

**Federal Trade Commission**  
**Supporting Statement**  
**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 1995<sup>1</sup> allowed the agency to decide whether to continue publishing these reports. In response to a request for public comment,<sup>2</sup> many public health and tobacco control advocates cited the importance and utility of the FTC’s reports,<sup>3</sup> 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, 2015, 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. § 46(b).

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

<sup>2</sup> 66 Fed. Reg. 18,640 (April 10, 2001).

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

**(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, and with past practice, the FTC will request that much of the responsive data be compiled using spreadsheet software using datafields already defined by the Commission. In addition, the Commission will continue to allow the cigarette and smokeless tobacco companies that receive its information requests to deliver their responses by electronic mail, should they choose to do so, rather than preparing conventional submissions that must be delivered through the mail or via courier service.

**(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**

Consistent with 5 C.F.R. § 1320.8(d), the FTC recently published a notice seeking public comment on the proposed collections of information, *see* 79 Fed. Reg. 47,463 (August 13, 2014), and is doing so again contemporaneously with this submission.

The Commission received four comments in response to the recently published notice. Those comments were filed by Altria Client Services (“Altria”), the Campaign for Tobacco-Free Kids (“CTFK”), Legacy, and Professor M. Jane Lewis (“Lewis”) of the Rutgers School of Public Health.

Three of the comments (Legacy, Lewis, and CTFK) specifically noted the utility and importance of the Commission’s Cigarette and Smokeless Tobacco Reports, and urged the

agency to continue collection and reporting industry sales and marketing expenditure data.<sup>4</sup> Legacy and CTFK also noted that these data are not available from other sources.

Three of the commenters (Altria, CTFK, and Legacy) responded to questions raised in the Commission's 60-day notice concerning future collection of data on cigarette tar, nicotine, and carbon monoxide yields. Altria stated that the Commission should not require the manufacturers to provide yield data on all varieties of cigarettes they sell and actually should cease requiring the cigarette manufacturers to report any smoke constituent data, given the Food and Drug Administration's (FDA) new statutory authority to collect such data. Altria stated further that if the Commission retains or expands the existing reporting requirements (which require the companies to provide yield data only for those varieties for which such data already exist), it should require all cigarette manufacturers, not just the major companies, to submit those data. Altria, at 3.

CTFK acknowledged that tar, nicotine, and carbon monoxide yield data may be important for researchers and regulatory agencies, but noted that "the tobacco industry's history of manipulating this self-reported data raises concerns about its accuracy and validity," and urged the Commission to coordinate with the FDA "to establish a coherent set of product testing requirements that will best serve the statutory missions of both agencies." CTFK, at 3.

Legacy encouraged the Commission to cease its collection and reporting of these cigarette yield data, citing their potential to mislead consumers about health risks, the limitations of existing testing methodologies to produce yield results consistent with those actually experienced by smokers, and the "potential unintended consequences among people of low literacy and low numeracy" to understand information on smoke constituent yields. Legacy, at 2-3. Instead, Legacy noted, the Commission and the FDA should work together to determine the best methodology for determining the yields of harmful or potentially harmful smoke constituents and the best means of disseminating that information in a way that protects public health.

The FTC and FDA staff have long worked together on the many areas where the two agencies share jurisdiction, and the Commission fully expects this tradition to continue now that the agencies share jurisdiction over cigarettes and smokeless tobacco. The Commission further agrees that FDA should be the primary agency to determine the best test methodology. The Commission is not aware, however, of another means to preserve the existing record of cigarette yield trends unless it continues to collect these data. Freedom of Information Act requests filed with the Commission also suggest that researchers remain interested in these data. Accordingly, the Commission intends to continue collecting the data to the extent recipients of the 6(b) Orders possess them.<sup>5</sup>

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<sup>4</sup> CTFK and Legacy also urged the Commission to collect and report sales and marketing data for cigars and electronic cigarettes, as well as for conventional tobacco cigarettes and smokeless tobacco. CTFK, at 2-3; Legacy, at 5-6. The Commission will consider those recommendations.

<sup>5</sup> The Commission will consider Altria's recommendation that all cigarette manufacturers be required to provide yield data if the major manufacturers are required to do so, although it believes that the five major

Two commenters (CTFK and Lewis) suggested modifications to the Commission's reports. CTFK recommended that the Commission: (1) report price discount expenditures for retailers and wholesalers separately; (2) clarify the definitions of certain expenditure categories – specifically, in which category coupons obtained online are to be counted; (3) report data on a company-specific or brand-specific basis, rather than on a fully-aggregated basis, and on a state-level basis, as well as nationally; and (4) require manufacturers to report expenditures related to corporate sponsorships and advertisements, and expenditures related to promotion of their youth tobacco prevention programs. CTFK, at 2.

The Commission agrees that separating the existing category for price discounts (which have accounted for more than 70% of cigarette industry expenditures and more than 20% of smokeless tobacco industry expenditures in recent years) into two separate categories would be useful, and consistent with past decisions to disaggregate certain expenditure categories when they represent a significant proportion of overall spending.<sup>6</sup> However, the Commission disagrees with the CTFK's suggestion that data be reported on other than a fully aggregated, nationwide basis. The cigarette and smokeless tobacco companies assert that those data are confidential and, as CTFK acknowledges, the Commission cannot publicly release trade secrets or certain commercial or financial information. *Id.* at 2 n.2. CTFK's contention that much of the information that the companies claim to be confidential is actually available from other sources seems inconsistent with its assertion that:

The FTC is currently the primary source for data on cigarette and smokeless tobacco companies' marketing and promotional expenditures. No other agency collects and publishes such information directly from the companies, making the FTC reports the most accurate and reliable assessment of tobacco marketing and promotion expenditures available.

