

BEFORE THE  
FEDERAL TRADE COMMISSION



In Re: Petition for Rulemaking  
Concerning Tar and Nicotine  
Testing and Disclosure

Docket No. \_\_\_\_\_

PETITION FOR RULEMAKING

PRELIMINARY STATEMENT

The requested action by the ETC is appropriate in light of current scientific development

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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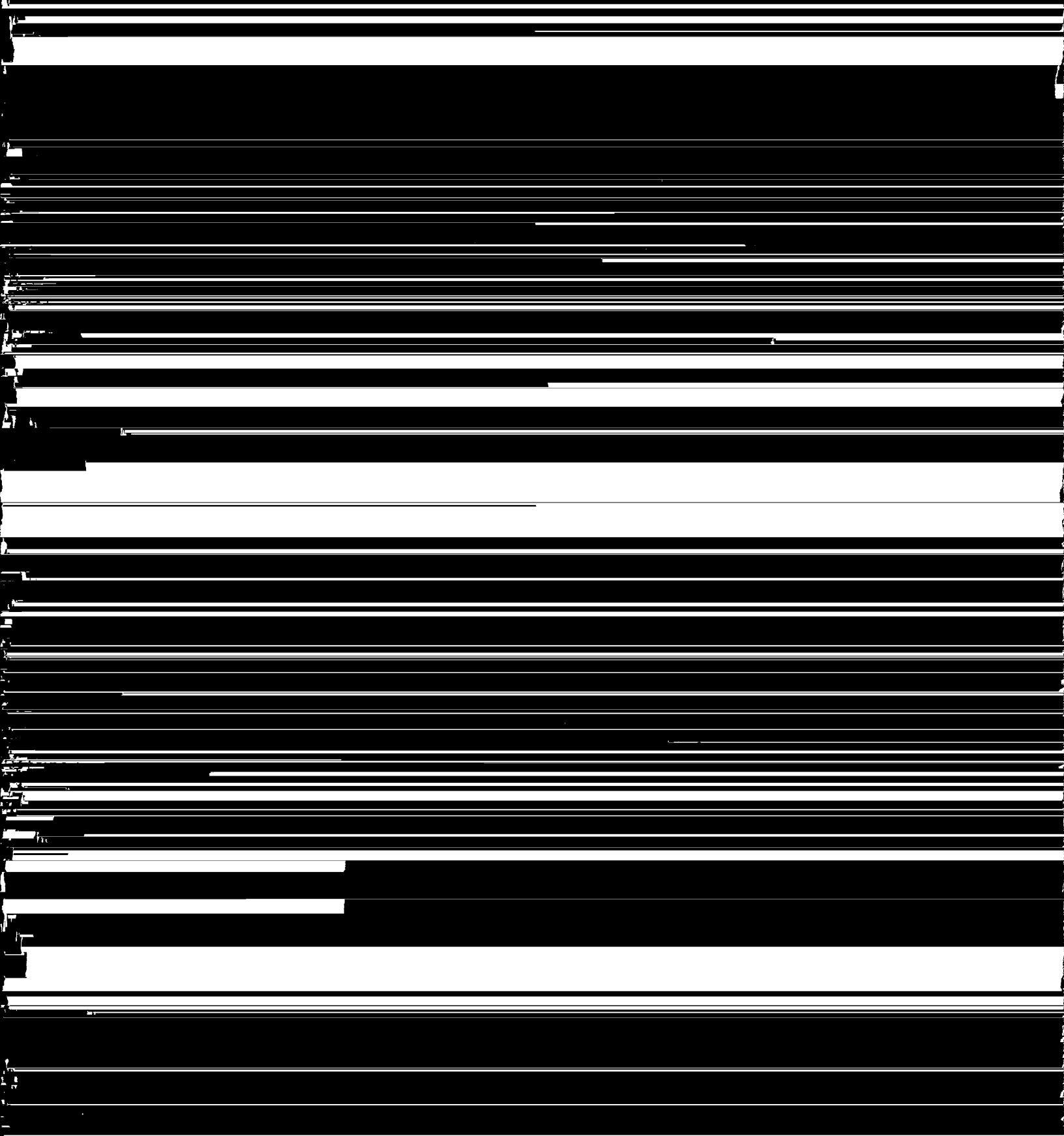
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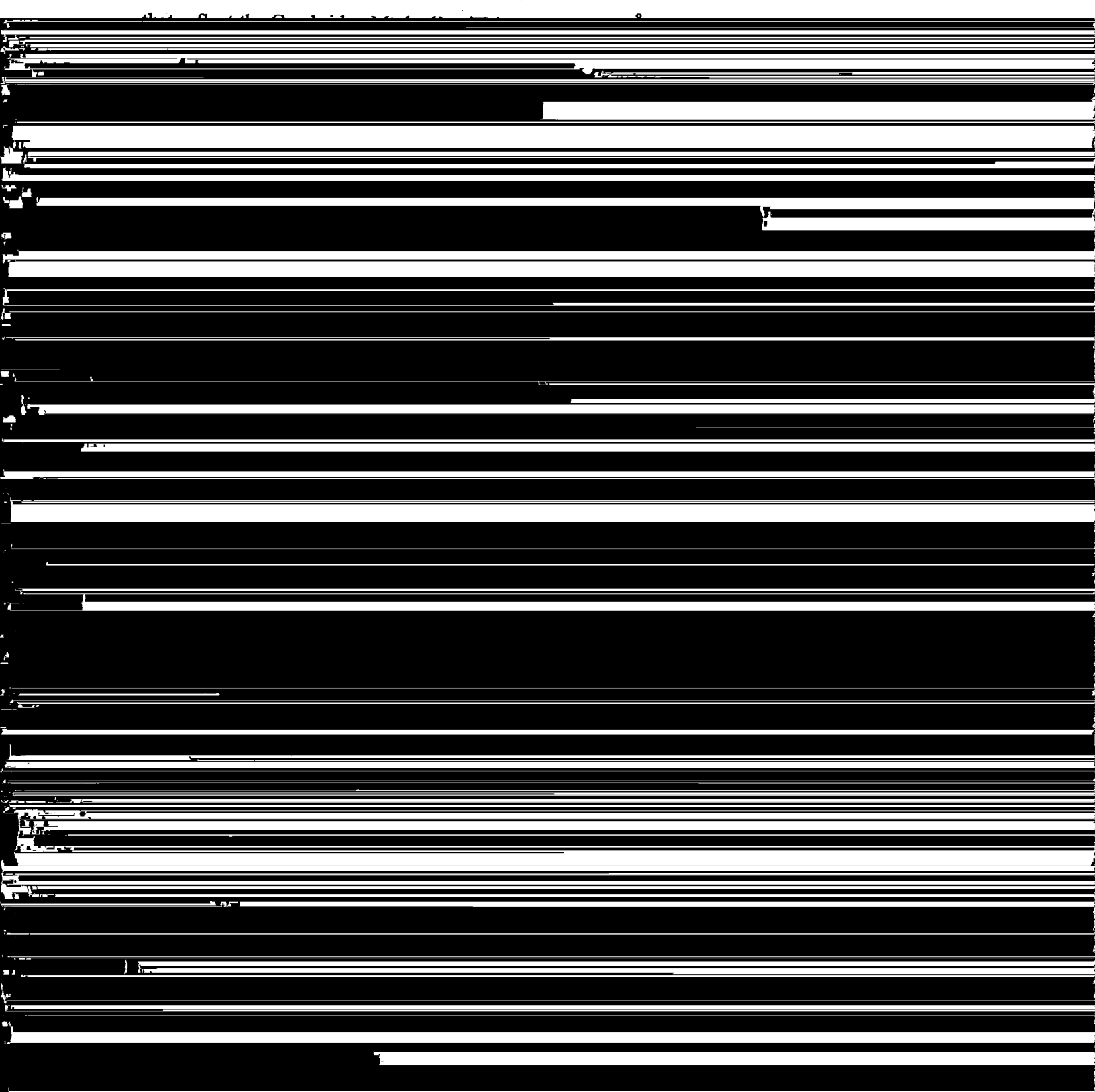
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only if such statements were based on the results of a standardized test method – the Cambridge Method:

On the basis of the facts now available to it, the



Throughout the last several decades, the FTC continued to monitor the tobacco companies' statements regarding average tar and nicotine yields. The FTC has specifically permitted the use of descriptors, such as "low," "lower," and "reduced" tar



In short, the FTC for the last five years has been considering what action, if any, to take on the subject matter of low tar cigarettes. Meanwhile, since 1997, concerns have increased with respect to (1) whether the FTC's Cambridge Method provides meaningful information to consumers and (2) whether descriptors, such as "light" and "ultra light," are potentially misleading to some consumers.<sup>11</sup> Recently emerging scientific analyses, such as those presented in NCI's Monograph 13, have placed into doubt the premise under which the FTC previously acted in this area: that low-yield cigarettes reduce the risk of harm. NCI's Monograph 13 concludes that "[t]here is no convincing evidence that changes in cigarette design between 1950 and the mid 1980s have resulted in an important decrease in the disease burden caused by cigarette use either for smokers as a group or for the whole population."<sup>12</sup>

Against this backdrop, PM respectfully files this petition asking the FTC to take immediate and appropriate action in light of the current state of the science in this area.

Specifically, PM submits that, in response to recent criticism of the Cambridge Method

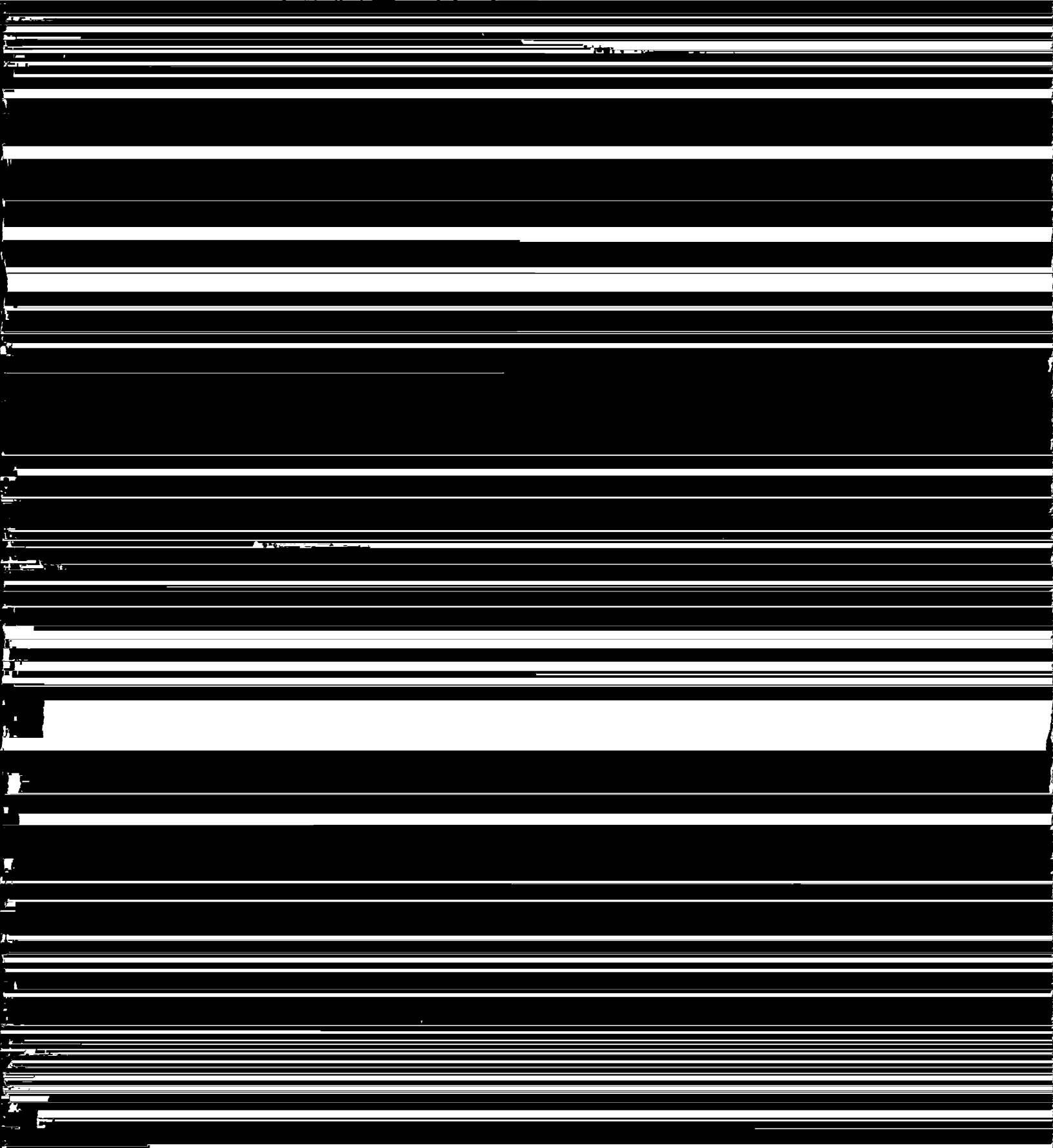
alternative method) and require that any such disclosure be accompanied by certain disclaimers. The purpose of these disclaimers would be to communicate to the public uniform and consistent messages: (1) that the amount of tar delivered by any cigarettes depends on how a person smokes the cigarette, (2) that smokers may intake more tar and nicotine than estimated by the Cambridge Method, (2) that 1

