

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

The Federal Trade Commission (“FTC” or “Commission”) proposes to conduct an analysis of food and beverage industry marketing to children and adolescents. This analysis will examine advertising and promotional techniques and expenditures by industry members that target the marketing of certain food and beverage products to this population. The Commission will seek the information necessary to prepare this analysis through compulsory process under Section 6(b) of the FTC Act, 15 U.S.C. § 46(b).

1. & 2. Necessity for Information Collection and How the Data Will Be Used

The Commission is undertaking this analysis in response to a congressional request. The Conference Report¹ for the Commission’s FY 2006 appropriation legislation² incorporated by reference language from the Senate Report directing the FTC to submit a report to the Committee regarding:

marketing activities and expenditures of the food industry targeted toward children and adolescents. The report should include an analysis of commercial advertising time on television, radio, and in print media; in-store marketing; direct payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games.³

The FTC proposes to send information requests to forty-four (44) food and beverage manufacturers, distributors, and marketers and quick service restaurant companies in the United States. The companies that will receive these information requests are those marketing and selling the categories of food and beverage products that appear to be advertised to children and adolescents most frequently. The information requests will seek data and information regarding, among other things: (a) the types of foods marketed to children and adolescents; (b) the types of measured⁴ and unmeasured⁵ media techniques used to market food products to children and

¹ H.R. Rep. No. 109-272 (2005).

² Pub. L. No. 109-108.

³ S. Rep. No. 109-88 (2005) at 108.

⁴ “Measured media” include methods such as television, radio, print (magazine and newspaper), and some forms of Internet advertising.

⁵ “Unmeasured media” include methods such as in-store marketing (including shelf placement), events, package promotions, and product placement in entertainment media

adolescents; (c) the amount spent to communicate marketing messages about food products to children and adolescents in measured and unmeasured media; (d) the nature of the marketing activities in unmeasured media used to market food products to children and adolescents; and (e) any marketing policies, initiatives, or research in effect or undertaken by the companies relating to the marketing of food and beverage products to children and adolescents.

The proposed Section 6(b) Orders will seek information about the categories of food products, the specific brands, and the sub-brands or brand variants that the companies market to children and adolescents. The Orders will specify eleven (11) food categories for which companies will have to report marketing expenditures and activities, and will list the corresponding Product Category Codes from Nielsen Media Research.⁶ In some cases, the FTC's food categories will be more limited than Nielsen's Product Category Codes, and the agency will make this clear in the Orders. The proposed Section 6(b) Orders will also request information on whether the companies offer a line of food products bearing a nutritional icon, seal, or symbol, or otherwise identified as "better for you," healthier, more nutritious, lower calorie, or lower fat than other products, and will seek information on how those product lines are marketed to children and adolescents. This information will help the agency evaluate the variety of foods and beverages that is marketed to children and adolescents.

The proposed Section 6(b) Orders will require the companies to provide their marketing activities and expenditures during the calendar year 2006 in a number of measured and unmeasured media categories. Specifically, the Orders require that data on expenditures and activities be broken down into 20 media categories.⁷ The proposed Section 6(b) Orders will require industry members to report expenditures in each of the measured and unmeasured media

(including television shows, movies, video games, and music recordings).

⁶ The specific categories for which the FTC will request data are: breakfast cereals; snack foods; candy; dairy products, including milk and yogurt; baked goods; carbonated beverages; fruit juice and non-carbonated beverages; prepared foods and meals; frozen and chilled desserts; and quick service restaurant items. FTC staff has identified these as the categories of food and beverage products that appear to be advertised to children and adolescents most frequently. In addition, the FTC proposes to collect information from major marketers of fruits and vegetables to ensure that data are gathered regarding efforts to promote consumption of these foods among children and adolescents.

⁷ These are: television advertising; radio advertising; print advertising; movie theater/video/video game advertising; company-sponsored Internet sites; other Internet advertising; other digital advertising; in-store advertising and promotions; specialty item or premium distribution; public entertainment events; product placements; character licensing and cross-promotions; sponsorship of sports teams or individual athletes; packaging and labeling; word-of-mouth marketing; viral marketing; celebrity endorsements; in-school marketing; advertising in conjunction with philanthropic endeavors; and other expenditures.

categories by food category, by brand (or variety for non-branded products), and, where such advertising exists, by sub-brand or brand variant, and to identify expenditures for products that are part of a nutritional product line. Expenditures will be reported separately for marketing activities directed to children ages 2-11 and for those directed to adolescents ages 12-17. This information will allow the agency to analyze how industry members allocate their promotional expenditures among particular food and beverage products and particular media for each age group.

