

**Supporting Statement for a Paperwork Reduction Act
Submission to OMB
FTC Study on Alcohol**

The Federal Trade Commission (“FTC” or “Commission”) proposes to conduct an analysis of alcohol industry self-regulatory code compliance. This analysis will look at sales of beverage alcohol, expenditures to advertise and promote alcohol, industry compliance with advertisement placement standards contained in self-regulatory codes, use of digital media and data collection, and use of lesser-known promotional methods. The Commission will seek this information through compulsory process under Section 6 of the FTC Act, 15 U.S.C. § 46 (hereinafter “proposed Section 6 Orders”).

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

In 1999, 2003, and 2008, the Commission conducted studies to evaluate alcohol industry self-regulation. In September 1999, the Commission issued a report to Congress, *Self-Regulation in the Alcohol Industry*,¹ which reported on information provided by eight key industry members in response to Section 6 Orders. The 1999 Report included Commission recommendations for measures to strengthen the industry’s advertising placement standard and compliance. The Commission’s second report, *Alcohol Marketing and Advertising*,² issued in September 2003, evaluated the industry’s response to these recommendations. The 2003 Report announced that the industry had adopted an improved standard for advertising placement, limiting ads to television shows, radio dayparts,³ and magazines with no more than 30% underage persons in the audience, such that the minimum adult audience composition is 70% (the “70% placement standard”). It also announced that some industry members had adopted external review of code compliance, as requested by the Commission in 1999. In June 2008, the Commission issued its third report, *Self-Regulation in the Alcohol Industry*,⁴ which reported on Section 6 Order responses provided by twelve major alcohol suppliers and also evaluated the industry’s response to the FTC’s prior recommendations. The report announced that the industry had been largely successful at meeting the 70% placement standard, and consequently, more than 85% of the audience for alcohol advertising placed by those twelve suppliers during the relevant period consisted of persons 21 and older. It also included Commission recommendations to facilitate better advertising placement management by the industry, extend the 70% placement standard to Internet advertising, and expand suppliers’ age-screening and verification processes to new, emerging digital media such as email and mobile marketing.

Since publication of the 2008 Report, the Commission staff has engaged in both formal and informal monitoring of alcohol self-regulatory efforts, but it has not conducted a

¹ Available at <http://www.ftc.gov/reports/alcohol/alcoholreport.htm>.

² Available at <http://www.ftc.gov/os/2003/09/alcohol08report.pdf>.

³ In radio and TV broadcasting, “daypart” is the standard practice of dividing the day into several parts, during each of which different type of programs and commercials (based on audience composition) are used.

⁴ Available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>.

comprehensive analysis of these practices. For example, between 2009 and 2010, the Commission issued 6(b) Orders to six mid-sized alcohol companies. Consumer advocacy organizations, state attorneys general, and others have urged the Commission to conduct an updated analysis of alcohol industry self-regulatory code compliance, including compliance with the 70% placement standard and efforts to protect youth from alcohol marketing in digital and social media. The Commission believes that it is appropriate to do so now. The proposed information requests will facilitate such a study.

The proposed information requests will seek, among other things, information regarding: (1) sales of beverage alcohol; (2) expenditures to advertise and promote beverage alcohol in measured and non-measured media; (3) compliance with the 70% placement standard contained in the industry's self-regulatory codes; (4) digital marketing practices and data collection, including efforts to avoid collection of data from youth under the legal drinking age of 21; and (5) descriptions of lesser-known media programs, such as point-of-sale advertising, product placements, and social responsibility programs.

The Commission will aggregate the information it receives before incorporating it into its prospective publication on alcohol industry self-regulation of advertising and marketing. Except for a limited portion of the product sales and advertising expenditure data, the information the report will share is not publicly available from other sources, to the agency's knowledge.

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 allow the submission of information through electronic or automated collection techniques. In addition, FTC staff will use database software to compile information and thereby facilitate their review and analysis.

