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December 27, 2011

BY ELECTRONIC SUBMISSION

Office of the Secretary
Federal Trade Commission
Room H-113 (Annex J)
600 Pennsylvania Avenue N.W.
Washington, D.C. 20580

Re: Tobacco Reports: Paperwork Comment, FTC File No. P054507

Dear Secretary Clark:

National Tobacco Company LP (“NTC”), 5201 Interchange Way, Louisville, KY 40229, is a licensed manufacturer and importer of tobacco products. In the United states, NTC manufactures smokeless tobacco products sold under the *Beech-Nut*®, *Durango*®, *Trophy*®, and *Stoker’s*® brands. NTC also manufactures *Red Cap*™ brand traditional pipe tobacco, roll-your-own cigar tobacco sold as *Zig-Zag*® pipe tobacco cigar blend, and fine cut roll-your-own cigarette tobacco sold under the *Zig-Zag*® brand. NTC imports *Zig-Zag*® brand cigarette papers, cigar wrappers and sells *Zig-Zag*® cigars.

NTC submits these comments in response to the November 25, 2011 notice published by the Federal Trade Commission (“FTC” or “Commission”) requesting additional comments on FTC’s proposed information collection requests to the major cigarette and smokeless tobacco manufacturers. (*See* Notice No. 227, 76 Fed. Reg. 72706 (November 25, 2011)).

The Commission intends to ask the Office of Management and Budget (“OMB”) to extend through January 31, 2015, the current Paperwork Reduction Act (“PRA”) clearance for information the FTC would seek through compulsory process orders from a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. This information includes, among other things, their annual sales and marketing expenditures. FTC’s current clearance for this information is set to expire on January 31, 2012. Specifically, the FTC’s information requests would seek data regarding:

(1) the tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the amounts spent in each of several specified expenditure categories; (3) whether industry members are involved in the appearance of their products or brand imagery in television shows, motion pictures, or the Internet; (4) how much industry members spend on advertising intended to reduce youth tobacco use; (5) the events, if any, during which industry members’ tobacco brands are televised; and (6) for the cigarette industry, the tar, nicotine, and carbon monoxide ratings of their cigarettes, to the extent they possess such data.

Notice No. 227, 76 Fed. Reg. 72706 (November 25, 2011)

Additionally, the FTC has invited comments on whether the proposed collection of information is necessary for the proper performance of the functions of the FTC; the accuracy of the FTC’s estimate of the burden of the proposed collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on mandatory respondents.

NTC believes the goals of information collecting provisions of the Federal Cigarette Labeling and Advertising Act (“FCLAA”), 15 U.S.C. §§ 1331-41, can be fulfilled while substantially reducing the burden on small businesses like NTC by limiting the reporting requirement to information regarding direct-to-consumer advertising. NTC also believes that the FTC’s estimate of the burden on respondents does not reflect the actual burden placed on

respondents because it does not take into consideration the numerous other tobacco reporting requirements imposed on NTC annually.

I. The Commission Should Limit Information Requests to Direct-to-Consumer Advertising

NTC believes that the public interest would be better served if the Commission focused its information requests on advertising directed towards consumers as opposed to all forms of advertising and marketing. The Commission's information requests were initially made in furtherance of the Federal Cigarette Labeling and Advertising Act ("FCLAA"), 15 U.S.C. §§ 1331-41. The purpose of FCLAA was to adequately inform the public of the potential health risks of cigarette smoking and to ensure that "commerce and the national economy...[were not] impeded by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." *See* Pub. L. No. 89-92 § 2, 79 Stat. 282 (1965). To effectuate this purpose, the Federal Trade Commission was mandated to submit annual reports to Congress concerning "(A) the effectiveness of cigarette labeling, (B) current practices and methods of cigarette advertising and promotion, and (C) such recommendations for legislation as it may deem appropriate." *See* Pub. L. No. 89-92 § 5(d)(2), 79 Stat. 282 (1965). Although, this reporting mandate was terminated in 2000, the Commission has continued its information requests pursuant to Section 6(b) of the Federal Trade Commission Act, 15 U.S.C. § 46(b).

NTC believes that portions of the current FTC information requests on advertising data do not comport with the underlying purpose of the reporting requirements and given the extended authority that the Food and Drug Administration now has over tobacco, the FTC requirements on reporting are unnecessary and burdensome. Currently, the Commission requests data on all forms of advertising, without regard to who is the target audience for the advertising.

The *Federal Trade Commission Smokeless Tobacco Report for 2007 and 2008* lists twenty-four different forms of advertising that respondents are required to report on. Some reporting requirements, advertising that is directed toward the consumer, clearly fall under the purview of information sought by Congress. Non-business to business advertising that is directed towards consumers in newspapers, magazines, outdoors, videos, Internet websites, telephone advertising, transit advertising, direct mail, and point-of-sale discounts should be reported upon to make sure that it does not create “non-uniform” or “confusing” relationships between smoking and health.

