

Benjamin K. Chu, M.D., M.P.H., M.A.C.P., Chair
President, Southern California Region
Kaiser Foundation Health Plan and Hospitals
Pasadena, CA

Ellen R. Gritz, Ph.D., Vice-Chair
Olla S. Stribling Distinguished Chair for Cancer Research
Professor & Chair, Department of Behavioral Science,
University of Texas M. D. Anderson Cancer Center
Houston, TX

Lawrence G. Wasden, Treasurer
Attorney General of Idaho
Boise, ID

Susan Curry, Ph.D.
Dean, College of Public Health
Distinguished Professor, Health Management and Policy
University of Iowa
Iowa City, IA

Jonathan E. Fielding, M.D., M.P.H.
Director Health Officer, Los Angeles County Department
of Public Health
Professor of Health Services and Pediatrics,
Schools of Public Health and Medicine,
University of California, Los Angeles
Los Angeles, CA

Irma Hunter Brown
Arkansas State Senator
Little Rock, AR

Jon Huntsman, Jr.
Governor of Utah
Salt Lake City, UT

Howard K. Koh, M.D., M.P.H.
Associate Dean for Public Health Practice, Harvey V
Fineberg Professor of the Practice of Public Health
Director, Division of Public Health Practice,
Harvard School of Public Health
Boston, MA

Tom Miller
Attorney General of Iowa
Des Moines, IA

Charles K. Scott
Wyoming State Senator
Casper, WY

Bethlehem Beru (Youth Board Liaison)
Temple University
Philadelphia, PA

Cheryl G. Heaton, Dr. P.H.
President & CEO
American Legacy Foundation

September 5, 2008

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex L)
600 Pennsylvania Avenue, NW
Washington, DC 20580

FEDERAL TRADE COMMISSION
Cigarette Test Method, P944509

Comment by the American Legacy Foundation
Supporting the FTC's Proposal to Rescind Its
Guidance Regarding The Current Cigarette Testing
Method for Low Yield Cigarettes

Dear Chairman Kovacic:

The American Legacy Foundation ("Legacy") is pleased to submit this comment in strong support of the Federal Trade Commission's (the "FTC's") decision to rescind its guidance on use of the Cambridge Filter Method (also referred to as "the FTC Method") as a basis for statements regarding the tar and nicotine yields of cigarettes.

Legacy is a national, independent public health foundation created in 1999 out of the landmark Master Settlement Agreement ("MSA") between the tobacco industry, 46 state governments and five U.S. territories. Legacy is dedicated to helping young people

reject tobacco, and providing access to tobacco prevention and cessation services. Our core programs include:

- **truth®** - A national youth smoking prevention campaign that has been cited as contributing to significant declines in youth smoking.
- **EX®** - A new innovative smoking cessation public education campaign that is designed to identify with smokers and change their approach to quitting.
- **Research Initiatives** - Examining the causes, consequences and approaches to reducing tobacco use.
- **Outreach** – Tobacco prevention and cessation in communities disproportionately affected by the toll of tobacco, including African Americans, Hispanics and Asian/Pacific Islanders.

Rescinding this guidance will help ensure that smokers do not rely on cigarette descriptors that are blatantly misleading about the harms of “low-tar” or “light” cigarettes. Studies show that measures of tar and nicotine based on the use of the Cambridge Filter Method do not provide accurate information on how much tar and nicotine is actually inhaled by a smoker or about the relative health risks of these cigarettes.¹ In fact, studies show that there is no meaningful difference in a smoker’s exposure to tar and nicotine based on whether that smoker smokes “light”, low-tar or regular cigarettes.²

Twelve hundred Americans die each day from tobacco related diseases.³ Labeling cigarettes as low in tar and/or nicotine masks that smoking these types of cigarettes is bad for your health. Suggesting that smoking these types of cigarettes may be less harmful to your health is simply not true.

