

**Supplemental Supporting Statement for a Paperwork Reduction Act
Submission to OMB
FTC Study of Food Marketing to Children and Adolescents**

Pursuant to the Conference Report for its 2006 appropriation legislation (“2006 Conference Report”),¹ the Federal Trade Commission (“FTC” or “Commission”) has proposed to undertake a study of food marketing to children and adolescents. This proposed information collection is very similar in content and methodology to studies the Commission has undertaken with respect to advertising for alcoholic beverages and tobacco products.² Nevertheless, the Office of Management and Budget (“OMB”) staff has expressed reservations about the practical utility of the proposed information collection under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (“PRA”). For the reasons discussed in this supplemental supporting statement, FTC staff believes the proposed study will have practical utility and should go forward.

In general, the proposed information collection will advance the Commission’s efforts to understand how food industry promotional dollars targeted to children and adolescents are allocated, the types of activities and marketing techniques the food industry uses to market its products to children and adolescents, and the extent to which current and planned future self-regulatory efforts address the full variety of child- and adolescent-directed marketing practices utilized by industry. By increasing its knowledge in these areas, the FTC will be able to:

- 1) promote and encourage industry self-regulatory initiatives³ regarding food marketing directed to children and adolescents, and establish a baseline by which to measure the future success of such efforts;
- 2) identify potential policy questions related to emerging media and marketing techniques that the FTC may study further in the future, such as by holding additional public workshops;

¹ H.R. Rep. No. 109-272 (2005), citing S. Rep. No. 109-88 (2005) at 108.

² OMB approval was received in December 2006 for the FTC’s Study on Alcohol Industry Self-Regulation (OMB Control Number 3084-0138). OMB approval was received in January 2006 for the FTC’s most recent Cigarette and Smokeless Tobacco Data Collection (OMB Control Number 3084-0134).

³ Self regulation has played a vital role in the advertising industry in the U.S. as a means of moderating industry conduct to improve marketplace behavior for the benefit of consumers. For example, the work of both the National Advertising Division/National Advertising Review Council of the Council of Better Business Bureaus and the Electronic Retailing Self-Regulation Program has been very important to the U.S. marketplace and to the FTC’s work to eliminate deceptive marketing.

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3) identify new communication techniques and strategies to enable the FTC and others to produce effective consumer education materials and develop media literacy campaigns targeted to children and adolescents, as well as their parents.

Background for the Study. Although the FTC is primarily a law enforcement agency, Congress also has endowed the Commission with wide-ranging authority to investigate and report to Congress and the public on industry practices that affect the economic well-being of consumers.⁴ In 2006, for example, the Commission issued a report on its investigation of price manipulation and price increases in the wake of Hurricane Katrina,⁵ and in 2005, it released a report examining the factors that affect gasoline prices in the United States.⁶ Both of these reports provided consumers with a clear view of how gasoline markets operate, and stressed the role of prices in equating supply and demand in times of shortage. Furthermore, last month the Commission released a report on broadband connectivity.⁷ This report summarizes some of the competition issues surrounding broadband connectivity, with a particular focus on “network neutrality” regulation, and suggests guiding principles for policy makers considering regulation of broadband Internet access.

Childhood obesity is another important public policy issue in the U.S., one with serious public health consequences.⁸ Department of Health and Human Services (“HHS”) Secretary Michael Leavitt has stated: “Obesity is one of the major health challenges facing the nation, especially our younger generation. Without early prevention and detection, obesity can have troubling consequences such as diabetes and heart and vascular diseases.”⁹

⁴ Specifically, Congress has authorized the FTC “to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce,” and “to make public from time to time such portions of the information obtained by it hereunder as are in the public interest.” 15 U.S.C. §§ 46(a), (f).

⁵ Federal Trade Commission, *Investigation of Gasoline Price Manipulation and Post-Katrina Gas Price Increases* (Spring 2006), available at www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf.

⁶ Federal Trade Commission, *Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition* (2005), available at www.ftc.gov/reports/gasprices05/050705gaspricesrpt.pdf.