A. The FTC's Decision to Ban Tar and Nicotine Disclosures

In the mid-1950s, in response to what it perceived as a rising number of health

subsequent proceedings under Section 5(B) of the Federal Trade Commission Act. . . .

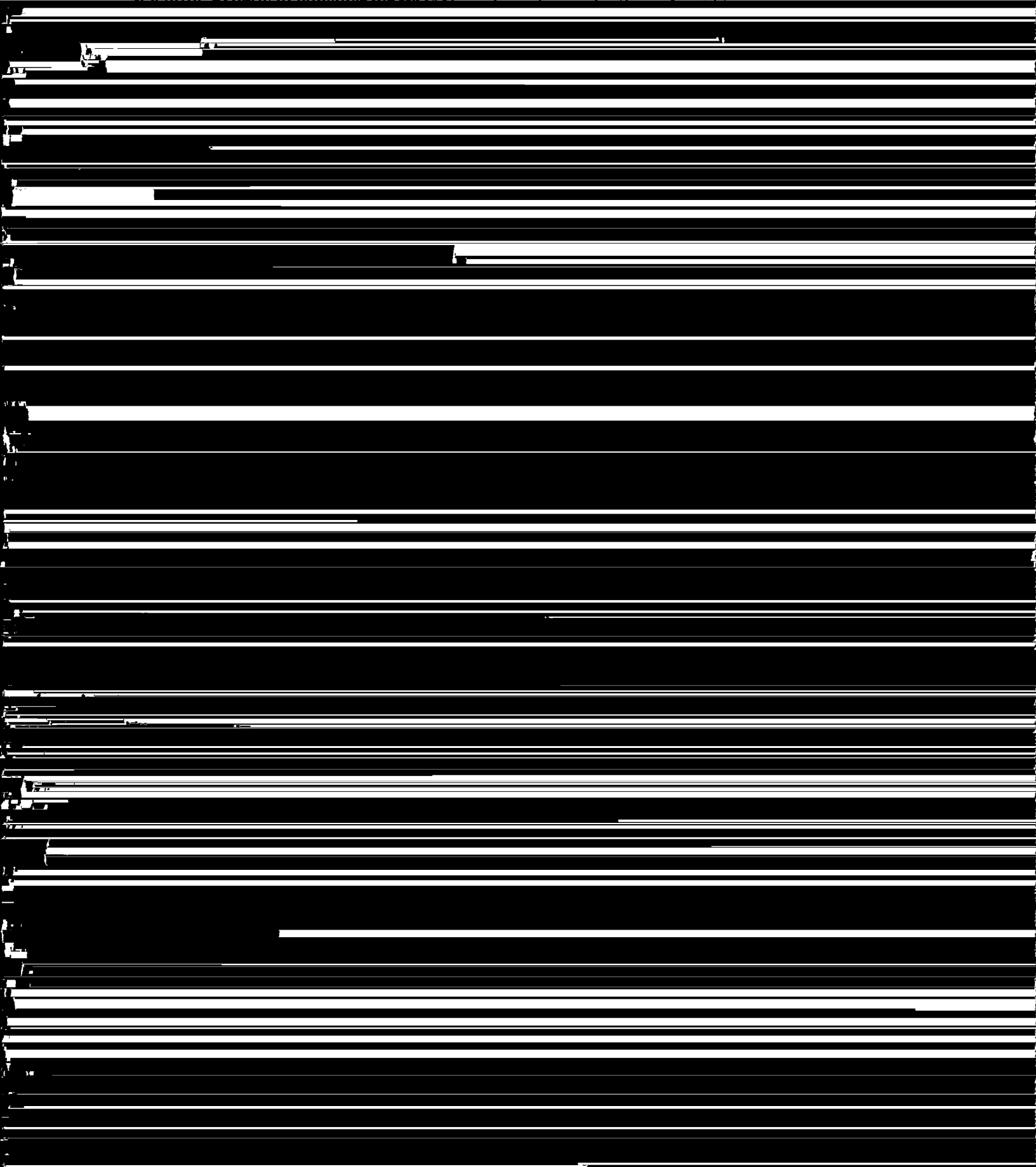
In 1960, then, the Commission was informing the





In 1966, the U.S. Public Health Service convened a technical committee of

scientific experts to consider what the technical committee



and other cigarette technology, a greater protection could be provided immediately.<sup>20</sup>

This finding was confirmed almost immediately in a 1970 epidemiological study conducted by Dr. Wynder, who found that filtered cigarette smokers had a reduced risk of lung cancer compared to non-filtered cigarette smokers.<sup>21</sup>

As a result of this growing scientific evidence that filtered cigarettes reduced

was "[b]ased on the proposition that lower yield cigarettes present a lessened hazard to the American public."<sup>24</sup> The FTC admonished, however, that "statements or

The [Cambridge] Method does not and cannot  
measure these many variations in human smoking habits.<sup>28</sup>