Thus, the proposed Section 6(b) Orders seek comprehensive information about activities and expenditures to promote food and beverages to children and adolescents. This information will allow the agency to analyze how industry members allocate their promotional activities and expenditures among various measured and unmeasured media types for different food products. The categories are carefully defined to facilitate compliance with the requests, as are the criteria for determining whether particular marketing activities and expenditures must be included in the responses.

Total marketing expenditures for each food category, brand, and sub-brand or brand variant will also be reported to permit the agency to analyze the percentage of marketing expenditures for any product or in any media category that is directed to children or adolescents. Similarly, the proposed Orders will ask the companies to identify any marketing expenditures that are directed to individuals of a specific race, ethnicity, or gender.

The information presented in the report will not reveal company-specific data, except data that are public. See 15 U.S.C. § 57b-2(d)(1)(B). The Commission anticipates providing information on an anonymous or aggregated basis, in a manner sufficient to protect individual companies' confidential information, to provide a factual summary of food industry marketing activities and expenditures targeted to children and adolescents. To the Commission's knowledge, most of the information to be included in this report is not publicly available from other sources.

3. Information Technology

Improved information technology may assist in gathering and producing this information. Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504, the FTC will request the submission of information through electronic means. Electronic submissions of the expenditure data are needed to enable FTC staff to aggregate and analyze the data using database software. In addition, the FTC is requesting the submission of two paper copies. These will facilitate the reading of the individual submissions by the FTC staff and will ensure that analysis will not be delayed by potential problems in the printing and copying of electronic submissions.

4. Efforts to Identify Duplication

There is no reliable information available elsewhere that can be used to prepare this report to Congress. Efforts to identify duplicate sources of information included a review of trade journals, government publications, and other published sources.⁸

5. Efforts to Minimize the Burden on Small Organizations

The requests to the 44 food and beverage industry members (including 39 producers, distributors, and/or marketers and 5 restaurant chains) will not have a significant impact on a substantial number of small entities. Wherever possible, the FTC has attempted to minimize the time commitment necessary to respond to the information requests. The FTC will consider proposals for use of information technology that may reduce the burden.

6. Consequences to Federal Program and Policy Activities/Obstacles to Reducing Burden

If the information is not collected, the FTC will not have the data necessary to prepare the report requested by Congress. The burden of the information collection has been reduced as much as possible.

7. Circumstances Requiring Collection Inconsistent with Guidelines

The information requests are consistent with all the applicable guidelines contained in 5 U.S.C. § 1320.5(d)(2).

⁸ Last year, the Institute of Medicine, Committee on Food Marketing and the Diets of Children and Youth, prepared a report titled “Food Marketing to Children and Youth: Threat or Opportunity?” The Committee relied upon published sources and publicly available industry and commercial marketing research. It noted in its report, however, at p. 1-14, the difficulty of obtaining and using the relevant data:

The Committee faced several notable challenges to acquiring and using this commercial marketing research. Businesses are increasingly using integrated marketing strategies to ensure that young consumers are exposed to messages that will stimulate demand, build brand loyalty, and encourage potential or existing customers to purchase new products. . . . Many of these strategies are new, and are not well researched or evaluated. Additionally, a large proportion of this research is conducted for paying clients and is therefore considered to be proprietary information that is not publicly accessible or available only for purchase at considerable cost to the committee and with prohibitive constraints on public availability of the data.

8. Public Comments/Consultation Outside the Agency and Actions Taken

As required by 5 C.F.R. 1320.8(d), the Commission published a notice seeking public comment on the proposed collections of information, see 71 Fed. Reg. 62109 (Oct. 23, 2006), and is doing so again contemporaneously with this submission.