4. Efforts to Identify Duplication/Availability of Similar Information

Specification 1 of the proposed information requests seeks information on sales by number of cases and dollar value, exclusive of taxes, for each brand sold by the 14 companies (the "target companies") that will receive an order. Although two sources (The Beverage Information Group and M. Shanken Company⁵), provide information on sales of the top beer, wine, and spirits brands, these sources do not provide information on many additional smaller brands that may be owned by the target companies. Specification 2 of the proposed information requests seeks data in 22 categories of promotional expenditures. Although Beverage Information Group and M. Shanken Company publish some information on television, radio, print, and magazine advertising expenditures, they do not provide information on the other categories identified in the specification. Further, in the past, it has been the FTC's experience

⁵ The Beverage Information Group, formerly known as Adams Business Media, is a division of M2MEDIA360, LLC. The Beverage Information Group's publications are the Beer Handbook, Liquor Handbook, and Wine Handbook, issued annually. Shanken's publications are The U.S. Wine Market: Impact Databank Review and Forecast, The U.S. Beer Market: Impact Databank Review and Forecast, and The U.S. Distilled Spirits Market: Impact Databank Review and Forecast, also issued annually.

that the data provided by the target companies has differed from the data provided by these two publishers, perhaps because the publisher information is based on assumptions regarding advertising purchase costs. The remainder of the information sought by the proposed information requests (including information on compliance with the placement standards, use of digital media and data collection, and use of lesser-known media programs to promote alcohol, requested in Specifications 3, 4, and 5, respectively) – is not, to the agency’s knowledge, available from any other source. Efforts to identify duplicate sources of information included a review of trade journals, government publications, and other published sources.

5. Efforts to Minimize the Burden on Small Organizations

The requests to the fourteen largest advertisers of beverage alcohol products 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 proposed Section 6 Orders. The FTC will consider proposals for use of information technology that may reduce 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 forthcoming report on alcohol industry self-regulatory efforts. The burden of the information collection has been reduced as much as possible.

7. Circumstances Requiring Collection Inconsistent with Guidelines

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

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

As required by 5 C.F.R. § 1320.8(d), the FTC published a notice seeking public comment on the proposed collections of information, 76 Fed. Reg. 10596 (Feb. 25, 2011) (“60-Day Notice”), and is doing so again contemporaneously with this submission.

The FTC received 71 comments in response to the 60-Day Notice. Of these, four comments favored and substantively addressed the proposed data collection. These comments were submitted by: (1) State Attorneys General representing 23 states and one territory⁶ (“State AG”); (2) the Center for Alcohol Marketing and Youth (“CAMY”); (3) the Center for Digital Democracy (“CDD”)⁷; and (4) University of Connecticut School of Medicine (“UConn Medical School”). One comment, submitted by The Marin Institute, offered substantive

⁶ The State AGs represented: Arizona, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Iowa, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wyoming.

⁷ CDD, Alcohol Marketing in the Digital Age (May 2010) (“CDD White Paper”). A private citizen also submitted the CDD White Paper as an attachment to her comment.

recommendations but also expressed concerns about self-regulation.⁸ Two additional comments offered limited recommendations regarding the proposed data collection.⁹ The remaining 64 comments did not substantively address the proposed data collection.¹⁰

A. General Support for the Data Collection

In its 60-Day Notice, the FTC sought comments regarding whether the proposed collection of information is necessary for the proper performance of the functions of the FTC.¹¹ The State AG and CAMY comments expressed strong support for the FTC's proposed data collection. Specifically, they stated that this information was essential to the FTC's performance of its regulatory duties and in the public interest.

B. Suggestions for Improvements to Proposed Information Collection

In its 60-Day Notice, the FTC invited comments regarding ways to enhance the quality, utility, and clarity of the information to be collected.¹² The FTC received substantive suggestions for enhancing its proposed collection of alcohol advertising data regarding the following specifications: (1) expenditure data; (2) advertising placement; and (3) digital marketing and data collection. The FTC also received several suggestions that did not fall within a particular specification.

i. Expenditure Data

In its 60-Day Notice, the FTC stated that it would seek company data regarding expenditures to advertise and promote beverage alcohol in measured and non-measured media. The State AG and CAMY comments exhorted the FTC to seek advertising and promotional expenditures from the alcohol industry on an "ongoing and regular basis," rather than intermittently. Both comments explained that the media landscape is changing daily. In order to understand how and where industry is advertising and to what extent the youth are exposed, the comments argued, the FTC should obtain this data from industry every two to three years, if not annually. The FTC will consider this recommendation in the course of developing its report.

ii. Advertising Placement Issues

Until very recently, the voluntary codes of the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute (collectively, "voluntary codes") each stated that

⁸ See further discussion about The Marin Institute comment at Section 8.B.iii, below.