For the last 40 years tobacco companies, based on the results of testing using the “FTC Method,” have successfully marketed and sold so-called “light”, “low-tar” and “low nicotine” cigarettes to millions of smokers under the pretense that they are less dangerous than regular cigarettes and also less harmful to a smoker’s health. In fact, the companies have known for years that these products are no safer than traditional cigarettes.⁴

After they first came on the market in the 1960’s, “light” and “low-tar” cigarettes continually grew in popularity. According to the FTC, in 2005 these cigarettes represented 83.5% of all cigarette sales in the United States.⁵ These so-called “low yield” cigarettes were marketed as a healthier alternative to smoking regular cigarettes, and studies show that most smokers perceive smoking these cigarettes as better for their health.⁶ In fact, according to the National Cancer Institute, there is no scientific evidence that there have been health benefits to the public due to these types of cigarette design changes.⁷ Unfortunately, there is evidence that shows switching to these types of cigarettes serves as an impediment to a serious attempt to quit smoking.⁸

Legacy's comments supporting rescission of this guidance will focus on:

- Specific reasons it supports the rescission of this guidance, including the positive effects that the FTC's proposal will have on consumers.
- Opportunities to educate consumers on "low-tar" and "low nicotine" cigarettes, the unintended consequences of the FTC Method and the dangers of smoking "low-tar" and "low nicotine" cigarettes.

Due to the seriousness of the problem, Legacy urges that the FTC prohibit the use of "light" and "low-tar" and similar descriptors altogether.

I. THE USE OF THIS TESTING METHOD HAS MISLED SEVERAL GENERATIONS OF SMOKERS REGARDING THE SAFETY AND HEALTH BENEFITS OF SMOKING LOW-TAR, LIGHT AND LOW NICOTINE CIGARETTES; RESCINDING THE USE OF THIS METHOD WILL HELP ENSURE THAT CONSUMERS ARE PROVIDED WITH MORE ACCURATE INFORMATION REGARDING THE HEALTH HAZARDS OF THESE CIGARETTES.

Generations of smokers have been gravely misled by the manner in which the results of tests using the FTC Method have been used in the marketing of cigarettes. Simply put, most cigarette smokers erroneously – and with deadly consequences – believe that smoking a "low-tar" or "low nicotine" cigarette is less harmful to their health, better for them, and one step towards quitting smoking altogether.⁹ In fact, smoking these types of cigarettes confers no health benefits

and can actually be worse for a smoker's health in part because they impede serious attempts to quit smoking.¹⁰

A substantial proportion of smokers have at one time switched to “low-tar” and “light” cigarettes under the false impression that smoking these cigarettes is better for their health.¹¹ In a survey published in the *American Journal of Preventive Medicine*, Kozlowski et al. surveyed a national sample of daily smokers, and found that 39% of “light” cigarette smokers and 58% of “ultra light” smokers reported that they choose “light” cigarettes to reduce risks associated with smoking without having to give up the habit.¹² In this study, approximately half of those smoking “light” cigarettes and almost three quarters of those smoking “ultra lights” said they smoke “light” cigarettes to reduce the tar and nicotine they get from smoking. It has also been shown that smokers erroneously believe that “light” cigarettes presented a 25% reduction in risk and that “ultra lights” presented a 33% reduction in risk compared to regular cigarettes.¹³ In a 2001 national survey of Marlboro Lights smokers, 49% agreed that high tar cigarettes are at least twice as likely to cause illness as ones that are low in tar.¹⁴ The majority of smokers also agree that the reduction of tar and nicotine had also made cigarettes less dangerous, with 60% and 50% of “light” smokers respectively, endorsing this belief.¹⁵

Unfortunately, smokers also believe that smoking these “light” cigarettes will make it easier for them to quit smoking.¹⁶ According to a study published in the *American Journal of*

Preventive Medicine, 30% of “light” smokers and nearly half of “ultra light” smokers indicated that one of the reasons they chose to smoke these brands was that these smokers considered it to be a step toward quitting completely.¹⁷

Scientific evidence demonstrates that these so called “lower yield” cigarettes do not reduce health risks for two critical reasons.