⁷ Federal Trade Commission, *Broadband Connectivity Competition Policy* (June 2007), available at www.ftc.gov/reports/broadband/v070000report.pdf.

⁸ Institute of Medicine, *Food Marketing to Children and Youth: Threat or Opportunity?* (2006), at ES-1 (“IOM Report”).

⁹ “FTC, HHS Announce Workshop on Childhood Obesity,” May 11, 2005, available at www.ftc.gov/opa/2005/05/childobese.shtm.

Although a wide variety of factors undoubtedly has contributed to the childhood obesity problem, some place the blame squarely on food marketing. While the FTC has firmly rejected calls to ban the marketing of food to children, the agency has endeavored to play a constructive role in the debate and in turning back the dangerous obesity trend. In July 2005, the FTC and HHS jointly convened a two-day workshop on “Marketing, Self-Regulation, & Childhood Obesity” (“2005 Workshop”). Participants included government officials, health experts, consumer advocates, and representatives of the food and media industries. The purpose of the workshop was to focus attention on the positive initiatives that the food industry and others could take to encourage healthier eating and lifestyles, particularly among the nation’s youth. The purpose of the workshop was not to determine whether or to what extent food marketing, or any other single factor, has contributed to the rise in childhood obesity. The workshop produced a series of recommendations for the food marketing industry, including suggestions for self-regulatory initiatives to address the way in which food is marketed to children.¹⁰ Industry members and the Grocery Manufacturers Association participated in the workshop and expressed support for addressing the problem through “meaningful, robust self-regulation of children’s marketing.”¹¹

An important development resulting from the 2005 Workshop was the Children’s Food and Beverage Advertising Initiative, established by the Council of Better Business Bureaus (“CBBB”). To date, 11 of the largest food and beverage companies – estimated to represent more than two-thirds of children’s food and beverage ad spending on TV – have joined the initiative, pledging to devote at least half of their advertising directed to children (on TV, radio, and the Internet and in print) to promote healthier dietary choices or to messages that encourage good nutrition or healthy lifestyles. The specific details of the “pledges” of these 11 companies will be announced in the near future.

It is within this context that Congress, in the 2006 Conference Report, directed the FTC to submit a report regarding the “marketing activities and expenditures of the food industry targeted toward children and adolescents.”¹² The 2006 Conference Report asked the Commission to focus on both measured media¹³ and unmeasured media.¹⁴

¹⁰ Federal Trade Commission & Department of Health and Human Services, *Perspectives on Marketing, Self-Regulation, & Childhood Obesity* (Apr. 2006). Recommendations that came out of the workshop are listed at pp. 48-54.

¹¹ *Id.* at Appendix C (Written Submission of Manly Molpus, President and CEO, Grocery Manufacturers Association).

¹² *See* note 1, *supra*.

¹³ Measured media include television, radio, print, and some Internet advertising.

¹⁴ Unmeasured media include, for example, product packaging; advertising in movie theaters, videos, or video games; in-store marketing; promotions at public events; advertising on digital devices, such as mobile phones; product placements in television shows, movies, and

While the Commission did not seek such directing language, there is a specific need for the proposed information collection. The Institute of Medicine has noted that although research to date has focused predominantly on television, “food and beverage marketing extends far beyond television and is changing rapidly to include integrated marketing campaigns that extend to new media platforms that target multiple venues simultaneously. . . . Virtually no scientific studies are available on these other tools.”¹⁵ A more recent study by the Kaiser Family Foundation regarding online marketing of food to children likewise notes the dearth of information about emerging media and marketing activities in this area.¹⁶ Thus, the proposed FTC study will be an important source of information that does not exist elsewhere.

Design of the Study. The FTC proposes to send the information request to 44 food and beverage companies in the U.S. In most cases, the proposed recipients are companies that market categories of food and beverage products that appear to be advertised to children and adolescents most frequently.