⁹ These were submitted by a private citizen in Michigan (also referenced in note 6, above) and the Mesilla Valley DWI Resource Center in New Mexico. The recommendations in these comments are discussed in notes 13 and 15, below.

¹⁰ See discussion at Section 8.C., below.

¹¹ See 60-Day Notice, 76 Fed. Reg. 10596, 10597 (Feb. 25, 2011).

¹² See 60-Day Notice, *id.* at 10597.

alcohol advertising should be placed in television, radio, and print communications only where at least 70% of the audience is reasonably expected to be above the legal purchase age (the “70% placement standard”).¹³ In the 60-Day Notice, the FTC stated that it planned to seek data on advertising placement, including industry compliance with the 70% placement standard.

The State AG and CAMY comments encouraged the FTC to recommend that the voluntary codes increase their placement standard from 70% to 85%.¹⁴ Citing a 2004 recommendation by the Institute of Medicine’s Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, the State AG and CAMY comments argued that youth exposure to alcohol advertising on television has grown since 2004 at a rate faster than that of adults or young adults. The State AG and CAMY comments also highlighted as an example Beam Global Spirits & Wine Inc., an alcohol company that since 2007 has voluntarily, and gradually, increased its placement standard to 85% for its aggregate average by brand and by medium. The FTC will consider these recommendations in the course of developing its report.

The State AG and CAMY comments recommended that the FTC seek brand-specific placement data and provide a brand analysis in its upcoming report. The UConn Medical School comment also recommended that the FTC seek data in connection with specific ads or ad campaigns. The Commission’s compulsory process orders to alcohol companies will, as they have in the past, collect advertising placement data for each individual ad, for individual brands. In the course of reviewing these data, the staff will evaluate whether specific brands are more likely to have placement compliance problems. Nonetheless, because the Section 6(f) of the FTC Act protects confidential commercial information that is submitted to the agency, the FTC’s reports do not discuss advertising data on particular brands or companies.

iii. Digital Marketing and Data Collection

In its 60-Day Notice, the FTC stated that it would seek information from the alcohol industry about data collection efforts, including data collection in connection with digital and social media marketing, and efforts to avoid collection of data from youth under the legal drinking age of 21. The FTC received extensive and detailed recommendations regarding its proposed collection of digital marketing and data collection. These recommendations were provided by the CDD, the State AGs, CAMY, and The Marin Institute.

¹³ On May 26, 2011, the Beer Institute and the Distilled Spirits Council of the United States (“DISCUS”) each announced that they would increase their placement standard from 70% to 71.6% to reflect the recently-published results of the 2010 U.S. Census data, which showed that 71.6 percent of the U.S. population is 21 years of age and older. See Beer Institute press release, “Beer Institute Revises Advertising Standard Based on New U.S. Census Data” (May 26, 2011), available at <http://www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/File/000000001167/Updated%20Ad%20Code%20with%20Census%20Data%20-%20FINAL%205-26-11.pdf>; DISCUS, “Distilled Spirits Industry Updates Advertising Guidelines Based on Newly-Released Census Data” (May 26, 2011), available at http://www.discus.org/media/press/article.asp?NEWS_ID=631. To date, the Wine Institute has not announced any changes to its placement standard.

¹⁴ This recommendation to increase the placement standard to 85% was echoed by a private commenter from Michigan.

The CDD White Paper expressed concern that online advertising has evolved without sufficient public analysis or regulatory oversight. It outlined key concepts and practices that have been guiding the growth of interactive marketing in the alcohol industry, including the creation of a “high-definition media and marketing ecosystem”¹⁵ that integrates advertising, editorial content, audience measurement, and content delivery; the growth of distribution platforms such as social media, online video channels, and virtual worlds; and targeted marketing to the African-American and Latino communities.

