

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 FTC submitted biennially to Congress reports on smokeless tobacco pursuant to the Comprehensive Smokeless Tobacco Health Education Act. 15 U.S.C. §§ 4401-4408. The reports were based on data submitted by the largest U.S. cigarette and smokeless tobacco manufacturers.

The Federal Reports Elimination and Sunset Act of 1995¹ allowed the agency to decide whether to continue publishing these reports. In response to a request for public comment,² many public health and tobacco control advocates cited the importance and utility of the FTC’s reports,³ and the Commission has continued to issue them.

The Commission 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 increased the number of separately incorporated entities required to provide data, bringing the requirements within the scope of the Paperwork Reduction Act (“PRA”). The current OMB clearance under the PRA runs through January 31, 2012, which the Commission seeks to extend for three years.

(2) Use of the Information

The Commission will use the information collected to publish periodic reports on cigarette and smokeless tobacco sales and marketing. To the FTC’s knowledge, the information published in these reports is not available from any other source.

The information requests the Commission intends to issue will seek data regarding, *inter alia*: (1) the tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the 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 use; (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 under the authority of Section 6(b) of the FTC Act, 15 U.S.C. §

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

² 66 Fed. Reg. 18640 (April 10, 2001).

³ See <http://www.ftc.gov/os/comments/tobaccocomments2/index.shtm>.

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 five 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 76 Fed. Reg. 47187 (Aug. 4, 2011), and is doing so again contemporaneously with this submission. The Commission did not receive any comments in response to the August 4, 2011 Federal Register Notice.

(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. Individual company information will be anonymized and/or aggregated so that information about the industry cannot be broken down to disclose information about any submitter.

(12) Estimated Annual Hours and Labor Cost Burden

Although the Commission plans to seek information from the five largest cigarette companies and the five largest smokeless tobacco companies in 2012 and the ensuing two years of requested clearance,⁴ this burden estimate is based on the Commission issuing up to 15 information requests per year. This conservative estimate is designed to anticipate future changes in these markets that might warrant obtaining data from other industry members.

These cigarette and smokeless tobacco companies vary greatly in size, in the number of products that they sell, and in the extent and variety of their advertising and promotion. Prior input from the industries, paired with staff's knowledge of those industries, suggests that smaller companies would require from 30 to 80 hours to gather, organize, format, and produce their responses per information request, while the very largest companies might require as much as hundreds of hours. 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, or 5,400 hours over the three years that would be covered by the extension of OMB's clearance.⁵

Staff estimates that for the smaller companies -- the potential five added recipients -- burden should not exceed 60 hours per company or 300 hours, cumulatively, per year. Thus, overall estimated burden for a maximum of 15 recipients of the information request is 2,100 hours per year or 6,300 hours over three years. 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 precisely 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. The estimate assumes that personnel with technical training will handle most of the tasks involved in the data collection process, although legal personnel will likely be involved in preparing the actual submission to the Commission. Staff has applied an average hourly wage of \$100/hour for the combined labor classifications. Thus, estimated total labor costs for up to 15 information requests is \$210,000 per year, for \$630,000,

⁴ In August 2011, the Commission issued information requests to five cigarette companies and five smokeless tobacco companies. The Commission anticipates that it will issue requests to the same number of companies in 2012 and subsequent years.

⁵ 73 Fed. Reg. 46006 (Aug. 7, 2008); 73 Fed. Reg. 67174 (Nov. 13, 2008).

cumulatively, for a projected three-year clearance.

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

The capital or other non-labor costs associated with the information collection are minimal. Although industry members may have to preserve relevant business records to accommodate the Commission's information requirements, they already have the means in place to do so.

(14) Estimate of Cost to the Federal Government

Staff estimates that the total cost each year to the FTC's Bureaus of Consumer Protection and Economics of collecting and analyzing this information is approximately \$18,000. This is based on the assumption that about seven percent of an attorney work year is devoted to those tasks. The cost in attorney time will be approximately \$11,000. In addition, about five percent of an economist's work year, approximately \$7,000, will be devoted to processing the data submitted.

(15) Changes in Burden

Burden hour estimates and non-labor costs are unchanged from the preceding request for renewed clearance. Estimated labor costs associated with burden hours have been reduced, however, from \$150 to \$100 per hour to reflect staff's further experience with the submissions of companies in response to these information requests. Previously, staff assumed that "professional" personnel (e.g., legal, financial, marketing) would handle most of the information gathering and production. As noted above, FTC staff now assumes that these tasks will be done by a combination of legal and technical staff, but mostly the latter.

(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 August 2012.

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

Not applicable.