To select potential recipients, staff first consulted a number of public sources – including the IOM Report, studies of food advertising to children on TV and online, and press reports – regarding categories of foods most often marketed to children and adolescents. Staff also conferred with FTC economists conducting an empirical study of child and adolescent exposure to food advertising on TV to identify categories of foods most frequently marketed to children and adolescents on TV.¹⁷ FTC staff then consulted a variety of published sources, and purchased relevant TV advertising exposure data from Nielsen Media Research, to determine the companies that likely account for the majority of the marketing directed to children and adolescents for these categories of foods. For each company identified, staff researched public sources and examined company and product websites to determine measured and (where possible) unmeasured media techniques used by those companies to market food products to children and adolescents. For most of the selected food categories, the target companies constitute the top television advertisers whose ads were viewed in programs or time segments where 30% or more of the audience is

video games; character licensing; sponsorship of athletic teams or events; and in-school marketing.

¹⁵ IOM Report, at ES-5 and 6.

¹⁶ Elizabeth S. Moore, *It's Child's Play: Advergaming and the Online Marketing of Food to Children* (The Henry J. Kaiser Family Foundation, July 2006) at 1.

¹⁷ The FTC's Bureau of Economics recently released a report on children's exposure to television advertising, comparing data from 2004 to similar data from 1977. The study concluded that children are not exposed to more food ads on television than they were in the past, although their ad exposure today is more concentrated on children's programming. *Children's Exposure to Television Advertising in 1977 and 2004: Information for the Obesity Debate* (a Bureau of Economics Staff Report, June 1, 2007), available at www.ftc.gov/os/2007/06/cabecolor.pdf.

between the ages of 2 to 17. Moreover, for the primary products in these food categories, the targeted companies account for the vast majority of U.S. sales, regardless of whether the products are advertised to children or adolescents.¹⁸

Included among the 44 companies to which the FTC proposes sending the information collection are several fruit and vegetable producers, distributors, and marketers. Traditionally, fruit and vegetable companies have not engaged in significant marketing efforts but, in recent years, some fruit and vegetable companies have packaged and promoted their products in ways likely to appeal to children, such as by using licensed characters popular with children in their product labels and displays. FTC staff has identified the particular companies engaged in such activities and has included them in the proposed information collection. Gathering information on these practices will enable FTC staff to compare the marketing techniques and expenditures being used to market fruits and vegetables relative to foods that traditionally have been more frequently marketed to children and adolescents. Also, FTC staff expects these novel efforts to increase significantly in the future; gathering the information now is an important first step towards charting a new trend in healthy marketing to children and adolescents.

As noted above, the FTC previously obtained approval for studies under the PRA on advertising for tobacco products and alcoholic beverages that employed similar methodology and studied essentially the same issues (OMB Control Numbers 3084-0134 and 3084-0138 respectively). In the alcohol study, the FTC issued orders under section 6(b) of the FTC Act to twelve companies who were estimated to be responsible for approximately 80% of U.S. alcohol advertising in measured media. The FTC sought advertising expenditure data in 22 measured and unmeasured media categories, many of which closely mirror the categories proposed for the food marketing study, and also sought information on the companies' compliance with self-regulatory initiatives.¹⁹

Significantly, the alcohol study was intended to provide a snapshot of new marketing techniques and self-regulatory initiatives; it was not intended to compare data from year to year. To that end, the FTC sought, for the first time, industry expenditures to advertise and promote beverage alcohol across a broad spectrum of measured and unmeasured media, and aimed to assess the level of industry compliance with current self-regulatory codes. Although the FTC undoubtedly may use this information in later years to measure changes or trends in these areas, staff can immediately use the data to engage in a valuable and useful analysis of industry marketing practices and self-regulation, which will allow the FTC to have more meaningful engagement in the self-regulatory process.

The proposed study design is also similar to that of the report of the cigarette and

¹⁸ The exception is fruit and vegetable marketers, which are discussed below.