Some of the Commission’s other reporting requirements, however, do not have a clear correlation to the purpose of the reporting requirements. Specifically, the FTC requires respondents to submit data on (1) price discounts paid to smokeless tobacco retailers or wholesalers, (2) promotional allowances paid to smokeless tobacco retailers, wholesalers, and other persons involved in the distribution and sales process, (3) any specialty item distribution that does not bear the name, logo, or an image of the brand or variety of the product, and (4) any public entertainment events that do not bear the name, logo, or an image of the brand or variety of the product. Data on discounts or promotional allowances given to retailers or wholesalers could not have any negative effect on the public’s view of the relationship between smoking and health. Additionally, any distribution or public entertainment events that do not bear the name, logo, or image of the product’s brand or variety also should have no effect on the public’s conception of tobacco and health.

NTC understands and believes in the importance of the reporting requirements in ensuring that direct-to-consumer advertising does not effectively mislead or confuse the public. However, NTC does not see how the additional reporting requirements mentioned above serve the underlying public interest goal. As a manufacturer who does not advertise directly to

consumers in the mass circulation print media, on television or radio, and who does not sponsor major sporting or entertainment events, the additional reporting requirements are a huge burden on NTC without providing any public gain. NTC respectfully requests the Commission to limit its advertising reporting requirements to the five largest manufacturers that represent some 97% of sales in the industry engaged in direct-to-consumer advertising in both the cigarette manufacturing categories and moist snuff manufacturing categories of the industry which NTC believes will “enhance the quality, utility, and clarity of the information to be collected” and minimize “the burden of the collection of information on mandatory respondents.” Further, there is little value in the collection of advertising spending data in those narrow subsets of the industry, such as loose leaf chewing tobacco, which are in rapid decline and purchased by a highly aging senior adult population.

II. The Cumulative Reporting Requirements Imposed on NTC are Unduly Burdensome

The FTC’s burden statement estimates that information requests to the five largest cigarette companies and smokeless tobacco companies accounts for 1,800 hours per year, burdening each company with 180 hours per year. Information requests to five additional smaller-sized respondents are estimated to consume a total of 300 hours, with each company individually burdened by 60 hours each year. This would make the overall estimated burden for a maximum of 15 respondents equivalent to 2,100 hours per year, with a total annual labor cost of \$210,000 (2,100 hours per year at \$100 per hour).

While this reporting burden may appear reasonable when considered in isolation, the FTC must recognize that continuing this reporting requirement, which is no longer required by statute, adds to the already enormous statutorily mandated reporting requirements that are imposed on small tobacco businesses like NTC. Attachment A to these comments is a partial list

of the burdens associated with tobacco reporting requirements. Taken alone, the Department of the Treasury imposes a minimum of 9,235 annual burden hours on respondents, the Department of Agriculture adds to that amount imposing, at a minimum, 4,595 hours on respondents, and the Department of Health and Human Services increases this amount by at least 121,820 hours on respondents. This total of 135,650 hours is based on a partial list of the mandatory information reporting requirements imposed on small tobacco companies. The cumulative impact of these reporting costs is a huge burden for small businesses like NTC.

These burdens could be substantially reduced by taking two steps that would not impede the FTC's goals. As noted above, reporting requirements should be limited to direct-to-consumer advertising which is the form of advertising that is most likely to impact a consumer's understanding of health issues associated with tobacco. Second, the FTC should direct its information requests to companies that have more than \$500 million in annual cigarette sales and \$60 million in annual sales of moist smokeless tobacco. These are the companies most likely to engage in competitive direct-to-consumer advertising. Consequently, they are also the companies that are likely to have the biggest impact on a consumer's understanding of the tobacco health issues. Addressing information requests only to large sellers of cigarettes and moist smokeless tobacco will substantially reduce the burden on small businesses without compromising the FTC's goal of effectively monitoring cigarette and smokeless tobacco advertising.

Thank you for your consideration of these comments. If you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely yours,

/s/

J. Kevin Horgan
deKieffer & Horgan
Counsel to National Tobacco Company

ATTACHMENT A

Tobacco Information Reporting Requirements

1) Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau

- a) Title: Tobacco Bond
 - i) *Estimated Number of Respondents:* 66
 - ii) *Estimated Total Annual Burden Hours:* 86
- b) Title: Inventory – Manufacturer of Tobacco Products, Processed Tobacco, or Cigarette Papers and Tubes
 - i) *Estimated Number of Respondents:* 193
 - ii) *Estimated Total Annual Burden Hours:* 386
- c) Title: Report – Manufacturer of Tobacco Products, or Cigarette Papers and Tubes and Report – Manufacturer of Processed Tobacco
 - i) *Estimated Number of Respondents:* 193
 - ii) *Estimated Total Annual Burden Hours:* 4,632
- d) Title: Records of Operations – Manufacturer of Tobacco Products or Processed Tobacco
 - i) *Estimated Number of Respondents:* 193
 - ii) *Estimated Total Annual Burden Hours:* 386
- e) Title: Tobacco Export Warehouse – Record of Operations
 - i) *Estimated Number of Respondents:* 80
 - ii) *Estimated Total Annual Burden Hours:* 1
- f) Title: Record of Operations – Importer of Tobacco Products or Processed Tobacco
 - i) *Estimated Number of Respondents:* 586
 - ii) *Estimated Total Annual Burden Hours:* 1
- g) Title: Monthly Report – Importer of Tobacco Products or Processed Tobacco
 - i) *Estimated Number of Respondents:* 586
 - ii) *Estimated Total Annual Burden Hours:* 14,064
- h) Title: Report of Removal, Transfer, or Sale of Processed Tobacco
 - i) *Estimated Number of Respondents:* 779
 - ii) *Estimated Total Annual Burden Hours:* 2,337