In response to the October 23rd Federal Register Notice, the FTC received 27 comments.⁹ Sixteen of the comments were filed by one organization, and did not specifically address the proposed data collection.¹⁰ Eight of the comments expressly favored the proposed data collection. These were submitted by: (1) the Public Health Institute (PHI) and, separately, the Public Health Law Program (PHLP) of the PHI; (2) members of the Children's Media Policy Coalition of the Georgetown University Law Center Institute for Public Representation (CMPC members);¹¹ (3) Consumers Union; (4) the California Department of Health Services (CDHS); and (5) three individual consumers, including one nutrition educator. The remaining three comments did not oppose the data collection but made suggestions for enhancing the quality, utility, and clarity of the information to be collected and for reducing the burden on the companies. These came from the Mercatus Center at George Mason University, food and beverage industry member Burger King Corporation (BKC), and the Grocery Manufacturers Association and Food Products Association (GMA/FPA).

a. General Support for the Data Collection

The Consumers Union comment stated that the proposed information collection is essential to the FTC fulfilling its consumer protection mandate and to enabling the FTC to provide key information for Congress and to meet the recommendation of the Institute of Medicine of the National Academies (IOM) to report on the status of food and beverage marketing to children. Consumers Union further noted that the information collection could provide a basis for sound policy-making in the area of food and beverage marketing to children and adolescents. The CDHS comment stated that the FTC's report, which will be based on information collected in response to the proposed Section 6(b) Orders, will guide the CDHS's

⁹ The comments are available at <http://www.ftc.gov/os/comments/foodmktgtokids-pra/index.htm>.

¹⁰ The sixteen comments were filed by the Loyola of Los Angeles Law Review and consisted of sixteen articles published in the Law Review in conjunction with a symposium held at Loyola Law School on October 21, 2005 on "Food Marketing to Children and the Law." See Comments by Loyola of Los Angeles Law Review (Nov. 16, 2006).

¹¹ Specifically, a comment was submitted by the following members of the Children's Media Policy Coalition: Action Coalition for Media Education, Benton Foundation, Children Now, National PTA, and the Office of Communication of the United Church of Christ, Inc.

own program planning, intervention and evaluation, and counter-advertising. CDHS stated that the report would also level the playing field among industry competitors by requiring all companies to disclose their marketing practices and, if necessary, would guide the development of state or federal regulatory and enforcement actions for food marketing to children.

One individual consumer commented that the information collection process is essential to making any determinations about what government action may be needed in the area of food and beverage marketing to children.¹² Another consumer similarly stated that the proposed Section 6(b) Orders are necessary for the government to take appropriate action in the debate regarding food marketing to children.¹³

b. Utility of the Information Collection

In its October 23 Notice, the FTC stated that it would seek relevant information, including empirical data, on the nature and extent of marketing activities and expenditures targeted to children and adolescents. The FTC invited comments on whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility. The Mercatus Center commented that, given the recent action by the Children's Advertising Review Unit (CARU) to update its self-regulatory guidelines as well as the Better Business Bureau's (BBB) Children's Food and Beverage Advertising Initiative entered into by eleven major marketers of food and beverage products to children, the data requested in the proposed Section 6(b) Orders may be outdated. The Mercatus Center suggested that the FTC request copies of new marketing plans that would reflect any changes resulting from the recent CARU and BBB initiatives. The FTC agrees that any new corporate policies and initiatives will enable the agency to report on any planned changes in the food and beverage industry's practices in marketing to children, and will request copies of such policies and initiatives in the proposed Section 6(b) Orders. However, information on recent expenditures and activities will allow the agency to present a complete and relatively current picture of marketing expenditures and activities targeted to children as well as adolescents – which are not covered by the CARU and BBB initiatives, and will serve as a benchmark for any future measurements of food and beverage marketing to children and adolescents. As a result, the proposed information requests will also seek these data.

Consumers Union strongly supported the FTC's proposal to request information on advertising expenditures and activities in both measured and unmeasured media. Consumers Union noted that use of unmeasured media is on the rise and that collection of these data will allow the FTC to provide a full picture of the marketing of food products to children and adolescents. The CDHS comment stated that the proposed information collection is necessary to determine the degree to which self-regulatory programs and other voluntary marketing

¹² See Comment by Fred Cantor (Nov. 30, 2006).

¹³ See Comment by Sheila Fleischhacker (Dec. 27, 2006).

restrictions are being implemented.