Notwithstanding the industry's observations regarding the limitations of the

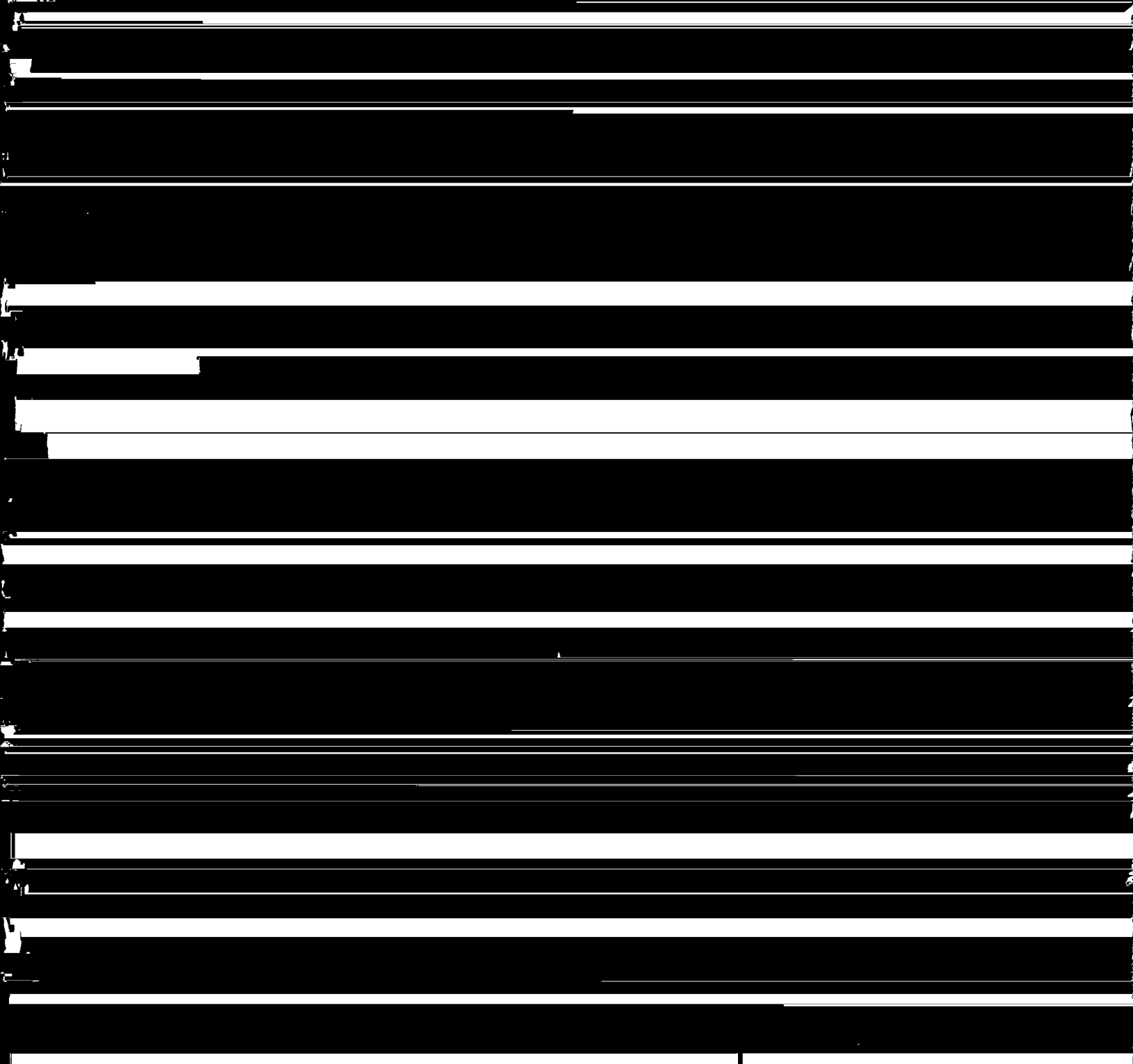
determine “the amount of smoke, or tar and nicotine, which the ‘average’ smoker will draw from any particular cigarette,” because “there are too many variables as to both smokers and smoking conditions for any average to be meaningful.” Indeed, the FTC was concerned that any attempt to determine results for an “average” smoker “could be misleading to the public, because a smoker has no way of knowing how closely his

smoking habits conform to the “average” smoker. 11 (b) (5) - (c) 32

Three years later, the FTC went a step further and proposed a trade regulation rule

requiring the disclosure of tar and nicotine ratings in cigarette advertisements. 36

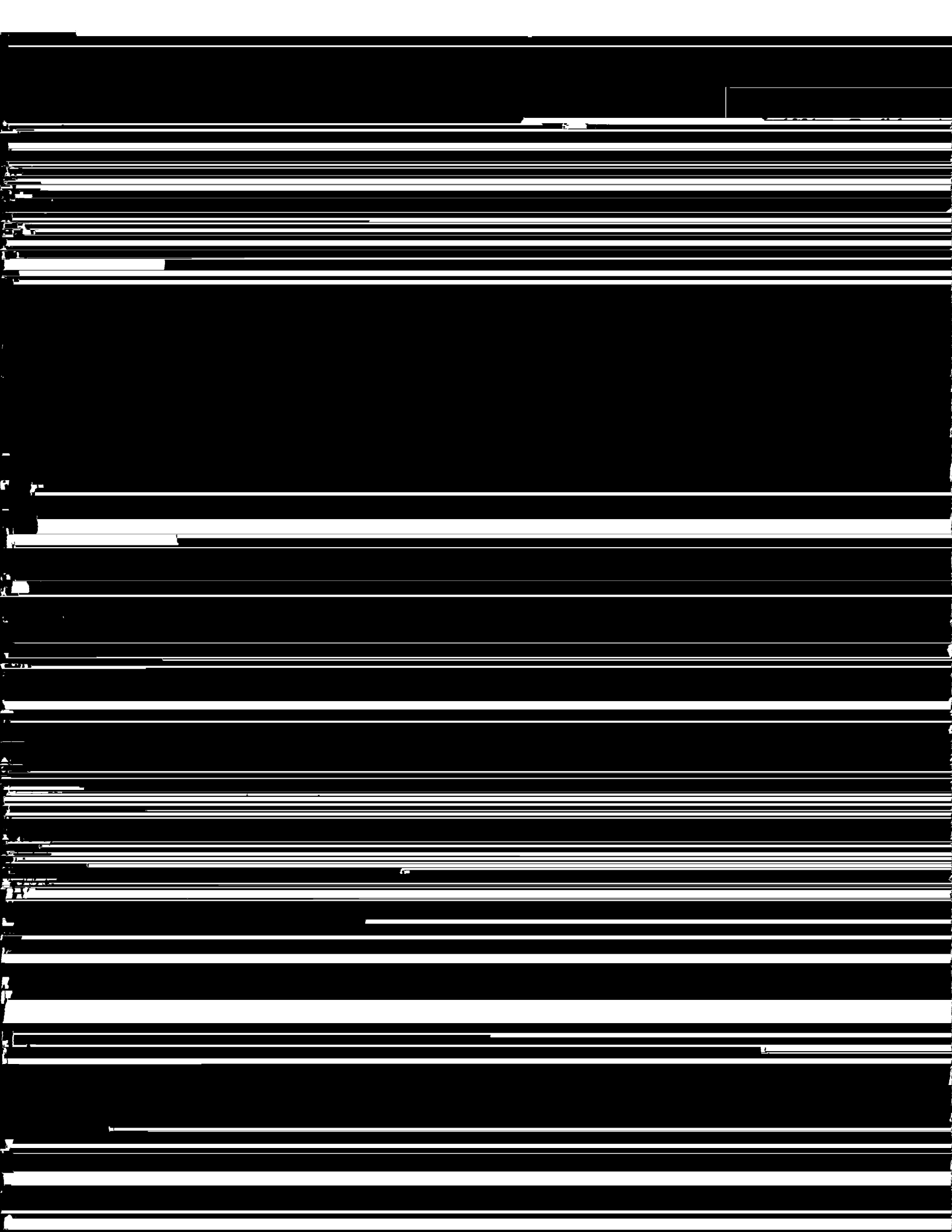
contents in cigarette advertising,” so long as the agreement would include an “effective method of insuring compliance with the terms of any agreement.”<sup>39</sup> In response, five of the six major manufacturers submitted a written plan agreeing to include tar and nicotine disclosures in advertising, and the FTC suspended its proposed trade rule indefinitely.<sup>40</sup> The FTC explained that relying on the industry’s plan would free its resources to pursue other matters, and at the same time argued that it would be best to the consumers to have a



