

**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 biennial reports to Congress 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 annually.

More than a decade ago, 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, 2018, 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 (collectively referred to as “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 the companies that receive its information requests (“the recipients”); (2) the types of products sold; (3) how much the recipients spend advertising and promoting their tobacco products, and the amounts spent in each of several specified expenditure categories; (4) whether the recipients are involved in the appearance of their tobacco products in television shows, movies, or Internet videos; (5) how much the recipients spend on advertising intended to reduce youth tobacco use; and (6) the events, if any, during which the recipients’ tobacco brands are televised. The information will be sought under the authority of Section 6(b) of the FTC Act, 15 U.S.C. § 46(b).

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

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

³ 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 data fields already defined by the Commission. In addition, the Commission will continue to allow the recipients 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 four 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* 82 Fed. Reg. 37,450 (August 10, 2017), and is doing so again contemporaneously with this submission.

In response to the August 10, 2017 Notice, the Commission received comments from the Campaign for Tobacco-Free Kids (“CTFK”) and Altria Client Services (“Altria”).

The CTFK comment specifically noted the utility and importance of the Commission’s Cigarette and Smokeless Tobacco Reports, and urged the agency to continue collecting and reporting industry sales and marketing expenditure data, which CTFK stated provide “critical data to researchers, policymakers, advocates and the general public.” CTFK additionally observed:

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.

CTFK at 1.

CTFK, however, suggested certain modifications to the Commission's reports. Specifically, CTFK recommended that the Commission: (1) report separately price discount expenditures for retailers and wholesalers; (2) clarify the definitions of certain expenditure categories – specifically, in which category coupons that consumers obtain online are to be counted; (3) report data on a company-specific or brand-specific basis, rather than on a fully-aggregated basis; (4) require manufacturers to report expenditures related to corporate sponsorships and advertisements; and (5) provide an option to download the published report data in spreadsheet format. *Id.* at 2.

The Commission agrees that collecting and reporting separately price discount expenditures for retailers and wholesalers is useful. Beginning with its 6(b) Orders for 2014, the Commission has been separately collecting and reporting information about price discounts paid to retailers and price discounts paid to wholesalers.

The Commission will clarify in future Orders that expenditures on coupons delivered online should be reported together with coupons delivered by other means. The full impact of couponing by the major cigarette and smokeless tobacco manufacturers can only be seen if expenditures for all coupons are reported together, regardless of how those coupons are delivered to consumers.

Regarding 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.

As for requiring manufacturers to report expenditures related to corporate sponsorships and advertisements, 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.⁴ However, the Commission does not include those data in its Cigarette and Smokeless Tobacco Reports. The Commission will consider whether those expenditures should be reported in the future or whether to cease collecting this information.

The Commission agrees that it would be helpful to provide an option to download the published report data in spreadsheet format and will begin doing so with its next published reports.

⁴ Both the cigarette and smokeless tobacco Orders require the recipients to report expenditures 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.

Altria stated that the Commission should no longer collect any information from cigarette and smokeless tobacco manufacturers “in light of the Food and Drug Administration’s ... extensive, active regulatory authority over tobacco products under the Family Smoking Prevention and Tobacco Control Act,” calling such collections “superfluous” and “unnecessary burdens.” Altria at 1, 3. Altria contends that the FTC’s most recent requests seek “not only information that the companies already produce to FDA, but also information unrelated to the advertising and promotion of tobacco products.” *Id.* at 3-4. It gives the following examples:

- (a) cigarette design data, including cigarette length, style, flavor, and filter type;
- (b) constituent data, including nicotine, carbon monoxide, and tar; (c) lists of cigarettes first sold or discontinued in 2016; and (d) lists of other product information, including brand varieties, pack size, and package type.

Id. at 4 n.15. Altria also suggests that the FTC has recently expanded its requests to seek information on expenditures from parent companies that do not sell or advertise tobacco products. *Id.* at 3.

The FTC staff and FDA staff have a long tradition of working together on the many areas where the two agencies share jurisdiction. The FDA is not collecting cigarette or smokeless tobacco sales and marketing expenditure data like that required by the Commission’s 6(b) Orders, so there is no overlap or duplication with respect to such data. Moreover, to the extent there might be some overlap in the collection of information about whether brand styles of cigarettes are filtered or unfiltered, menthol or non-menthol, and their cigarette length, the Commission needs those data so it can combine them with sales information for each brand style in order to report the percentages of cigarettes sold by the leading manufacturers falling into each product type category (e.g., 26% of the cigarettes sold by these manufacturers in 2015 were menthol). FDA is not collecting cigarette sales information, so it cannot calculate sales percentages by product types. The Commission intends to continue collecting cigarette and smokeless tobacco sales and marketing expenditure data, together with cigarette length, flavor, and filter information. To the extent that in the future the FDA duplicates the FTC’s data collection, the FTC can modify or cease its collection.

