

CONCURRING STATEMENT OF COMMISSIONER PAMELA JONES HARBOUR

*Regarding the November 13, 2007 Testimony Before the Senate Committee on Commerce,
Science, and Transportation*

File No. P064508

Today, the Commission approves testimony to be presented on November 13, 2007 before the Senate Committee on Commerce, Science, and Transportation concerning the Federal Trade Commission's Tar and Nicotine Rating System. I concur in the decision to present testimony providing an overview of the FTC's responsibilities and activities in the area of tobacco advertising and a discussion of cigarette testing and the promotion of cigarettes based on machine-measured tar and nicotine yields. I also concur in the Commission's recommendation that Congress consider giving authority over cigarette testing to one of the federal government's science-based public health agencies.

However, I would also recommend that steps be taken to prohibit the use of any claims based on the Cambridge Filter Method – also known as “FTC Method” – for testing tar and nicotine. *See* the attached May 10, 2007 letter to the Hon. Frank Lautenberg. The tobacco industry has known for decades that the FTC method does not accurately measure the amount of tar and nicotine a person consumes from a cigarette. Prohibiting the use of claims based on the FTC method would remove the FTC's apparent imprimatur from cigarette labels and ads.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Commissioner

May 10, 2007

The Honorable Frank Lautenberg
United States Senate
324 Hart Senate Office Building
Washington, DC 20510

Dear Senator Lautenberg:

I send this letter to express my support for S.625, the Family Smoking Prevention and Tobacco Control Act.¹ The bill creates a reasonable framework to oversee the manufacture, sale, advertising, and marketing of tobacco products. Notably, the bill includes several key consumer protection measures.

First, the bill allows the Food and Drug Administration to regulate tobacco products. This is a critical starting point. The FDA has lacked adequate authority in this area for decades, and tobacco manufacturers have exploited the void. The bill authorizes FDA scientists to track, analyze, and regulate the components of tobacco products. At last, the FDA will have more effective tools to protect the public's health.

Second, the bill properly assigns – to manufacturers themselves – the burden of substantiating “modified risk” claims, such as “light,” “low tar,” and “reduced exposure.” Consumers’ choices are influenced by these claims. If a manufacturer says that its tobacco product poses a reduced risk, the manufacturer should be required to substantiate the claim with competent evidence that can be evaluated by scientists. This bill will compel manufacturers of tobacco products to provide scientific data, which will enable scientists to scrutinize modified-risk claims and determine whether the claims can be made responsibly.

The bill gives the FDA authority to establish new testing procedures and disclosures about tar and nicotine. However, an additional provision is needed to ensure that consumers receive accurate information about tar and nicotine levels. Thus, the bill should prohibit the use of any claims based on the so-called “FTC method.” Such a provision would be similar to the prohibition in your bill, S. 3872. The tobacco industry has known for decades that the FTC method does not accurately measure the amount of tar and nicotine a person consumes from a cigarette. Since 1999, the FTC has publicly stated its concerns about the method’s accuracy. It distresses me that a small

¹ This letter reflects my own views. It does not purport to represent the views of the Commission or any other Commissioner.

number of cigarette manufacturers still invoke the name of the FTC when claiming low tar and nicotine content. By prohibiting the use of claims based on the FTC method, the bill would remove the FTC's apparent imprimatur from cigarette labels and ads.

Third, the bill appropriately preserves coordination between the FTC and the FDA in enforcing labeling and marketing requirements, particularly as they relate to children. This kind of enforcement is a core element of the FTC's consumer protection mission. The bill wisely preserves the FTC's jurisdiction over unfair or deceptive cigarette advertising. I am especially pleased that advertising in violation of the proposed Act also will be deemed a violation of a rule promulgated under Section 18 of the FTC Act. Civil penalty authority is an important tool in the FTC's enforcement arsenal. By enabling the FTC to seek civil penalties immediately when a violation of the proposed Act is found, the Act will further enhance the agency's authority to stop misleading and youth-oriented advertising.

I thank you for your leadership in sponsoring the bipartisan Family Smoking Prevention and Tobacco Control Act. The regulation of the manufacture, sale, advertising, and marketing of tobacco products is a tall order, but it is crucial for the health of our country, particularly its young people. I hope that action on the bill will advance the dialogue and push federal health agencies to step up to the plate on this issue.

Please contact me if I may provide any assistance to you as the bill moves forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pamela J. Harbour".

Pamela Jones Harbour
Commissioner