

Supporting Statement
FTC Cigarette and Smokeless Tobacco Data Collection
OMB Control # 3084-0134

(1) Necessity for Information Collection

Beginning in 1967, the Federal Trade Commission (“FTC” or “Commission”) 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 Commission submitted biennially to Congress reports on smokeless tobacco pursuant to the Comprehensive Smokeless Tobacco Health Education Act. 15 U.S.C. §§ 4401-4408. The sales and marketing data contained in the cigarette and smokeless tobacco reports were based on data submitted to the Commission pursuant to compulsory process by the largest cigarette and smokeless tobacco manufacturers in the United States.

The Federal Reports Elimination and Sunset Act of 1995¹ terminated the statutory mandates for the cigarette and smokeless tobacco reports, and allowed the agency to assess for itself the need for continued issuance of these reports. Accordingly, the Commission sought public comment on whether continuing to issue reports on the cigarette and smokeless tobacco industries was in the public interest and what forms any such reports should take.² The Commission received numerous comments from public health and tobacco control advocates who cited the importance and utility of the Commission’s reports. Since then, the Commission has continued to issue cigarette and smokeless tobacco reports.

The Commission subsequently decided to address its information requests to the ultimate parent of each of the leading cigarette and smokeless tobacco manufacturers in order to ensure that no relevant data from affiliated companies went unreported. This change increased the number of separately incorporated entities affected by the Commission’s requests, thereby bringing the requests within the scope of the Paperwork Reduction Act (“PRA”). Accordingly, in 2005, the Commission requested PRA clearance for information sought through compulsory process orders to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers in order to obtain from them information including, among other things, their sales and marketing expenditures. The Commission received that clearance in January 2006, and it is valid through January 31, 2009.

(2) Use of the Information

The information collected will be reviewed by the Commission, aggregated, and used to publish periodic reports on cigarette and smokeless tobacco sales and marketing. To the FTC’s knowledge, the information published in these reports is unavailable from any other source.

The information requests the Commission intends to issue will seek data regarding, *inter*

¹ Pub. L. No. 104-66, Section 3003(a)(1), 109 Stat. 734.

² 66 Fed. Reg. 18,640 (April 10, 2001).

alia: (1) the tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the specific amounts spent in each of several specified expenditure categories; (3) whether industry members are involved in the appearance of their tobacco products in television shows or movies; (4) how much industry members spend on advertising intended to reduce youth tobacco usage; (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 industry members possess such data. The information will be sought using compulsory process under Section 6(b) of the FTC Act, 15 U.S.C. § 46(b).

(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 note, the FTC will allow the submission of information through electronic or automated collection techniques. In addition, database software also will be used to compile information and thereby facilitate review and analysis by FTC staff.

(4) Efforts to Identify Duplication

There is no reliable information available elsewhere that can be used for these purposes.

(5) Efforts to Minimize the Burden on Small Organizations

The requests to the six largest cigarette and the five largest smokeless tobacco manufacturers will not have a significant impact on a substantial number of small entities. Wherever possible, the FTC will attempt 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 burden.

(6) Consequences of Not Conducting the Collection or Conducting Less Frequently

If the information is not collected, the FTC will not have the data necessary to prepare the reports. The burden of the information collection has been reduced as much as possible, and the information is collected no more frequently than once per year.

(7) Circumstances Requiring Collection Inconsistent with Guidelines

The reporting requirements are consistent with all the applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

As required by 5 C.F.R. § 1320.8(d), the FTC published a notice seeking public comment on the proposed collections of information, see 73 Fed. Reg. 46,006. (Aug. 7, 2008), and is doing so again contemporaneously with this submission.

In response to the August 7, 2008 Federal Register Notice, the FTC received one comment: from Altria Client Services Inc., on behalf of Philip Morris USA Inc. (“PM USA”). The comment stated that PM USA believes the FTC’s authority to collect the proposed information “should be extended given the important role that the FTC has played and should continue to play relative to these products.” The comment then referenced a separate Commission matter, noting that if the FTC were to rescind its guidance that factual statements of cigarette tar and nicotine yields based on the Cambridge Filter Method generally do not violate the FTC Act,³ PM USA would question the Commission’s need to continue collecting such information.

The matter referred to by PM USA is still being considered by the Commission. If the 1966 guidance is rescinded, the Commission will decide whether to continue collecting tar, nicotine, and carbon monoxide yield data to the extent the companies possess them.

(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, 15 U.S.C. § 46(f), such information will be protected from disclosure while it remains confidential commercial information.

(12) Estimated Annual Hours and Labor Cost Burden

The FTC staff’s estimate of the hours burden is based on the time required to respond to each information request. Although the FTC currently anticipates sending information requests to the six largest cigarette companies and the five largest smokeless tobacco companies in 2009,⁴ the burden estimate is based on up to 15 information requests being issued per year to take into account any future changes in these industries. These companies vary greatly in size, in the number of products that they sell, and in the extent and variety of their advertising and

³ On July 14, 2008, the Commission published a Federal Register notice seeking comment on a proposal to rescind its guidance, issued in 1966, that it is generally not a violation of the FTC Act to make factual statements of the tar and nicotine yields of cigarettes when statements of such yields are supported by testing conducted pursuant to the Cambridge Filter Method. 73 Fed. Reg. 40,351.

⁴ In August 2008, the Commission issued information requests to six cigarette companies and five smokeless tobacco companies. The Commission anticipates that it will issue requests to the same number of companies in 2009.

promotion. Prior input received from the industries, combined with staff's knowledge of them, suggests that the time most companies would require to gather, organize, format, and produce their responses would range from 30 to 80 hours per information request for the smaller companies, to as much as hundreds of hours for the very largest companies. As an approximation, staff continues to assume a per company average of 180 hours for the ten largest recipients of the Commission's information request to comply with it; cumulatively, 1,800 hours per year.⁵ Staff further estimates that for the eleventh recipient of the information request to be issued in 2009 and the four possible additional recipients, all of which would be smaller companies than the initial ten recipients, the burden should not exceed 60 hours per company or 300 hours, cumulatively. Thus, the overall estimated burden for a maximum of 15 recipients of the information request is 2,100 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 not possible 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. Commission staff assumes that professional personnel will handle most of the tasks involved in gathering and producing responsive information, and have applied an average hourly wage of \$150/hour for their combined labor. Staff's best estimate for the total labor costs for up to 15 information requests is \$315,000.

(13) Estimated Annual Capital or Other Non-labor Costs

Staff believes that the capital or other non-labor costs associated with the information requests are 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

Staff estimates that the current year's cost to the FTC's Bureaus of Consumer Protection and Economics of collecting and analyzing this information is approximately \$22,000. This estimate is based on the assumption that about seven percent of an attorney work year is devoted to collecting and analyzing this information. The cost in attorney time will be \$11,000. In addition, approximately ten percent of an economic research analyst's work year and five percent of an economist's work year will be devoted to processing the data submitted. The cost of the economic support time will be approximately \$11,000.

⁵ 70 Fed. Reg. 24,415 (May 9, 2005); 70 Fed. Reg. 62,313 (Oct. 31, 2005).

(15) Changes in Burden

Not applicable.

(16) Statistical Use of Information/Publication of Results

The information provided by the respondents will be used to prepare annual reports 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 first reports is September 2009.

(17) & (18) Failure to Display the OMB Expiration Date/ Exceptions to Certification

Not applicable.