Until 2000, the Commission collected cigarette tar, nicotine, and carbon monoxide yields and published that information by brand style. Because of concerns that the yield information was misleading consumers, the Commission ceased publishing that information, but it has continued to collect tar, nicotine, and carbon monoxide yields to the extent recipients of the 6(b) Orders possess it, and the Commission releases the data to researchers in response to Freedom of Information Act requests. In recent years, however, there have been very few requests for the data. Given that the Commission no longer publishes tar, nicotine, and carbon monoxide reports and the limited interest in these data, the Commission intends to cease collecting tar, nicotine, and carbon monoxide yield data.

There are other information fields that the Commission no longer needs to collect, including information about cigarette package type, cigarette package size, cigarette styles, and whether a cigarette variety’s tar yield and its nicotine yield are disclosed on its package. The Commission intends to continue to collect UPC-Codes in order to distinguish one variety from another, but does not need any other variety descriptors beyond cigarette length, flavor, and filter

information. The Commission also no longer needs lists of cigarettes first sold or discontinued in a calendar year.

Contrary to Altria's suggestion, the FTC did not recently expand its requests to seek information from parent companies. More than a decade ago, the Commission began directing its orders to the ultimate domestic parents of the cigarette and smokeless tobacco manufacturers because some parent companies owned more than one subsidiary selling those products and the Commission wanted to ensure that no relevant data from affiliated companies went unreported. Moreover, the 6(b) Orders ask several questions about whether the recipient engages in certain practices, such as paying for cigarette or smokeless tobacco product placement in movies, and the Commission wants to be sure that such practices by any related company are reported, even if that company does not itself sell cigarette or smokeless tobacco products. The Commission intends to continuing directing its 6(b) Orders to the parent companies of the leading cigarette and smokeless tobacco manufacturers.

(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 it 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 four largest cigarette companies and the five largest smokeless tobacco companies in 2018 and the ensuing two years of requested clearance,⁵ 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 recipients, paired with staff's knowledge, 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 nine largest recipients of the Commission's information request to comply with it; cumulatively, 1,620 hours per year.⁶

⁵ In May 2017, the Commission issued information requests to the four largest cigarette companies and five largest smokeless tobacco companies.

⁶ 82 Fed. Reg. at 37,451.

Staff estimates that for the smaller companies -- the potential six added recipients -- burden should not exceed 60 hours per company or 360 hours, cumulatively, per year. Thus, overall estimated burden for a maximum of 15 recipients of the information request is 1,980 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 \$198,000 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 recipients 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 \$25,000. 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 10 percent of an economist's work year, approximately \$14,000, 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. Commission staff estimates that the first annual cigarette and smokeless tobacco reports using such information will be completed in February 2019.

The proposed data collections do not employ statistical methods such as sampling or imputation. The Commission does not attempt to describe the sales and marketing activities of either the cigarette or the smokeless tobacco industry as a whole. Instead, the Commission has focused on only the largest players in each market.

The Commission could attempt to perform reporting that is statistically representative of the entire cigarette and smokeless tobacco industries, but doing so would first require preliminary surveys of the respective industries to identify as many participants as possible, and

then to gather information on their sales and marketing expenditures. Conducting those preliminary surveys would impose a burden on the recipients, many, if not most, of which – other than prior recipients of the Commission’s 6(b) orders – are likely to be small entities with low sales and even lower marketing expenditures. This would also require significant additional agency resources, delaying timely completion of the FTC’s reports. Issuing the 6(b) orders to those very small entities could likely impose a significant burden upon them. Further, given the Commission’s belief that the responses provided by the four largest cigarette manufacturers and the five largest smokeless tobacco manufacturers represent the vast majority of the industries’ sales and marketing expenditures, the result would likely not be very different from that produced by the FTC’s proposed data collections. Accordingly, the Commission believes that employing a statistically representative approach is not in the public interest, because it would impose additional burdens far exceeding its benefits.

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

Not applicable.