**D. The Scientific and Public Health Community**  
**Continued to Support Lower Tar and Nicotine Yields**

Following the FTC's adoption of the Cambridge Method, scientific





Relying on these and other studies, public health officials concluded that low tar cigarettes did reduce disease risk. In a 1981 comprehensive review, the Surgeon General concluded that “[t]oday’s filter-tipped, lower ‘tar’ and nicotine cigarettes produce lower rates of lung cancer than do their higher ‘tar’ and nicotine predecessors.”<sup>48</sup> In 1986, the International Agency for Research on Cancer (“IARC”) similarly concluded that the epidemiological evidence “suggest[ed] that prolonged use of non-filter and high-tar cigarettes is associated with greater lung cancer risks than prolonged use of filter and low-tar cigarettes.”<sup>49</sup> More recently, in 1996, the NCI concluded that the “more recent” scientific evidence continued to support the Surgeon General’s 1981 conclusion that “[t]oday’s filter-tipped, lower ‘tar’ and nicotine cigarettes produce lower rates of lung cancer than do their higher ‘tar’ and nicotine predecessors.”<sup>50</sup>

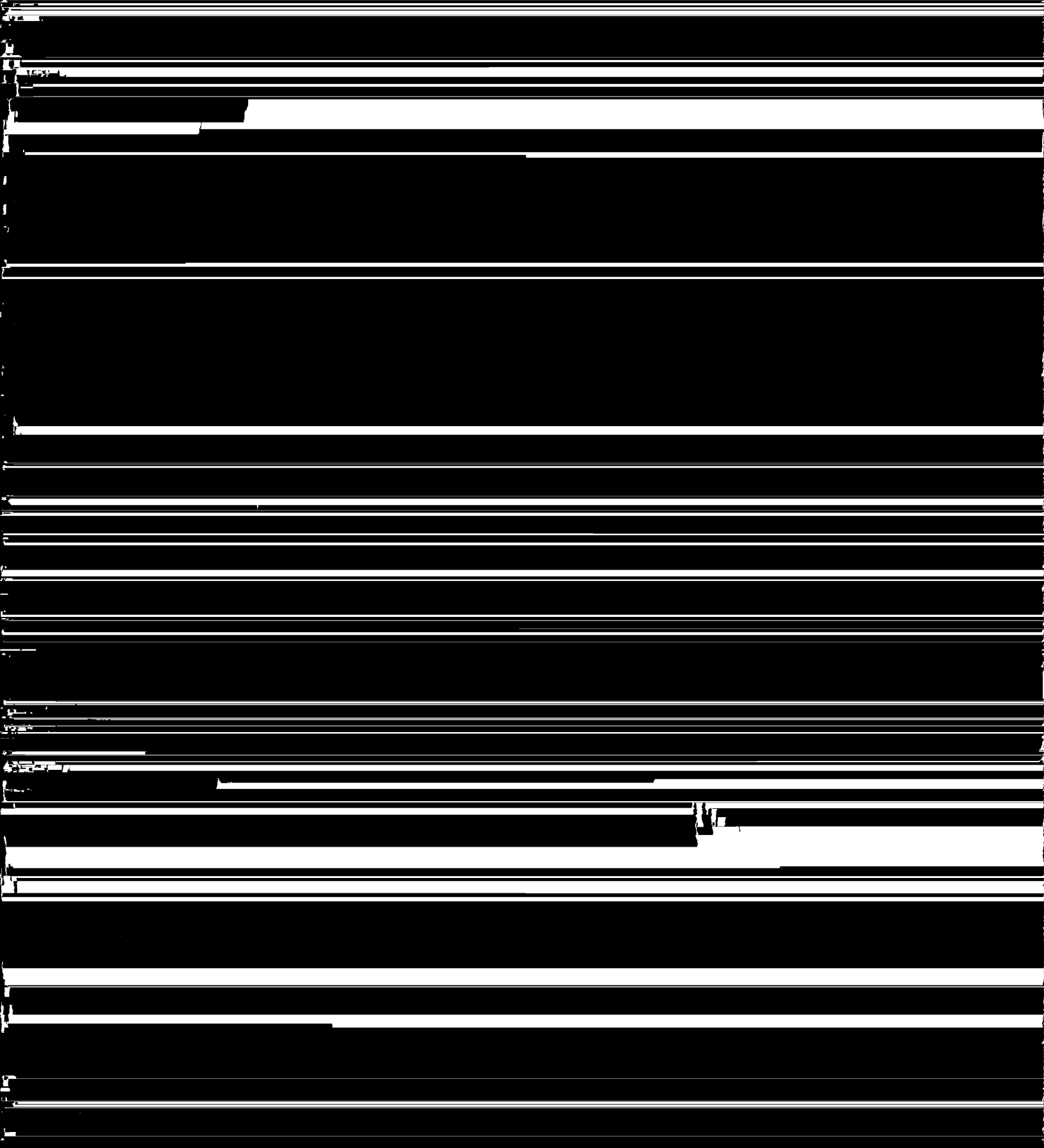
Consistent with these conclusions, the public health community throughout the world called for cigarette manufacturers to reduce tar and nicotine yields in their