The State AG comment observed that alcohol advertising has substantially increased its presence online. The comment identified one brand that advertises solely in social media and another company that employed “extensive, world-wide use of social media” for a recent World Cup-related advertising campaign.¹⁶ The CAMY comment echoed the concerns cited by the State AG comment.

Accordingly, the CDD, State AG, CAMY, and The Marin Institute comments requested that the FTC seek a variety of information regarding digital marketing and data collection practices. These practices included: marketing and data collection on both corporate-sponsored websites as well as websites operated by third parties, age verification mechanisms on such websites, and marketing practices on social media sites.

The FTC’s information requests will take account of the comments and changing technology and seek information about alcohol companies’ digital marketing and data collection practices, including data collected about consumers on corporate-sponsored websites and those operated by third parties. The FTC will also consider these commenters’ recommendations about digital marketing and data collection in the course of developing its report.

iv. Lesser-Known Media Programs

The UConn Medical School comment recommended that the FTC specifically seek expenditure data for product placements in television and film, including the type of product depicted and to whom the compensation was paid. The FTC’s information requests will seek expenditure data for product placements in general as well as the type and title of the entertainment vehicle in which such product placement appeared, and whether compensation was made in the form of monetary payment or an in-kind provision (e.g., products or other logoed items).

¹⁵ It particularly noted three aspects of the high-definition media and marketing ecosystem: (a) engagement, i.e., the creation of a marketing environment where consumers interact with brands and integrate them into their personal and social relationships; (b) data collection and behavioral targeting, such as digital advertising campaigns that encourage users to provide their personal information in order to participate in a design contest; and (c) a “360-degree strategy” that aims to keep consumers continuously plugged into their advertising campaigns, whether they are online or in the real world.

¹⁶ Similarly, the Mesilla Valley DWI Resource Center comment stated that the FTC should seek information regarding the extent to which the alcohol industry is shifting its advertising to the Internet and to what extent those websites and social media sites are following the voluntary codes.

v. Other Recommendations About Data Collection

The UConn Medical School comment offered many recommendations for the types of data the FTC should seek in its data collection. In particular, the comment suggested gathering specific data about the voluntary codes' complaint review procedures and the composition of their complaint review boards. For example, the comment recommended that the FTC seek data regarding the complaint review process, such as procedures for evaluating complaints. The comment also recommended that the FTC seek information regarding the qualifications, compensation, and conflicts of interest of complaint review board members.¹⁷

The Commission agrees that complaint review procedures are a critical component of self-regulation. In past studies, the compulsory process orders specifically sought information about the complaint review process from individual companies; ultimately, the information was provided voluntarily by the three alcohol trade associations. Similarly, for this study, the Commission plans to seek information about the complaint review process and related issues from the trade associations.

C. *Other Comments*

As noted earlier, the FTC received 64 comments in response to the 60-Day Notice that did not address the proposed data collection. These comments fall into three broad categories: (1) comments opposing the FTC's study concept in general; (2) comments seeking stricter self-regulation; and (3) comments calling for an end to self-regulation, to be replaced by a government ban or curtailing of alcohol advertising.

i. Comments Opposing Study Concept

Three comments expressed disagreement with the general concept of studying the alcohol industry. These were submitted by: (1) one university; (2) one non-governmental organization; and (3) one anonymous commenter. Each of these commenters offered a different reason: one argued that there was no causal connection between alcohol advertising and youth drinking; another argued that the damage already had been done, so the FTC's study would come too late; and the final one argued "we are taxed enough" without adding anything further other than requesting confidential treatment. As noted earlier, the FTC believes that its information requests are in the public interest and essential to the agency's performance of its regulatory duties.

ii. Comments Seeking Stricter Self-Regulation

Two comments advocated for more "teeth" in self-regulation. First, the Cambridge Prevention Coalition and Bluegrass Prevention comments advocated for objective standards to judge the content of alcohol advertising. Second, the Bluegrass Prevention comment stated that

