their activities.

The Commonwealth of Massachusetts has used the cigarette and smokeless tobacco reports for a number of purposes. First, the data from the reports has been used to advocate for funding of the state's tobacco control program. Based on the Cigarette Report, the state estimates that in excess of \$130 million is spent for cigarette advertising and promotions in Massachusetts each year. The state's total tobacco control budget is only one-third of that amount and the report helps educate legislators about the disparity between the tobacco industry's efforts to promote smoking versus the state efforts to curb it.

Massachusetts played a key role in the passage of the 1986 federal Comprehensive Smokeless Tobacco Health Education Act which mandated the Smokeless Tobacco Report. Data from the report allowed the state to develop the new policies to reduce smokeless tobacco use.

Data from the Cigarette Report proved very helpful in the state's adoption of a consumer protection regulation banning tobacco advertising within 1000 feet of schools and playgrounds. The tobacco industry sued the state over the regulation and the case is before the United States Supreme Court. The data from the Reports was very helpful to the lawsuit. The data from reports have also proved helpful to Massachusetts in monitoring industry marketing practices pre/post the MSA.

In the early 1990's, the FTC included questions about tobacco product placement in movies, a routine practice in the 1980's. By including this question, the tobacco industry help shape an industry decision to end this practice. In summary, these reports are extremely important to public health efforts to curb smoking and should be continued.

2.) Costs to the Tobacco Industry for the Reports.

The costs of these reports to the tobacco industry are nominal when compared to tobacco product sales and profits and overall costs for tobacco advertising and promotions. Much

of the data is readily available as part of conducting business, and, therefore, should not be an economic burden. Also, the manufacturers have a system already in place and continuing the reports requires no new start-up funds.

3.) Should FTC continue to collect and publish data regarding cigarette and smokeless tobacco sales, advertising and promotions?

Yes, the FTC reports are the only reports of their kind available. The reports are essential to researchers, policy makers and the public health authorities. The reports allow for monitoring trends in advertising over time and for evaluating new marketing practices of the industry.

4.) What data or other information should be maintained or dropped from the Reports? Why?

Given the limited amount of information collected in the current reports, no data or information should be dropped. Data should be broken down better possibly by company, brand and state. Manufacturers may claim such information is proprietary, however, much of the information is already collected by marketing research firms such as Simmons, MRI and others.

5.) What new data or information should be included in the Reports

There are a number of new data and information needs that are important for tracking tobacco industry marketing practices and should be included in the Reports. The new data help evaluate the impact of the MSA and the use of new technologies to advertise and promote tobacco products.

a.) The data should be broken down into subcategories, and by company, brand and state.

The existing data needs to be broken down much better into subcategories, and company when available, brand and state. This is essential for tracking why certain brands may grow in popularity among youth or high-risk groups or in particular parts of the country. Manufacturers may claim that such information is proprietary or confidential. However, much of the information is already collected by commercial market research firms such as Simmons and MRI. Both Simmons and MRI break down advertising by company and brand. It is essential that manufacturers be required to provide much more specificity in their reporting and categories such as promotional allowances and specialty item distribution should be broken down into subcategories.

b.) More companies should report.

Presently, only the major manufacturers file reports with the FTC. Since the MSA was signed a number of other tobacco manufacturers have seen large increases in cigarette sales. According to the Maxwell Report, 3.7% of sales were made by non-reporting companies in the year 2000, up from 1.2% in 1998. A new company, the Commonwealth Tobacco Company currently has 1.8% of market share and doesn't report. Other companies such as Star, Sante Fe Tobacco and Patriot Tobacco have seen large increases in sales. The FTC should consider a threshold for reporting such as .25% of U.S. market share. This would increase the number of reporting companies from five to approximately eight. This is important since the marketing practices of the start-ups may be very different from the major companies. New companies may rely more on internet advertising and direct mail. Also, given the price increases of MSA on the larger manufacturers, the market share for the start-ups should continue to grow.

c.) Magazine spending should be broken down by youth magazines (15% or more of youth readers) and non-youth magazines.