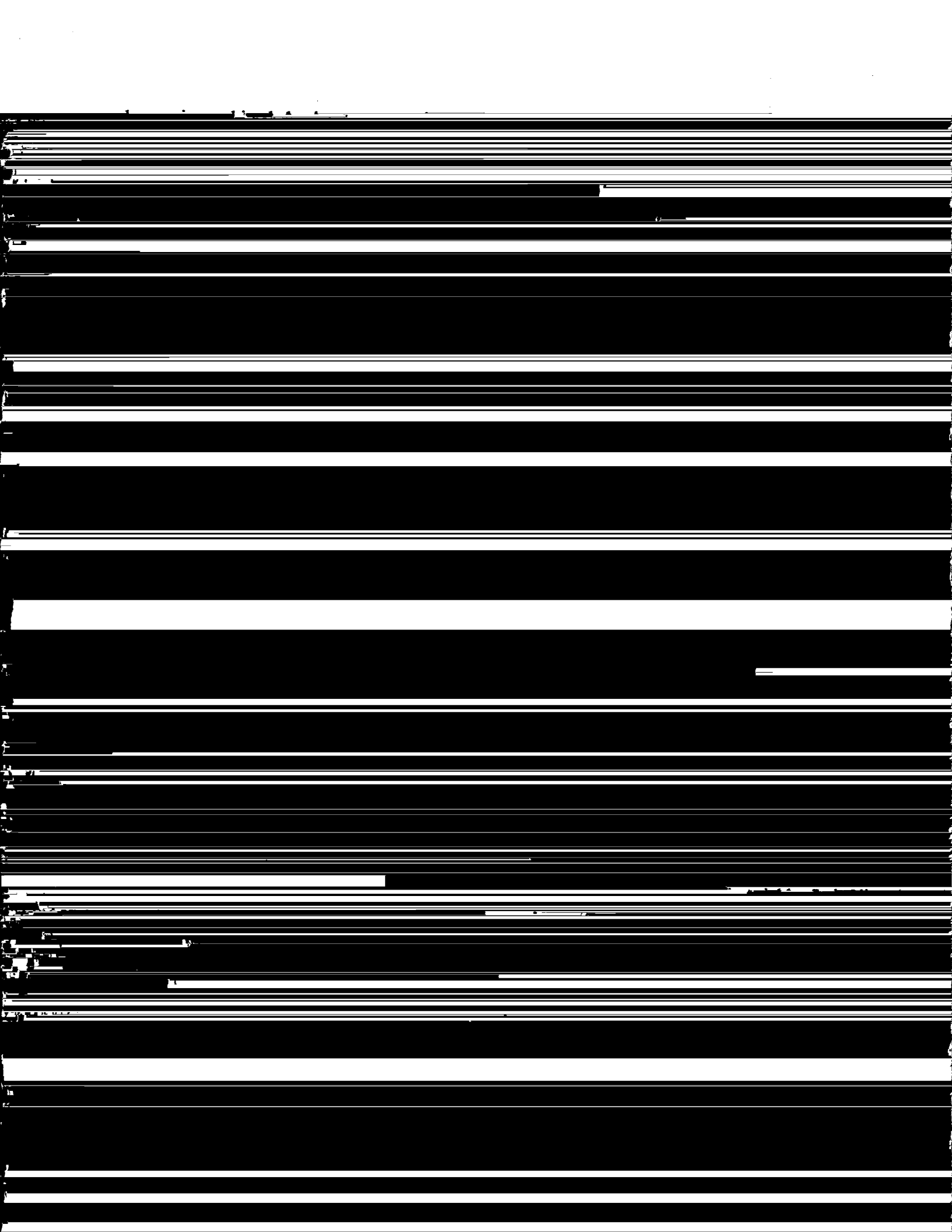
- In 1983, the U.K. Independent Scientific Committee on Smoking and Health concluded that it was “encouraged by the decrease in tar yields over the last few years and recommend a continued reduction.”<sup>51</sup>

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the health improvement," leading it to "support further reduction in tar levels."<sup>56</sup>

Furthermore, the public health community has been successful in





epidemiologist Dr. Jonathan Samet, in a 1996 review for NCI explained that

advertise a tar figure which is higher than the latest applicable FTC tar figure."<sup>66</sup> At the same time, however, the FTC acknowledged its concerns about whether its testing