The GMA/FPA stated that the need for data is limited when compared to the cost of obtaining and compiling it, and noted that food and beverage television advertising to children has substantially decreased over the last thirty years and is not likely a factor that contributes to increasing childhood obesity levels. BKC suggested that the FTC limit the scope and substance of the information requests and the report to focus on empirical data relating to advertising expenditures and practices. BKC noted that Congress has not asked the agency to study the link between advertising and obesity. The proposed Section 6(b) Orders and the FTC's forthcoming report will address marketing activities and expenditures by the food and beverage industry that are targeted to children and adolescents; the Orders and report will not attempt to analyze any purported causal connection between advertising and obesity, as this subject is outside the scope of the report Congress requested. However, Congress expressly requested that the report address expenditures and activities in both measured and unmeasured media categories, and the FTC requires empirical data from industry members to do so.

c. Accuracy of Estimated Burden of the Information Collection

In the October 23 Notice, the FTC invited comments on the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used. The GMA/FPA stated that, while the aggregate costs of complying with the proposed data requests are difficult to predict, the FTC's estimate is likely too low, and some companies may not track marketing expenditures and activities in the categories and the format the agency will request. The GMA/FPA stated that the cost of hiring financial and legal assistants to prepare a response could alone equal \$25,000 for smaller companies and \$50,000 for larger companies. The GMA/FPA suggested that the burden on companies is likely to correlate more closely to the number of brands a company markets, than the number of food categories in which it markets products.

The FTC cannot, however, determine in advance the number of brands for which each company will be required to provide data; this will depend on how the companies market their brands. Nor is it likely that each company will engage in an equal level of marketing for all brands. The FTC believes its ranges for estimated costs, which are separated into single-category and multiple-category company ranges, are sufficiently wide to account for differences in the number of individual brands the companies market in each category and in the amount of marketing the companies engage in for each brand.

d. Suggestions for Improvements to Proposed Information Collection

The FTC invited comments in its October 23 Notice on ways to enhance the quality, utility, and clarity of the information to be collected. Many of the comments the FTC received offered suggestions for enhancing the FTC's proposed collection of marketing data.

The PHI comments encouraged the collection of in-school marketing data, data on pricing strategies and consumer food purchases, and expenditures devoted to market research. PHI also recommended that the FTC seek information on the companies' product portfolios and on any marketing resources devoted to developing, packaging, and promoting products that contribute to a healthy lifestyle. The Mercatus Center suggested that the FTC research and report on the new self-regulatory initiatives being undertaken by food and beverage industry members, including the revised CARU guidelines and the Children's Food and Beverage Advertising Initiative, as well as company-specific initiatives. Consumers Union urged the FTC to seek information on school-related marketing activities, request brand-specific information from companies, and collect marketing data broken down by race and ethnicity.

The CMPC members requested that the FTC include major child-oriented media companies in the information requests, in order to determine the percentage of advertising run in their media that is directed to children and promotes food and beverage products or companies, the reach of such advertising, and the revenue from such advertising. The CMPC members also urged the FTC to seek information on all major and emerging types of food marketing directed at children and teens, including in-school marketing activities, character licensing, celebrity endorsements, Internet, cell phone and other technological advertising, and viral and word-of-mouth marketing. The CMPC members further requested that the FTC require companies to provide information about any market research involving children, advertising exposure data, and demographic data for target audiences.

The GMA/FPA comments recommended that the FTC's information requests specify categories and terminology used in the ordinary course of business by manufacturers and advertisers, such as the Product Category Codes used by Nielsen Media Research. GMA/FPA also asked that the FTC not request data on in-store marketing activities, event marketing, character licensing, product packaging, or product placement, on the grounds that these types of marketing are not likely to be targeted to children and adolescents, and because expenditures and activities in these categories would be difficult to ascertain. GMA/FPA further requested that FTC limit the information requests to a discrete time period, such as a single fiscal year.

BKC recommended that the FTC send information requests regarding: the types of food and beverage products marketed to children (defined as "consumers under the age of 13"); the amount of commercial time dedicated to advertising to children on television and radio; the types of print media, in-store marketing, events, packaging promotions, Internet activities, and product placements used to advertise to children; and the expenditures for television, radio, and print media advertisements directed to children. The PHLP urged the FTC to make its reporting requirements similar to those used in the FTC's tobacco industry information requests.