Research conducted by the Massachusetts Department of Public Health found that after the companies ended outdoor advertising (as required by the MSA), the money was redirected to advertising in magazines. Many of the magazines had youth readership greater than 15%. The 15% standard was developed by the Food and Drug Administration in its rule regulating tobacco products. The Attorney Generals questioned the companies whether or not the increase in advertising in magazines read by youth violated the MSA provision not to directly or indirectly target youth. Following the Attorney Generals' action, Phillip Morris, Brown & Williamson and Lorillard dropped advertising in youth magazines. RJR refused and is being sued by the Attorney General of California in that state. The FTC should ask the companies for data for advertising in magazines with greater than 15% youth readership. In doing so compliance with the MSA can be better monitored.

d.) Outdoor advertising should break out tobacco retail store front advertising from other forms of outdoor advertising

The MSA allows manufacturers to advertise on store fronts that sell tobacco products. Research conducted by this Department found an increase in store-front advertising among 300 Massachusetts stores following the MSA. It is important to break out store-front advertising from other outdoor advertising to monitor industry advertising practices post the MSA and determine if billboard advertising is being redirected to store fronts.

- e.) Point of Sale Advertising should be broken out by advertising within the store and on the storefronts (outdoor).

It is not clear if point of sale advertising includes store-front advertising. If the store-front advertising is included in this category then it should be broken out from in-store advertising and not included in the outdoor category. .

- f.) Promotional allowances should be broken down by category; Slotting Fees, Free Standing Displays, Rebates.

Promotional allowances include many categories including slotting fees, free standing displays rebates, etc. This category should be broken down much better. Free-standing displays have been shown to increase the rate of illegal sales of cigarettes to minors. Many communities and some states have banned such displays to better enforce youth access laws. By tracking this expenditure, states will be able to monitor the impact of their restrictions on expenditures for free-standing displays.

Also, as free-standing displays are eliminated, shelf space in retail stores may be reduced as cigarettes are placed behind the counter. Manufacturers may increase slotting fees to retailers to maintain their brands' position within the store. R. J. Reynolds and Brown and Williamson are suing Phillip Morris claiming that the Company is using their slotting fees as a way to keep their brands off the shelves, a possible anti-competitive practice. By breaking out slotting fees, one can monitor whether or not slotting fees are increasing as shelf space decreases. Overall expenditures for promotional allowances represent 43% of all 1999 spending and this category deserves to be broken down much better to be of any use.

- g.) Specialty Item Distribution should be broken down to include expenditures . . for branded and non-branded specialty items.

The MSA prohibits distribution of promotional items with a brand logo except in adult only establishments. Following the MSA, the major manufacturers continued to give away specialty items but removed brand logos from them. It is unclear from the definition of Specialty Item Distribution in the 1999 Cigarette Report if expenditures for items without a brand logo are being reported. It is extremely important to obtain this information to monitor industry behavior post the MSA. The FTC should also require that all items be reported by venue in which they are distributed (mail, event, other). The venue reporting requirement is very important since branded specialty items can still be given out at adult only establishments (i.e. Camel Night at a night club) in accordance with MSA.

- h.) Public entertainment should be broken down to include sponsorship of adult only events as well as category of sponsorship (concert, auto race, rodeo)

The MSA prohibits certain advertising and promotions except in adult only establishments. Following the MSA, there has been a sharp increase in tobacco industry sponsorship of night club events in Massachusetts cities with large college and young adult populations. Many new advertising campaigns for cigarette brands feature ads with night-club scenes (Camel, Parliament, Salem, Benson & Hedges and Lucky Strike). This is a major public health concern since the industry appears to be heavily advertising to the young adult market and using the adult only establishment as a way to recruit them into smoking. This is done by advertising, giving away free samples, enrolling young people into data bases and promoting smoking at the sponsored club event. By tracking this, researchers and public health officials will be able to monitor the impact of this practice on young adult smoking rates. Also, the MSA restricts companies to one sponsorship per brand per year. By reporting on the type of sponsorship, (auto racing), MSA compliance can be monitored.

- i.) Retail value added should be broken down into the value of free cigarette give-aways (buy one get one free), the value of promotional items that are branded and the value of promotional items that are not branded.

By breaking out the value of free cigarette give aways, public health officials can get a much better understanding of how manufacturers are discounting the price of cigarettes when faced with price increases (i.e. state tax increase)..