2) Department of Agriculture, Farm Service Agency

- a) Title: Tobacco Reports
 - i) *Description of Respondents:* Business or other for-profit
 - ii) *Estimated Number of Respondents:* 57
 - iii) *Frequency of Responses:* Reporting quarterly
 - iv) *Estimated Total Annual Burden Hours:* 204
- b) Title: Tobacco Inspection and Grading Services: Reporting and Recording Requirements for 7 CFR part 29
 - i) *Description of Respondents:* Primarily tobacco companies, tobacco manufacturers, import inspectors, and small businesses or organizations
 - ii) *Estimated Number of Respondents:* 50
 - iii) *Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.60 hours per response.
 - iv) *Estimated Number of Responses per Respondent:* 48
 - v) *Estimated Number of Responses:* 2,415
 - vi) *Estimated Total Annual Burden Hours on Respondents:* 3,851

3) Department of Agriculture, Commodity Credit Corporation

a) Title: Importer Assessments

- i) *Description of Respondents:* Importers of unmanufactured tobacco for consumption in the United States, who may be individuals, small businesses, or large tobacco leaf dealers and cigarette manufacturers.
- ii) *Estimated Number of Respondents:* 40
- iii) *Estimate of Burden:* Public reporting burden for this collection of information is estimated at 45 minutes per response.
- iv) *Estimated Number of Responses Per Respondent:* 18
- v) *Estimated Total Annual Burden Hours on Respondents:* 540

4) Department of Health and Human Services, Food and Drug Administration

a) Title: Draft Guidance for Industry: Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products

- i) *Description of Respondents:* The respondents to this collection of information are manufacturers, importers, distributors, and retailers of cigarettes and/or smokeless tobacco products who are required to submit warning plans for cigarettes and smokeless tobacco products to FDA under FCLAA and the Smokeless Tobacco Act.
- ii) Table 1: Cigarette Warning Plans Reporting Burden [New Collection of Information]
 - (1) Cover Letters
 - (a) *Estimated Number of Respondents:* 770
 - (i) Manufacturers, Distributors, and Importers: 226
 - (ii) Retailers: 10
 - (b) *Estimate of Burden Hours per Cover Letter:* 5
 - (c) *Estimated Total Cover Letter Burden Hours on Respondents:* 3,850
 - (2) Warning Plans
 - (a) *Estimated Number of Respondents:* 770
 - (i) Manufacturers, Distributors, and Importers: 226
 - (ii) Retailers: 10
 - (b) *Estimate of Burden Hours per Warning Plan:* 120
 - (3) *Estimated Total Warning Plan Burden Hours on Respondents:* 92,400
 - (4) *Table 1 Estimated Total Annual Burden Hours (Combined):* 96,250
- iii) Table 2: Smokeless Tobacco Product Warning Plans Reporting Burden
 - (1) Cover Letters
 - (a) *Estimated Number of Respondents:* 30
 - (i) Manufacturers, Distributors, and Importers: 20
 - (ii) Retailers: 10
 - (b) *Estimate of Burden Hours per Cover Letter:* 5
 - (c) *Estimated Total Cover Letter Burden Hours on Respondents:* 150
 - (2) Warning Plans
 - (3) *Estimated Number of Respondents:* 10
 - (a) Retailers: 10
 - (4) *Estimate of Burden Hours per Warning Plan:* 120
 - (5) *Estimated Total Warning Plan Burden Hours on Respondents:* 1,200
 - (6) *Table 2 Estimated Total Annual Burden Hours (Combined):* 1,350

- b) Title: Guidance for Industry and Food and Drug Administration Staff; Section 905(j)
Reports: Demonstrating Substantial Equivalence for Tobacco Products
- i) *Estimated Number of Respondents: 120*
 - (1) Large Tobacco Manufacturers or Importers: 3
 - (2) Small to Medium Tobacco Manufacturers or Importers: 7
 - (3) Submission of Letter indicating no documents available: 110
 - ii) *Estimate of Burden Hours on Respondents: 7,731*
 - (1) Large Tobacco Manufacturers or Importers: 7,500
 - (2) Small to Medium Tobacco Manufacturers or Importers: 230
 - (3) Submission of Letter indicating no documents available: 1
 - iii) *Estimated Total Burden Hours on Respondents: 24,220*