The CDHS encouraged the FTC to seek information on: all of the categories of data listed in the Senate Report; trends for unmeasured media promotion, such as product placement, character licensing, special events, in-school activities, advergames, and promotions using music, cell phones, and sport and entertainment venues; price promotions and price points; and

promotional and educational strategies directed toward particular population segments based on income-level, race/ethnicity, or age. CDHS also recommended that the FTC collect data by specific name brands, including the nutrition or caloric level of the food being advertised for comparison purposes, and that the FTC request the marketing portfolios for healthy foods as compared to all foods marketed by the companies. Finally, CDHS suggested that the FTC collect any qualitative research data studying children and youth, as well as scanner or other sales data for food and beverage products marketed to children, including cross-promotions.

One individual consumer asked that the Commission request data on celebrity endorsements, sweepstakes, product placements, and peer-to-peer advertising, as well as data showing the placement times for television advertisements directed to children.¹⁴ Another consumer recommended that the FTC seek information on audience thresholds companies use to target particular age groups, and to request any market research the companies may have undertaken for particular advertising campaigns directed to children.¹⁵ A third consumer suggested that the FTC seek information on: the demographic data industry uses to target marketing to particular ethnic or age groups; product profiles, to enable the FTC to analyze the amount expended on the marketing of items of greater or lower nutritional value; the expertise of any nutrition or health professionals who work or consult on marketing activities and the expenditures related to the hiring of such professionals; quantitative and qualitative assessments of marketing practices that emphasize physical activity in comparison to dietary choices; criteria for any nutritional icons used; and money spent on lobbying Congress on the issue of food marketing to children.¹⁶

Many of the proposals for improving the data collection are incorporated into the proposed Section 6(b) Orders. The proposed Orders will require the companies to provide samples of (or to describe, if providing samples is not practicable) the specific advertising and promotional activities undertaken in each of the unmeasured media categories (including all Internet advertising) for which qualifying expenditures are reported or for which there are qualifying activities for which no expenditures are reported. Whereas marketing activities in television, radio, and print media are relatively uniform, research by FTC staff indicates that industry members employ a wide variety of marketing techniques in unmeasured media to promote food and beverage products to children and adolescents. In addition, some activities, such as product placements and viral and word-of-mouth marketing activities, may occur as cross-promotions or in another context in which no actual costs are incurred. By collecting samples and descriptions of these activities from industry members, the agency will be able to provide Congress and the public with a complete picture of the types of marketing techniques the industry is using to reach children and adolescents.

¹⁴ See Comment by Jill Pakulski (Oct. 30, 2006).

¹⁵ See Comment by Fred Cantor (Nov. 30, 2006).

¹⁶ See Comment by Sheila Fleischhacker (Dec. 27, 2006).

The proposed Section 6(b) Orders also will seek information about any company policies pertaining to the marketing of food and beverage products to children and adolescents, including any policies or programs undertaken or implemented by the companies to improve the nutritional profiles of the foods they market to children or to encourage healthy eating and lifestyle choices by children and adolescents. In addition, the Orders will request copies of any market research sponsored or undertaken by the companies to measure the appeal of certain food products or marketing activities to children and adolescents.

Thus, the companies will be able to show any changes in their future marketing plans and policies that might not be reflected in their reports of past marketing expenditures and activities. The information will also allow the agency's report to address any anticipated changes in the marketing of food and beverage products to children and adolescents, and will permit the agency to evaluate whether companies have implemented any of the recommendations contained in the April 2006 Report on a Joint Workshop of the Federal Trade Commission and the Department of Health and Human Services.¹⁷ Information on market research sponsored or undertaken by the companies will enable the agency to evaluate the companies' process for selecting food products or marketing techniques to reach children and adolescents.

