



James E. Dillard III
Senior Vice President
Regulatory Affairs
Chief Innovation Officer

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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue N.W.
Washington, D.C. 20850

Re: Electronic Cigarettes: Paperwork Comment, FTC File No. P144504

Altria Client Services Inc. (“ALCS”), on behalf of Nu Mark LLC (“Nu Mark”),¹ appreciates the opportunity to comment on the Federal Trade Commission (“FTC” or “Commission”) Agency Information Collection Activities, proposed collection of information from marketers of electronic cigarettes, dated October 27, 2015. The FTC poses a number of questions about its proposed request for sales and marketing expenditures of electronic cigarettes.

The e-vapor² category is rapidly evolving. There are potentially thousands of new entrants, foreign and domestic, with wholesale and retail distribution systems that may differ greatly from traditional tobacco products. A precise reading of the current e-vapor market is hindered by non-traditional sales channels, including online sales, and supply chains. Compounding this challenge is that many e-vapor devices and e-liquids are commonly purchased from international online wholesalers or manufacturers.³ In this light, we offer the following considerations to the Commission.

A. The Commission Should Establish Clear Criteria for the Study.

There is a proliferation of product forms and flavor varieties in the e-vapor category, with no dominant e-vapor form or flavor variety today. Indeed, the e-vapor category is comprised of many different product forms, including those that have been labelled “closed,” “open,” “refillable,” or “hybrid.” Many of these devices are rechargeable, while some are disposable. In addition to the varying product formats, some manufacturers make both e-liquids and devices while some make just one component or the other. Brands are also fragmented in this category

¹ Nu Mark is a wholly-owned subsidiary of Altria Group, Inc. (“Altria”). Nu Mark markets the MarkTen and Green Smoke e-vapor products. ALCS provides certain services, including regulatory affairs, to the Altria family of companies. “We” and “our” are used throughout to refer to Nu Mark, except where the context requires otherwise.

² The term e-vapor encompasses e-cigarettes and other products.

³ See “Industry Trends and Insights,” presented August 4, 2015 at the CSP Edunetworking Total Nicotine Conference.

and industry leadership continues to evolve. Given that this is a rapidly-evolving category and product forms are likely to continue to evolve, the FTC should clearly establish the scope of the products that will be studied to minimize the burden of the FTC's requests and to support the collection of useful data. The survey must also be flexible enough to anticipate rapid changes in a dynamic category.

The FTC should also clearly define "unit of sale." As referenced above, e-vapor products come in many forms. In the current landscape, it is unclear whether a unit of sale for a closed system is a single assembled unit that includes both the battery and cartridge or what the unit of sale is for a refillable system. The Commission will need to determine the appropriate equivalence that will make intra-category comparisons meaningful where multiple different product formats exist.

B. The Commission Should Consider a State-by-State Analysis and Expanding the Number of Entities Surveyed.

The emergence of thousands of vape shops – some of which manufacture and market their own e-liquids – is an important consideration for the FTC in developing the survey tool. To date, most vape shop chains seem to be regionally focused. A December 2015 survey of vape shops⁴ highlights this fractured category; among the survey's conclusions:

The e-liquid sector remains very fragmented and no one company dominates in terms of brand penetration; the hardware sector is much more consolidated. Respondents asked to identify the top-selling products in their stores named a total of 532 brands of e-liquid, against just 52 brands of tanks and atomisers, and 42 brands of mods.

The FTC should consider these realities as it seeks to collect meaningful data. For example, the Commission might consider conducting a state-by-state analysis to create a more accurate picture of the e-vapor category. In addition, given the fragmentation of the e-vapor marketplace, the FTC should consider issuing information requests to more than just ten small e-vapor industry members.

Finally, the U.S. Food and Drug Administration ("FDA") is in the final stages of extending its regulatory authority to include e-vapor products. We encourage the FTC to consider how it will interact with FDA once that regulation is complete.

We appreciate the opportunity to comment on this proposal. If you have additional questions, contact me at (804) 335-2679.

Sincerely,

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James E. Dillard III

⁴ See, "Project Vape Manifest: 2015 Vape Shop Index: U.S. Vape Shop Survey Analysis" at http://www.researchandmarkets.com/publication/m3dscru/us_liquid_market_focus_on_type_origin_an