First, switching to a “low-tar” or “low nicotine” brand, in fact, delays attempts to quit smoking.¹⁸ An *American Journal of Public Health* study found that smokers who say they smoke “light” cigarettes to reduce health risks are significantly less likely to quit smoking than people who smoke regular cigarettes.¹⁹ The study found that smokers who switched to “light” cigarettes to reduce health risks were about 50% less likely to quit smoking than those who smoked non-”light” cigarettes.²⁰

Second, as understood by the cigarette companies for many years, the smoking machines used in the Cambridge Method do not accurately reflect how people actually smoke.²¹ When smoking, individuals cover the “ventilation” holes around cigarette filters, which are designed to dilute the smoke with air, thus reducing the amount of tar and nicotine inhaled, thereby mitigating any positive effect these ventilation holes might have on the amount of tar a smoker inhales.²² In addition, smokers compensate for any lower tar and nicotine by smoking more “low-tar” and “low

nicotine” cigarettes per day; by inhaling more deeply; by puffing harder on these cigarettes; and by taking more puffs per cigarette.²³ These adaptations allow individual smokers to continue to obtain the nicotine they need, along with the same levels of tar, nicotine and carcinogens as are in “regular” cigarettes.

The FTC’s proposal to rescind this guidance will take an important step toward mitigating the enormous damage to lives and health caused by these so called “low yield” cigarettes.

II. THE FTC SHOULD EXERCISE ITS AUTHORITY TO PROHIBIT THE USE OF THESE MISLEADING DESCRIPTORS.

Finally, we urge the FTC to take the next step and exercise its authority to prohibit the use of “light”, “low-tar” and related descriptors altogether. For all the reasons we have already discussed, the use of these descriptors presents a textbook example of advertising practices which are both “unfair” and “deceptive” within the meaning of the law.

The use of these descriptors is unfair because it (1) causes or is likely to cause substantial injury to consumers, which is (2) not reasonably avoidable by consumers themselves and (3) is not outweighed by countervailing benefits to consumers or to competition. It is deceptive because it constitutes (1) both a material representation and omission that (2) is likely to mislead consumers acting reasonably under the circumstances, and (3) is likely to affect a consumer’s choice of, or conduct regarding, a product.

As set out above, the record definitively shows that the tobacco industry's use of these descriptors over decades has caused extraordinary damage to the health and very lives of millions of Americans.²⁴ While full well knowing that "light" and "low-tar" cigarettes are no safer than other cigarettes but keeping that information from the public (and the FTC), the industry has used these descriptors to lull a majority of smokers into the false and dangerous belief that smoking "light" or "low-tar" cigarettes is good for their health.²⁵ The industry has also used these descriptors to help deter millions of smokers from making the serious efforts necessary to successfully stop smoking. There is no conceivable offsetting consumer or competitive benefit from the use of these descriptors. Moreover, given the marketing juggernaut supporting these products and the concerted suppression over many years of the scientific evidence regarding the dangers of "light" and "low-tar" cigarettes, there is no realistic way that a reasonable consumer could evaluate the industry's claims and understand the enormous risks.

It is all the more important for the FTC to take this step because, albeit unintentionally on its part, the "FTC" or "Cambridge" method played a key role in enabling the extraordinarily successful marketing of "light" and "low-tar" cigarettes and the resulting devastating health effects.²⁶ The facts are clear that the cigarette companies aggressively used these descriptors despite the fact that they fully understood that the FTC "[m]ethod was totally unreliable for measuring the actual nicotine and tar any real life smoker would absorb because it did not take into

account the phenomenon of smoker compensation.”²⁷ It is long past time to put an end to this assault on the public health.

III. GIVEN THE DEVASTATING PUBLIC HEALTH CONSEQUENCES OF USING THIS TESTING METHOD, THE FTC SHOULD EMBARK UPON A NATIONAL PUBLIC EDUCATION CAMPAIGN REGARDING THE DANGERS OF LOW-TAR AND NICOTINE CIGARETTES.

In addition to rescinding this guidance, we strongly urge the FTC to launch a national public health education campaign to raise awareness about the dangers of so called “light” and “low-tar” cigarettes and to encourage smokers to quit. Such a campaign is critically important to counter the sophisticated advertising campaigns conducted by cigarette manufacturers to market these types of cigarettes as a healthier alternative to smoking regular cigarettes.