The FTC has concluded that in order to produce a report that is both comprehensive and of manageable scope, the proposed Section 6(b) Orders should focus primarily on the issues outlined in the Senate Report. The Commission has structured the proposed Orders so as to achieve those twin goals.

e. Suggestions for Minimizing the Burden of the Information Collection

In the October 23 Notice, the FTC invited comments on ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In response, the Mercatus Center stated that information on advertising in measured media is collected by various market research companies, and that it might be less costly to compel production of this information from such companies. However, the FTC seeks information on expenditures and activities in both measured and unmeasured media categories, and industry members are in the best position to provide responsive data. The data gathered by market research companies is too limited to provide an adequate substitute. The Mercatus Center commented that market research companies may be in a better position to provide information on

¹⁷ See Federal Trade Commission & Department of Health and Human Services, Perspectives on Marketing, Self-Regulation, & Childhood Obesity: A Report on a Joint Workshop of the Federal Trade Commission & the Department of Health and Human Services 48-54 (Apr. 2006) (Joint Workshop Report), available at <http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>.

advertising time and exposure, but the proposed Section 6(b) Orders do not ask companies to provide this information.

The FTC's proposed Section 6(b) Orders seek information on expenditures and activities in both measured and unmeasured media categories. The GMA/FPA stated that the FTC should seek data only on measured media expenditures and activities in order to minimize the burden on industry members. Although GMA/FPA states that measured media activities account for the majority of marketing expenditures targeted to children and adolescents, other commenting parties made conflicting observations,¹⁸ and the FTC staff's research found that industry members are currently engaged in a wide variety of unmeasured media activities to promote food and beverage products to children and adolescents. Moreover, Congress expressly requested that the report address expenditures and activities in both measured and unmeasured media categories, and a substantial number of the media categories for which information is sought in the proposed Section 6(b) Orders are taken directly from the Senate Report.

GMA/FPA further requested that, if information is sought on unmeasured media, the FTC should ask for best estimates of aggregated expenditures (rounded to the nearest multiple of \$10 or \$50 million), along with illustrations of the activities. The FTC will seek illustrations of unmeasured media activities in the proposed information requests. However, limiting reporting of expenditures to multiples of \$10 or \$50 million would not provide a sufficiently accurate or complete picture of the amount of unmeasured media activity in which the companies are engaged. Many Internet-based promotions, for example, are likely to cost the companies relatively little money and would not be captured if the reporting limit were set that high. The FTC proposes seeking data on expenditures rounded to the nearest \$1,000.

The GMA/FPA also asked that the FTC provide a clear definition for marketing directed to children and adolescents. The proposed Section 6(b) Orders provide a detailed list of criteria for marketing expenditures and activities that companies must report. The FTC will examine reported data and determine which expenditures and activities are targeted to children and adolescents, and will report on these in the aggregate.

BKC commented that the information requests should be limited to marketing undertaken by companies at the centralized, corporate level, and should not include marketing that occurs at the regional, local, or individual franchise level. The FTC believes that limiting the requests in this fashion could result in the omission of valuable marketing data. If a company expends money on or approves activities in advertising or other promotional activities that are segmented by region, locality, or individual franchise, then the proposed Section 6(b) Orders would require the company to report these expenditures and activities; the company would not, however, be required to gather data not already in its possession on expenditures and activities independently undertaken by individual franchises.

¹⁸ See, e.g., Comments by Consumers Union (Dec. 18, 2006), at 2.

The CDHS recommended that data be collected online and that, whenever possible, the FTC should use existing industry information consistent with conventional commercial measures. The CDHS stated that any costs to industry members in responding to the information requests were fair and reasonable given that the IOM recently reported that the food, beverage, and restaurant industries have approximately \$900 billion in annual sales and spend more than \$10 billion per year in marketing their products to children and youth. CDHS also pointed to the cost to the public and the U.S. health care system due to the consequences of physical inactivity, obesity, and overweight, which were approximately \$28 billion in California alone in 2005. Again, the proposed Section 6(b) Orders will seek information consistent with commercially measured media, but will also seek information on non-commercially measured media expenditures and activities, as requested by Congress.

f. Other Requests Contained in Comments

The CDHS requested that information collected from the companies be made public and that data collection continue following the publishing of the FTC's report. The Mercatus Center also requested that the FTC create a publicly available database of any of the information collected that is not confidential or does not constitute trade secrets, so that other researchers could replicate the FTC's findings. The agency anticipates, however, that much of the information collected will be protected by law from public disclosure,¹⁹ and anticipates reporting on marketing expenditures and activities in the aggregate.