*Id.* at 1. Similarly, when the Commission has previously inquired about the feasibility of requiring expenditures to be reported on a state-by-state basis, rather than nationally, the major cigarette companies have stated that this was not possible. The Commission again asks for comment on this question.

The Commission already requires the recipients of its 6(b) Orders to report certain expenditures made in the name of the company, rather than any of its brands,<sup>7</sup> although it does

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cigarette manufacturers that have received its Orders in recent years already represent at least 95% of domestic cigarette sales.

<sup>6</sup> For example, the Commission reported spending on a single "promotional allowances" category through 2001, at which time separate categories were created for price discounts and promotional allowances paid to retailers, wholesalers, and others.

<sup>7</sup> Both the cigarette and smokeless tobacco Orders require submission of data on "Public entertainment events (including, but not limited to, concerts and sporting events) bearing or otherwise displaying the name of the company or any variation thereof but not bearing or otherwise displaying the name, logo, or an image of any portion of the package" of any of its cigarettes or smokeless tobacco products, or otherwise referring to those products.

not include them in its Cigarette and Smokeless Tobacco Reports. The Commission will consider whether those expenditures should be reported in the future. Similarly, the companies do report to the Commission the amount they spend on advertising directed to youth or their parents that are intended to reduce youth smoking or smokeless tobacco use (depending on the Order). The Commission includes this information in the textual portions of its industry Reports (unless only one company reported such spending), not in the annual expenditure-by-category tables.

Lewis noted that the Commission's reports do not define the term "expenditure," and she recommended that the reports clearly state what costs (*e.g.*, contracted outside services, in-house costs, and personnel) are covered. Lewis, at 2. The Commission agrees that this would be a useful addition to its Reports.

Lewis stated that the Commission's reports underestimate direct mail spending because the costs of items distributed by direct mail (*e.g.*, coupons and specialty items) are reported in other categories, and recommended that the Commission require the companies to include the costs of those items in their calculations of their direct mail expenditures.<sup>8</sup> Lewis also recommended that the Commission clarify whether spending for brand-specific websites should be reported as advertising on the company's website, or as spending on the Internet other than on the company's own website, and specify whether expenditures for electronic mail messages should be reported as direct mail or as advertising on the Internet other than on the company's own Internet website.<sup>9</sup> Lewis, at 2-3.

The Commission will clarify in future Orders that spending on brand-specific websites should be counted as spending on the company's websites. However, the Commission does not believe that its Orders distinguish should between, for example, expenditures on coupons delivered through direct mail and coupons delivered by other means. The full impact of couponing by the major cigarette and smokeless tobacco manufacturers can be seen only if expenditures for all coupons are reported together, regardless of how those coupons are delivered to consumers.

The Commission believes that its Orders have been clear that spending on electronic mail messages should be reported as advertising expenditures on the Internet other than on the company's website, and that the absence of reported expenditures does not mean that those costs are being categorized incorrectly.<sup>10</sup> However, Lewis's comment raises a question about whether spending on electronic mail messages should continue to be reported in the "other Internet"

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<sup>8</sup> As noted above, CTFK also asked about the reporting of coupons obtained online.

<sup>9</sup> Lewis correctly noted that the category for spending other than on the company's website specifically references "direct mail advertising using electronic mail messages." Based on her review of recent Commission reports, however, she questioned whether instead those costs are being reported as direct mail.

<sup>10</sup> For example, companies do not report the costs of employing full-time employees. If those employees are producing the electronic mail messages, their salaries would not show up in the companies' submissions to the Commission.

category or should be reported as direct mail expenditures. The Commission requests comment on that question.

Finally, the Commission requests comment on two additional subjects: (1) its intention to have the cigarette and smokeless tobacco companies that receive these Orders submit two separate datafiles (one containing sales-related data, the other containing data on marketing expenditures), rather than one; and (2) whether it should cease collecting expenditure data on transit advertising.

The Commission's Orders require that sales data be reported in actual dollars, while advertising and promotional expenditures are reported in thousands of dollars; sales data are also reported for each individual variety of cigarette and smokeless tobacco sold by the company, while expenditure data are reported at the brand level. The Commission believes that requiring the recipients of these Orders to submit separate datafiles for sales and marketing expenditure data will both help avoid errors in the preparation of the companies' submissions and expedite the agency staff's processing of those data, without imposing additional costs on the Order recipients.

The Commission has collected and reported data on transit advertising (currently defined as "advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any other transportation facility") for decades. However, the 1998 Tobacco Master Settlement Agreement prohibited transit advertising, and the major cigarette manufacturers have reported no such spending since 2000, while the major smokeless tobacco companies have never reported any transit spending.<sup>11</sup>

**(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.

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<sup>11</sup> See Federal Trade Commission Cigarette Report for 2011 (2013), at Tables 2B – 2E, *available at* <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-cigarette-report-2011/130521cigarettereport.pdf>; Federal Trade Commission Smokeless Tobacco Report for 2011 (2013), at Tables 3B – 3H, *available at* <http://www.ftc.gov/reports/federal-trade-commission-smokeless-tobacco-report-2011>.

**(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 2015 and the ensuing two years of requested clearance,<sup>12</sup> 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.<sup>13</sup>

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. 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.

**(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.

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<sup>12</sup> In July 2014, the Commission issued information requests to the five largest cigarette companies and five largest smokeless tobacco companies.

<sup>13</sup> 79 Fed. Reg. 47,464 (Aug. 13, 2014); 79 Fed. Reg. 67,174.

**(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 estimate 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 estimates are unchanged from the preceding request for renewed clearance.

**(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 October 2015.

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

Not applicable.