¹⁹ See 71 Fed. Reg. 62261, 62264 (Oct. 24, 2006).

smokeless tobacco companies that the Commission has undertaken for many years.²⁰ As with the proposed study of food marketing activities and expenditures, the tobacco report has collected and reported on marketing expenditures by the leading manufacturers in the industry and has sought data on a wide range of measured and unmeasured media categories.²¹ The information is reviewed by the Commission, aggregated, and used to publish annual reports. To the Commission's knowledge, much of the information published in the tobacco reports is unavailable from any other source, and the information serves to inform the public policy debate in the area of tobacco marketing.

Practical Utility of the Study. The proposed food marketing study has practical utility. It will provide the FTC with accurate and reliable data that staff can use in a timely fashion with respect to the goals set forth above: the promotion and assessment of industry self-regulatory efforts; the identification of policy questions to be addressed with regard to emerging media and marketing techniques; and the identification of techniques and strategies for future consumer education and media literacy campaigns.

The information staff proposes to collect will allow the FTC to increase its knowledge on a wide range of topics related to the marketing of food to children and adolescents. Advertising expenditure data will allow the FTC to determine how food companies are allocating their advertising budgets among different audience age groups, among a wide variety of media types, and among food products in different product categories and of varying nutritional profiles. The FTC will also collect meaningful and useful data relating to the particular marketing techniques companies are using to promote food products to children and adolescents. Significantly, the FTC will not only learn what techniques companies are using, but will also collect actual samples of those activities. This will allow much greater understanding and analysis of the current media landscape. All of this information, including both the expenditure data and the samples of actual marketing activities, will directly advance the FTC's planned uses for the study.

Notably, the proposed orders include specific requests for information about any nutritional icon or other "better for you" product lines the companies may market. The Mercatus Center at George Mason University pointed out that the utility of the collection would be enhanced if the Commission sought information on new marketing plans that may reflect forthcoming changes resulting from the recent CBBB initiative. Accordingly, the FTC included

²⁰ Beginning in 1967, the FTC submitted annual reports to Congress on cigarette sales and marketing pursuant to the Federal Cigarette Labeling and Advertising Act. 15 U.S.C. §§ 1331-1341. Beginning in 1987, the FTC submitted biennially to Congress reports on smokeless tobacco pursuant to the Comprehensive Smokeless Tobacco Health Education Act. 15 U.S.C. §§ 4401-4408. When these statutory mandates ended, the Commission sought public comments on whether to continue issuing these reports. Since then, the Commission has continued to collect and report on sales and marketing data for cigarettes and smokeless tobacco.

²¹ See 70 Fed. Reg. 62313 (Oct. 31, 2005).

requests for information on companies' nutritional icon programs and healthy-eating initiatives so that the FTC can study the amount and types of marketing that companies are devoting to these products. This information will enable the FTC to report not only on recent marketing practices but also on planned efforts whose success the Commission and others can monitor in the future. As with the FTC's studies on the marketing of alcohol and tobacco products, the information will increase the FTC's understanding of food industry advertising issues and the role of the industry in regulating its own advertising practices.

Finally, the proposed study is an essential step in measuring what will certainly be a changing landscape for food marketing to children. The CBBB initiative, as well as other industry programs, is expected to increase children's exposure to nutritional information and promotional messages about healthier foods and beverages. When conducting other similar studies (*e.g.*, the FTC's Cigarette Report), the Commission has discovered that it is often useful to repeat these studies over time. Thus, the Commission will likely perform a follow-up study to ascertain the future effect of these self-regulatory programs. The information from 2006 will provide an important baseline against which to measure progress in this area. OMB staff has suggested that the FTC should wait three years, then collect information from 2006 and 2009 in order to compare the two time periods. FTC staff believes that this approach would not be feasible, however, because much of the relevant 2006 data may no longer be available at that point, and the basis for meaningful comparison will be lost. Furthermore, the immediate benefits of the study, discussed above, would be delayed for three years. Instead, this initial information collection will provide helpful guidance to industry members as to how to keep records on marketing to children and adolescents so that any future information collection may be substantially less burdensome.