Many ads misled consumers in their perceptions regarding “low-tar” and “low nicotine” cigarettes as healthier and safer than regular cigarettes. Campaigns promoting these cigarettes do not provide meaningful information regarding the health effects of smoking these cigarettes and are intended to reassure smokers worried about the health impact of smoking. While many smokers who switch to these brands believe they are healthier, few consumers actually know the truth, as supported by evidence presented in the aforementioned studies.

In order to combat the four decades of this type of advertising, the FTC should employ a national public education campaign to ensure that consumers understand the inherently deceptive nature of this advertising and labeling. Such a campaign could also promote existing and no-cost smoking cessation services. This public education campaign should be designed and driven by the public health community, and paid for by the tobacco industry.

Regards,

Stephenie Foster
Senior Vice President, Government Affairs

¹ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

² *Id.*

³ Centers for Disease Control and Prevention, Annual Smoking – Attributable mortality, years of potential life lost, and productivity losses --- United States, 1997-2001, MMWR. 2005. Vol. 54(25): 625-628.

⁴ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

⁵ U.S. Federal Trade Commission (FTC), Cigarette Report for 2004 and 2005. Issued 2007.

⁶ Cummings KM, Hyland, A, Giovino GA, Hastrup JL, Bauer JE, Bansal MA. Are smokers adequately informed about the health of smoking and medicinal nicotine? Nic & Tob Re. 2004. Vol 6 (S3): S333-S340.

⁷ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

⁸ Tindle HA, Rigotti NA, Davis RB, Barbeau EM, Kawachi I, Schiffman S. Cessation among Smokers of “light”

Cigarettes: Results from the National Health Interview Survey. *American Journal of Public Health*. 2006. Vol 96 (8):1498-1504.

⁹ Cummings KM, Hyland A, Giovino GA, Hastrup JL, Bauer JE, Bansal MA. Are smokers adequately informed about the health of smoking and medicinal nicotine? *Nic & Tob Re*. 2004. Vol 6 (S3): S333-S340.

¹⁰ Tindle HA, Rigotti NA, Davis RB, Barbeau EM, Kawachi I, Schiffman S. Cessation among Smokers of "light" Cigarettes: Results from the National Health Interview Survey. *American Journal of Public Health*. 2006. Vol 96 (8):1498-1504.

¹¹ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

¹² Kozlowski, LT, et al. Smokers' Misperceptions of "light" and Ultra "light" Cigarettes May Keep Them Smoking. *American Journal of Preventative Medicine*. 1998. Vol 15(1): 9-16.

¹³ Shiffman, S, et al. Smokers beliefs about "light" and ultra "light" cigarettes. *Tobacco Control* 2001. Vol 10 Suppl. I: i17-i23.

¹⁴ Cummings, KM, Hyland A, Bansal MA, Giovino G. What do Marlboro "light"s smokers know about "low-tar" cigarettes? *Nicotine Tob. Res*. 2004 Vol 6 Suppl 3:S323-32.

¹⁵ *Id.*

¹⁶ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

¹⁷ Kozlowski, LT, et al. Smokers' Misperceptions of "light" and Ultra "light" Cigarettes May Keep Them Smoking. *American Journal of Preventative Medicine*. 1998. Vol 15(1): 9-16.

¹⁸ Tindle HA, Rigotti NA, Davis RB, Barbeau EM, Kawachi I, Schiffman S. Cessation among Smokers of "light" Cigarettes: Results from the National Health Interview Survey. *American Journal of Public Health*. 2006. Vol 96 (8):1498-1504.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *United States v. Philip Morris, Inc.*, 449 F. Supp. 2d 1, 430-561 (D.D.C. 2006)(appeal pending) for detailed findings regarding the tobacco industry's decades long fraudulent and deceptive marketing of "low-tar" and "low nicotine" cigarettes.

²² *Id.*

²³ *Id.*

²⁴ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

²⁵ See *United States v. Philip Morris, Inc.*, 449 F. Supp. 2d 1, 430-561 (D.D.C. 2006)(appeal pending) for detailed findings regarding the tobacco industry's decades long fraudulent and deceptive marketing of "low-tar" and "low nicotine" cigarettes

²⁶ National Cancer Institute, Risks Associated with Smoking Cigarettes with Low Machine Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

²⁷ *United States v. Philip Morris, Inc.*, 449 F. Supp. 2d 1 at 560.