One consumer asked the FTC to provide information on the selection process criteria for the targeted companies.²⁰ These criteria will be outlined in the FTC's final report. The PHLP requested that the FTC make reporting an ongoing requirement for food and beverage industry members. The FTC plans to complete the current report before considering proposals for future research. The agency is committed to ongoing monitoring of this subject area, however, and anticipates that it will continue to address issues raised by food marketing to children.

The Mercatus Center's comment suggested that the FTC evaluate a number of additional issues: the extent to which children and adolescents are exposed to and process advertisements targeted toward them; other factors that might cause a rise in obesity, such as physical inactivity and sedentary activities; and the possible beneficial aspects of advertising, such as educational effects. These issues, however, are beyond the scope of the report requested by Congress, and the FTC will not address them in the current report. The goal of the proposed information

¹⁹ Section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act. 5 U.S.C. 552(b)(4).

²⁰ See Comment by Sheila Fleischhacker (Dec. 27, 2006).

collection is to conduct a comprehensive review of food industry marketing activities and expenditures targeted to children and adolescents. The FTC expects that focusing its efforts in this manner will facilitate production of a high quality study that thoroughly responds to Congress's request.

9. Payments and Gifts to Respondents

There is no provision for payments or gifts to respondents.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

In connection with the information requests, the Commission will receive information of a confidential nature. Under Section 6(f) of the FTC Act, such information will be protected from disclosure while it remains confidential commercial information. 15 U.S.C. 46(f). In order to protect the confidential financial information it receives, the Commission will aggregate the information before incorporating it into the report to Congress.

12. Estimated Annual Hours and Labor Cost Burden

Annual Hours Burden: 6,000 hours (rounded to the nearest thousand)

Annual Cost Burden: \$1,568,000 (rounded to the nearest thousand)

FTC staff's estimate of the hours burden is based on the time required to respond to each information request. The Commission intends to issue the information requests to 44 parent companies of food and beverage and quick service restaurant advertisers. Because these companies vary in size, in the number of products they market to children and adolescents, and in the extent and variety of their marketing and advertising, the FTC staff has provided a range of the estimated hours burden.

Based upon its knowledge of the industries, the staff estimates, on average, that the time required to gather, organize, format, and produce such responses will range between 80-120 hours per information request for companies that market a single category of product to children and adolescents. The FTC staff estimates that companies that market multiple categories of products to children and adolescents would spend between 120-300 hours to respond to an information request. The total estimated burden per company is based on the following assumptions:

Identify, obtain, and organize product information, prepare response:	15-35 hours
Identify, obtain, and organize information on marketing expenditures, prepare response:	15-75 hours

Identify, obtain, and organize information on and samples of marketing activities, prepare response:	40-160 hours
Identify, obtain, and organize information regarding marketing policies and research, prepare response:	10-30 hours
Total	80-300 hours

The Commission intends to send 27 information requests to parent companies that market a single category of product to children and adolescents. As a result, staff estimates a total burden for these companies of approximately 2700 hours (27 companies x 100 average burden hours per company). The Commission intends to send 17 information requests to parent companies that market multiple categories of products to children and adolescents. As a result, staff estimates a total burden for these companies of approximately 3570 hours (17 companies x 210 average burden hours per company). Thus, the staff's estimate of the total burden is approximately 6270 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

It is difficult to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The FTC staff has assumed that professional personnel and outside legal counsel will handle most of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of \$250/hour for their labor. Thus, the staff estimates that the total labor costs for the information requests will be approximately \$1,567,500 ((\$250 x 2700 hours for companies that market a single category) + (\$250 x 3570 hours for companies that market multiple categories)).

13. Estimated Annual Capital or Other Non-Labor Costs

FTC staff estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

14. Estimate of Cost to the Federal Government

The FTC staff estimates that the cost to the FTC Bureau of Consumer Protection of collecting this information is approximately \$1,071,625. This estimate reflects approximately one para-legal and six attorney work years, inclusive of benefits, devoted to collecting, processing, and analyzing the requested information, together with contract and travel money.

15. Program Changes or Adjustments

Not applicable. This is a new collection of information.

16. Plans for Tabulation and Publication of Information

The information provided by the respondents will be used to prepare a report that will be publicly released. The collection of the information will begin after the completion of the OMB review process. The estimated date for the completion of the report is March 2008.

17. & 18. Failure to Display the OMB Expiration Date/Exceptions to Certifications

Not applicable.