Public Support for the Study. The comments received by the Commission in response to two Federal Register notices²² demonstrated overwhelming support for the proposed study. In the final round of comments, after having an opportunity to review the proposed section 6(b) order, none of the commenting parties, including the Grocery Manufacturers Association/Food Products Association ("GMA/FPA"), voiced concern for the utility of the study or requested that it not be undertaken. In fact, GMA/FPA stated that its "members are committed to assisting the Commission in this effort and believes there will be substantial value for all concerned in the Commission's final report."²³ GMA/FPA also offered a few suggestions for refining the methodology which FTC staff took into consideration when drafting the amended proposed section 6(b) order, submitted to OMB on June 15, 2007.

The FTC also received supporting comments from a state government agency, a national professional organization, and numerous consumer advocacy groups. The California Department

²² See 71 Fed. Reg. 62109 (Oct. 23, 2006); 72 Fed. Reg. 19505 (Apr. 18, 2007).

²³ GMA/FPA Comment at 1 (May 18, 2007), *available at* www.ftc.gov/os/comments/foodmktgtokidspra-3/529477-00013.pdf.

of Health Services (“CDHS”) noted that the FTC’s report would make youth-focused food industry marketing practices transparent and guide CDHS’s own program planning, intervention and evaluation, and counter-advertising. The American Medical Association (“AMA”) concluded that the collection of comprehensive data would allow the FTC to provide an essential external review of the adequacy and efficacy of self-regulatory initiatives. Organizations including Consumers Union and Center for Science in the Public Interest similarly noted that the information collected will provide a vital benchmark for evaluating the self-regulatory model in the future, and remarked that information on the types of food, media used, and amount spent by companies to market foods to children has not been publicly available. Many parties²⁴ supported the collection of information on unmeasured, as well as measured, media activities, noting that such information would provide the FTC with a full picture of the techniques being used to market food to children and enable the FTC to track whether self-regulatory programs were being fully implemented across all media.

FTC staff has carefully crafted its information requests so as to collect information that may be used in a reasonable, practicable, workable, and reliable way. The FTC’s amended proposed section 6(b) order submitted on June 15 fully addresses concerns raised by commenting parties, including GMA/FPA, regarding the structure of the FTC’s initial proposed order, submitted on April 18. For example, GMA/FPA questioned whether companies would be able to determine the audience composition for many unmeasured media categories (such as the percentage of audience members at a public event that were children or adolescents), and whether this would prevent the companies from being able to determine if activities were targeted to children or adolescents under the FTC’s criteria.²⁵ In such cases, GMA/FPA was concerned the companies might be forced to answer “unknown” or “not available” in response to the FTC’s specifications.

The FTC’s amended proposed order includes significant revisions to the advertising and promotional category definitions, as well as the criteria for each category for determining whether a particular activity was targeted to children or adolescents. Staff enhanced the objectivity of all targeting criteria and clarified the particular targeting criteria that the companies should apply in each measured and unmeasured media category. By doing so, staff ensured that the nature of the various companies’ responses would be uniform. Staff believes it should now receive few, if any, “unknown” responses to its requests for unmeasured media information. For example, the criteria for determining whether a public event was “targeted” to children or

²⁴ Parties who supported the collection of information on unmeasured media expenditures and activities included: CDHS; the AMA; Consumers Union; the Public Health Institute; the Children’s Media Policy Coalition of the Georgetown University Law Center Institute for Public Representation; Campaign for a Commercial-Free Childhood; Center for Digital Democracy; the Rudd Center for Food Policy and Obesity; and an individual consumer (a nutrition educator).

²⁵ GMA/FPA Comment at 12-13 (May 18, 2007).

adolescents now include audience share data only to the extent the company is already in possession of such data; if the company lacks audience share data it will make a determination based on other enumerated, objective factors. FTC staff expects that for many unmeasured media activities, such as public events, companies will determine whether the activity was targeted to children or adolescents by reviewing their marketing plans.

In conclusion, Congress, the public, and the Commission believe this study will yield useful information not available elsewhere to inform the public policy debate over food marketing directed to children and adolescents. The FTC believes it will collect accurate and reliable information in response to the section 6(b) orders, and in a timely fashion will be able to put the information to a number of practical uses in support of the FTC's functions.