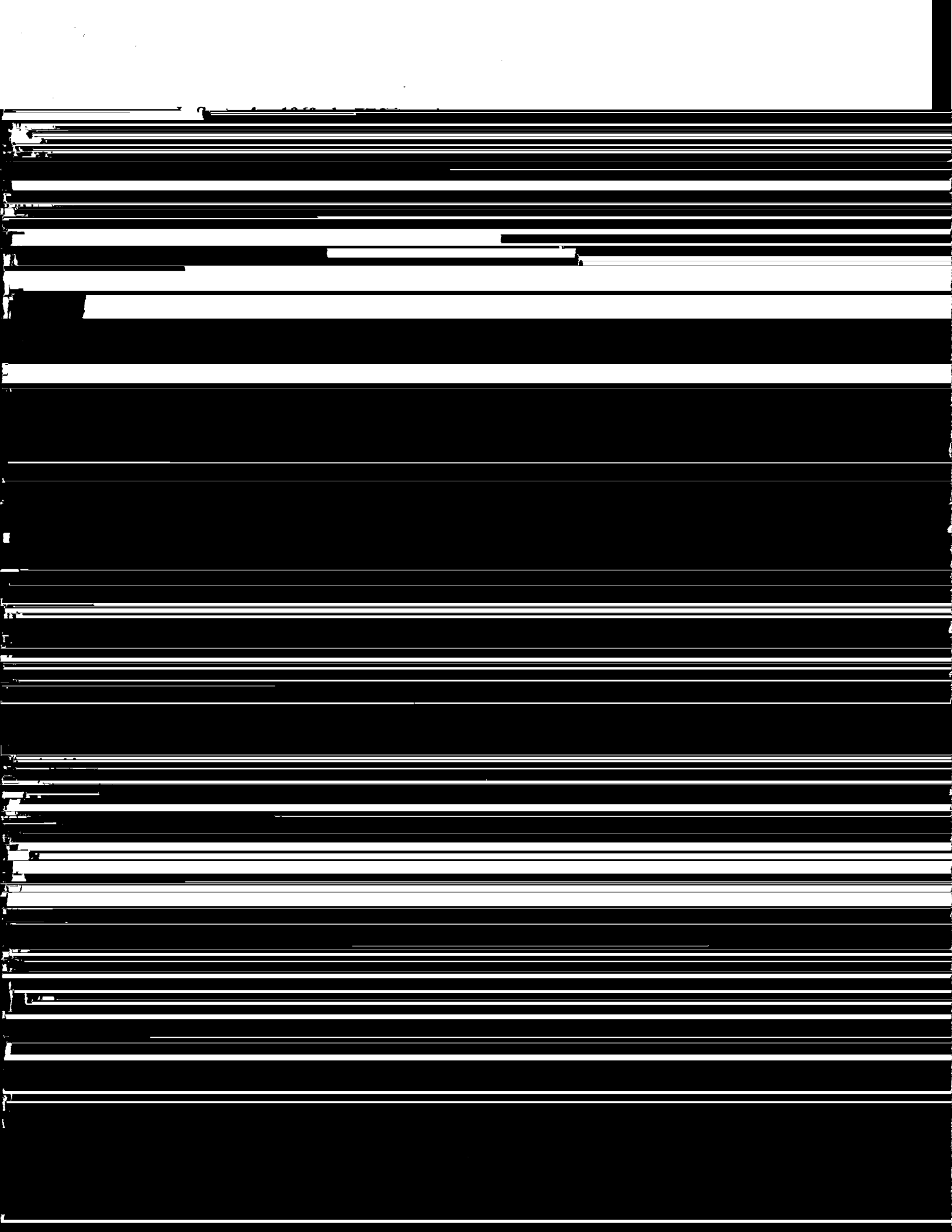
reduction in lung cancer deaths that might be attributable to declines in average tar levels.”<sup>75</sup>

Approximately a decade later, in July 1994, the FTC revisited the propriety of its

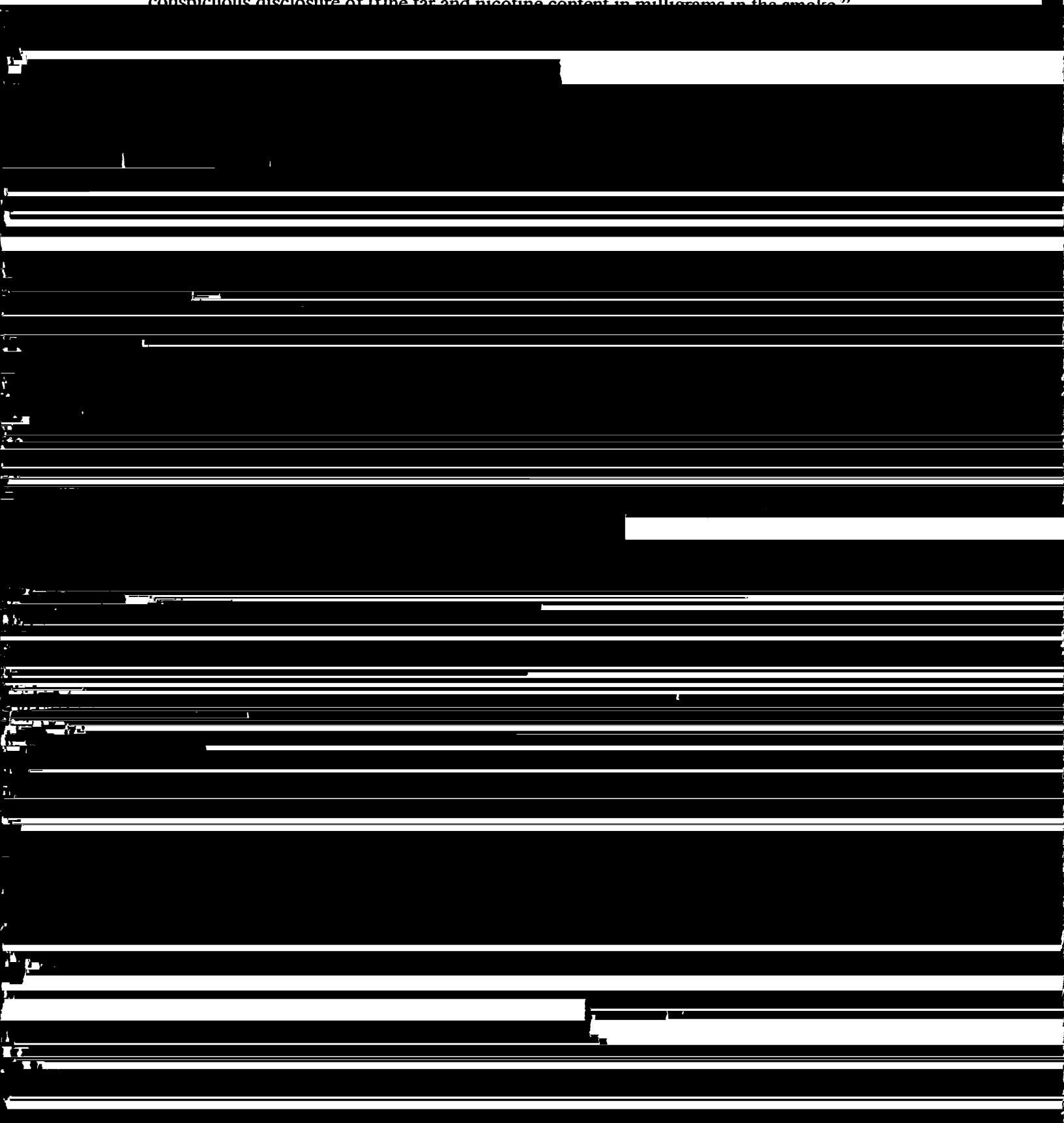
that each cigarette variety be tested under two different sets of smoking conditions.”<sup>78</sup>

Finally, in 1998, the FTC sought expert scientific advice again, requesting that HHS

“conduct a complete review of the FTC’s cigarette testing methodology.”<sup>79</sup> The FTC



Thus, in this consent decree, the FTC specifically permitted American to use “qualifying terms” such as “low” and “lower” provided that those terms were accompanied by a “conspicuous disclosure of [t]he tar and nicotine content in milligrams in the smoke.”