The current system has little value since it collapses price discounts with the value of promotional items. Also, by breaking out promotional items, one can determine the total value of promotional items that are offered through specialty item distribution and retail value added. This would be very important for understanding how promotional items affect consumption. Finally, by breaking out promotional items by branded and non branded status, one can monitor the effect of the MSA's ban on the give-away of branded promotional items.

- j.) Internet Advertising should be renamed to "electronic advertising and promotions" and should be broken down into internet advertising, direct mail advertising, creation and maintenance of electronic data bases of smokers and telephone advertising and promotions.

The use of new electronic media by the tobacco industry is of major public health concern. As retail market space shrinks and restrictions on advertising grow, tobacco manufacturers will look to new, innovative technologies such as the internet, telemarketing and direct mail to circumvent these restrictions. The Internet is of major concern since it undermines proven public health measures that have been shown to reduce smoking. Many Internet sites sell

cigarettes without paying state taxes resulting in prices that are one-half to one-third lower than what is expected at a brick and mortar retail site. By eliminating the price effect of taxation, cigarette consumption will increase. It is extremely important that the FTC monitor expenditures of the Internet activities closely. Other Internet sites employ electronic advertising that was banned in 1971 such as Sante Fe's Tobacco website which features music and animation. Other sites collect data about the smoking behavior and pricing preferences of their customers through software applications. Such information could be used by companies to target smokers who quit by sending them tailored e-mails that encourage them to return to smoking. Brown and Williamson operate a virtual magazine at its site www.Flairmagazine.net which is geared toward young females. The site does not advertise or promote smoking directly. This site enrolls visitors into data bases that could potentially be used for cigarette advertising and sales through the mail. Internet advertising should also be broken down into corporate versus brand advertising.

Electronic data bases are of major concern. Major tobacco companies are creating and maintaining data bases of smokers that contain tens of millions of names. Such data bases could be used to advertise, promote and sell cigarettes to consumers. At present, there is no public health policy to adequately regulate these new technologies and the Commission should collect data on industry expenditures in this area.

k.) Data on Nicotine Yield of Brands Reported to Massachusetts and Texas Should be included in the Reports.

The Massachusetts Department of Public Health requires the tobacco manufactures to test approximately 175 brands for the nicotine content in the tobacco, percent filter ventilation and smoke yield under a machine testing conditions that is more typical of how smokers smoke today (45 ml puff, half vent block every 30 seconds). Since this data has already been made available to the Massachusetts public health authorities, the FTC should require it to be reported in its annual report. The same is done for smokeless tobacco manufacturers.

l.) Advertising Expenditures for Reduced Harm Products should be Reported and Health Claims Substantiated.

A number of companies are marketing "reduced harm products" with implicit and explicit health claims. These products include RJR's smokeless cigarette Eclipse, Phillip Morris' Accord and Star Tobacco's Advance cigarette. The Institute of Medicine (IOM) recently published a monograph on such products and posed a number of research questions that need to be addressed. One

question relates to how claims for these products are being communicated to smokers. At a minimum, the FTC should require the companies to report advertising expenditures for such products when they make direct or implied claims of reduced risk.

The Massachusetts Department of Public Health recently conducted testing of one such product, (Eclipse) to validate RJR's claim that Eclipse had 80% lower levels of cancer causing agents in its smoke when compared to a typical ultra-light cigarette (Merit Ultra-Light). The Department tested Eclipse against two other typical ultra-light cigarettes, Now and Carlton, and found Eclipse to have higher levels of smoke carcinogens than Now and the same levels as Carlton. The FTC, as part of its annual report, should require manufacturers to submit scientific research from independent entities validating claims that are made for reduced harm.

The same reporting requirements that are adopted for "reduced harm" products should be required for other innovations such as the use of cigarette paper that reduces the risk of cigarettes igniting fires (Merit Select brand). Manufacturers should be required to report advertising expenditures when such claims are made as well as providing the scientific evidence documenting the claim. Information provided to the FTC documenting claims of reduced harm or fire safety should be made available to the research and public health community.

m.) Date should be reported in electronic file formats.

All data provided to the FTC should be filed with the Commission in electronic file format and such files should be made available to the research and scientific community.