¹⁷ The UConn Medical School comment also suggested that the FTC gather specific information about advertising strategy, content, and substantiation. The comment recommended that the FTC seek a variety of data, ranging from the ages of actors who appeared in alcohol advertising for television and print to substantiation for health benefits claims made about low-carbohydrate beers. The Commission believes the level of specificity in these recommendations exceeds the scope of the current study.

the alcohol industry should be required to take reasonable steps to ensure that their brands are not promoted by fans and other third parties online (e.g., social media) in a way that violates the voluntary codes. The FTC will consider these recommendations in the course of developing its report.

iii. Comments Calling for an End to Self-Regulation

The vast majority of comments received – 60 – called for an end to alcohol industry self-regulation and advocated for more active government regulation. These were submitted by: (1) five local government agencies; (2) 24 non-governmental agencies; (3) two religious organizations; (4) one research institute; and (5) 28 individuals. The Marin Institute comment described industry self-regulation as a “complete failure.” Marin, along with an individual commenter, called for the existing compliance review boards to be replaced by a “truly independent third party review board that includes public interest representatives.” Other comments, including many submitted by individuals, called for alcohol advertising to be banned or curtailed to reduce the likelihood of youth exposure to the ads. The FTC will consider these recommendations after conducting its review of the information submitted.

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 its requests, the Commission will receive information of a confidential nature. Under Section 6(f) of the FTC Act, such information is protected from disclosure while it remains confidential commercial information. 15 U.S.C. § 46(f).

12. Estimated Hours and Labor Cost Burden

A. *Estimated Hours Burden:* 8680 hours

The staff’s estimate of the hours burden is based on the time required to respond to each information request. Because beverage alcohol companies vary in size, the number of products they sell,¹⁸ and the extent and variety of their advertising and promotion efforts, the staff has provided a range of the estimated hours burden. As noted above, each company will receive information requests pertaining to five categories of information.

Based upon its knowledge of the industry, the staff estimates, on average, that the time required to gather, organize, format, and produce responses to the proposed Section 6 Orders will range between 300 and 620 hours per company. The total estimated burden per company is based on the following assumptions:

¹⁸ In 2007, the top 12 alcohol suppliers alone reported selling 1,133 brands. See 2008 FTC Alcohol Report, available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>.

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|---|-----------------|
| (1) Identify, obtain, and organize sales information, prepare response: | 30 - 70 hours |
| (2) Identify, obtain, and organize information on advertising and marketing expenditures, prepare response: | 50 - 130 hours |
| (3) Identify, obtain, and organize placement information, prepare response: | 120 - 280 hours |
| (4) Identify, obtain, and organize information regarding digital marketing practices and data collection, prepare response: | 80 - 100 hours |
| (5) Identify, obtain, and organization information regarding lesser-known media programs: | 20 - 40 hours |

Conservatively, the staff estimates that the burden per company for each of up to fourteen intended recipients will be 620 hours. Accordingly, the staff estimates a total burden for these companies of approximately 8,680 hours (14 companies × 620 average burden hours per company). 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.

B. Estimated Cost Burden: \$186,000

It is difficult to calculate with precision the labor costs associated with the information requests, as the costs 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 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 \$300/hour for their labor. Thus, the staff estimates that the total labor costs per company will range between \$90,000 (\$300 × 300 hours) and \$186,000 (\$300 × 620 hours).

The 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.

13. Estimated Annual Capital or Other Non-labor Costs

FTC staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may require industry members to maintain the requested information the Commission seeks, they should already have in place the means to compile and maintain it.

14. Estimate of Cost to the Federal Government

FTC staff estimates that the current year's cost to the FTC Bureau of Consumer Protection of collecting this information is approximately \$300,000 for fiscal year 2012 and \$150,000 for fiscal year 2013, including benefits and operational expenses (such as equipment, overhead, printing). For fiscal year 2012, this estimate reflects approximately one attorney work year, and one support staff work year, devoted to collecting, processing, and analyzing the requested information. For fiscal 2013, this includes approximately one half of an attorney work year, and one half of a support staff work year, devoted to collecting, processing, and analyzing the requested information.

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 January to September 2013.

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

Not applicable.