FTC tar ratings.”<sup>89</sup> Disclaimers were also considered. The FTC has not modified its test method or required additional disclosures.

**G. Monograph 13**

In 1998, the FTC formally requested HHS to further review its testing method and



TABLE

smoke have increased over the years and may be responsible for the rising rates of adenocarcinoma:

Changes in the agricultural, curing, and manufacturing

## II. PROPOSED RULEMAKING

Following the issuance of Monograph 13, the FTC indicated that it intends to reevaluate the Cambridge Method. In a November 27, 2001 press release, the FTC

announced that it will be "conducting a comprehensive review of the Cambridge Method."

nicotine testing methodology."<sup>103</sup> PM believes that the FTC should take immediate and appropriate action with respect to attempting to improve the method by which tar and nicotine yields are measured. Furthermore, PM believes that the FTC should



such a method. Finally, PM proposes that the FTC replace the current Cambridge Method in the event the FTC finds a superior method available.

**B. Consider Requiring Additional Information**

Regardless of the testing methodology adopted, the FTC should require the disclosure of tar and nicotine ratings along with the provision of mandatory disclaimers

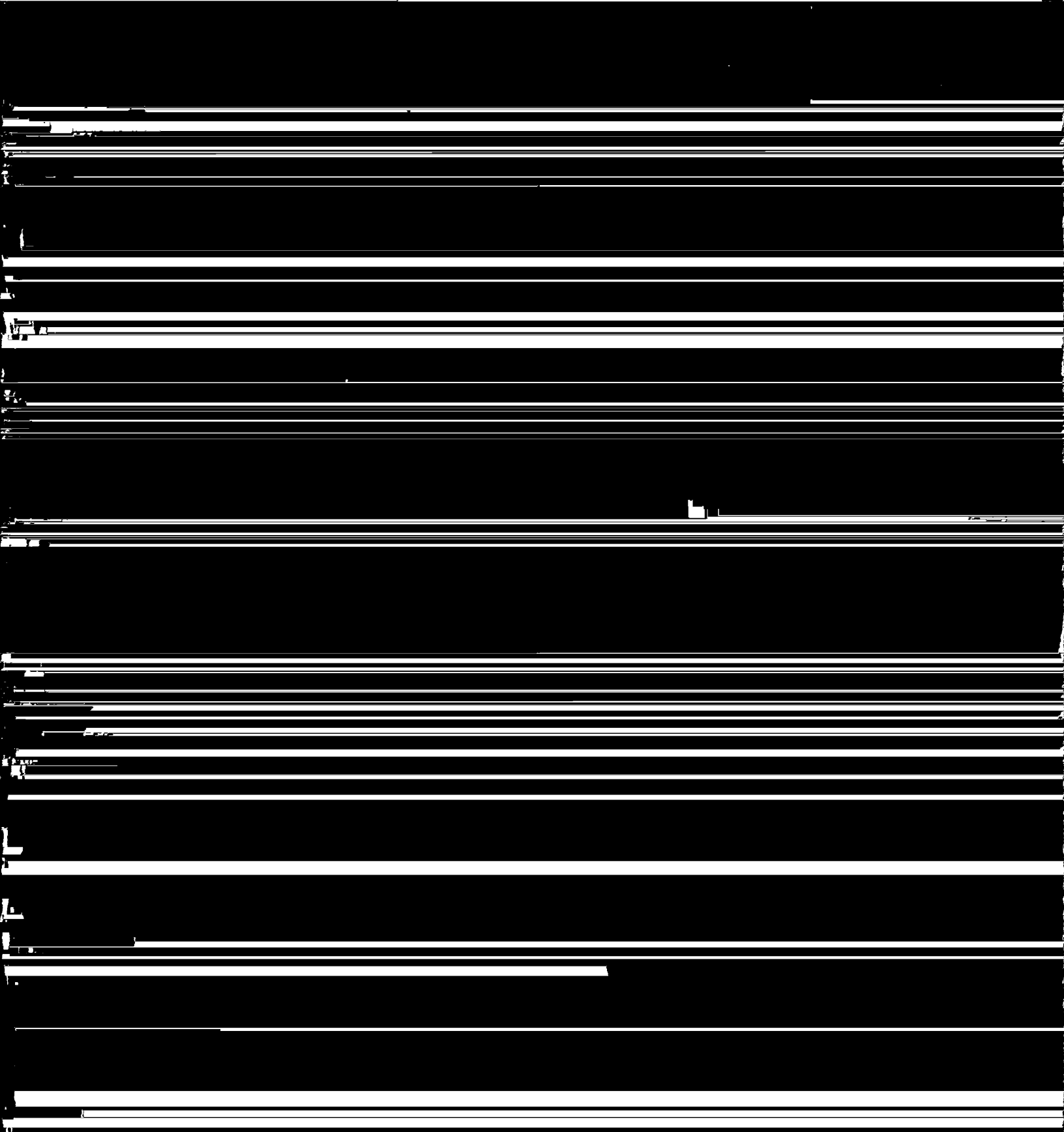
C. Clarify Use of Descriptors

Cigarette manufacturers have historically used descriptors such as "light" and

“prefer taste.”<sup>104</sup> Consumers should be permitted to use descriptors to accommodate taste preferences, so long as they are also informed that the descriptors do not indicate that any

**ATTACHMENT A**

**Information for Smokers:**



16 If you're worried about the health effects of smoking, you should quit. For more