

Federal Trade Commission
Supporting Statement for Modification of
Previously Approved 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 (“Cigarette Reports”). 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 cigarette and smokeless tobacco manufacturers of products sold in the United States.

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, and the Commission has continued to issue them annually.

More than fifteen years 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 Office of Management and Budget (“OMB”) clearance under the PRA runs through December 31, 2023.

The Commission seeks to amend its previously approved information requests to the largest domestic cigarette manufacturers to obtain the annual sales, give aways, and marketing expenditures for electronic devices used to heat non-combusted cigarette products. Since OMB’s approval, the Commission now believes that a narrow collection of information related to heated, non-combusted tobacco products is necessary to understand the overall market for nicotine-based products. Heated, non-combusted cigarettes already fall within the definition of cigarettes, which are covered by the currently approved information collection. The electronic devices in which such cigarettes are heated do not fall within the definition of cigarettes, and thus are not covered by the approved information collection.

(2) Use of the Information

The Commission uses the information collected to publish periodic reports on cigarette and smokeless tobacco (collectively referred to as “tobacco”) sales and marketing.³ This

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

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

³ See, for example, the most recent reports under the existing PRA clearance at <https://www.ftc.gov/reports/federal-trade-commission-cigarette-report-2018-smokeless-tobacco-report-2018>. See also related FTC Press Release, *FTC Releases Reports on Cigarette and Smokeless Tobacco*

information helps the FTC and the public's understanding of the overall market for nicotine-based products.

The additional information that the Commission intends to seek regards: (1) whether the recipient cigarette manufacturer sold heated, non-combusted, cigarettes during a calendar year, (2) the net number of heating devices designed to be used with heated cigarettes that it sold in the United States, (3) the net dollar value of such devices sold, (4) the net number of such devices it gave away in the United States, and (5) the total amount it expended on the advertising, merchandising, or promotion in the United States of such devices. With its next annual information collection from cigarette manufacturing recipients in early 2022, the Commission proposes to collect this additional information for 2019, 2020, and 2021. The information will be sought under the authority of Section 6(b) of the FTC Act, 15 U.S.C. § 46(b).

As noted in section #1 above, the FTC's understanding of the overall market for nicotine-based products is incomplete without more information regarding heated, non-combusted cigarettes and the corresponding devices. For example, the information could assist the Commission in conducting a study of the sales and marketing of these devices. Thus, the proposed addition will assist the Commission in closing this gap in our understanding.

(3) Information Technology

Improved information technology may assist in gathering and producing this information. 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. In particular, the Food and Drug Administration is not collecting the sales and marketing expenditure data regarding devices used to heat non-combusted cigarette products that would be collected in response to the Commission's 6(b) Orders.

(5) Efforts to Minimize the Burden on Small Organizations

The requests to the four largest cigarette 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's understanding of the overall market for nicotine-based products is substantially incomplete. The burden of the information collection

Sales and Marketing Expenditures for 2018 (Dec. 30, 2019), <https://www.ftc.gov/news-events/press-releases/2019/12/ftc-releases-reports-cigarette-smokeless-tobacco-sales-marketing>.

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

On June 25, 2020, the FTC sought public comment on the information collection requirements associated with renewing the Cigarette and Smokeless Tobacco Data Collection, which were then set to expire on December 31, 2020. 85 Fed. Reg. 38,139. On October 23, 2020, the FTC provided a second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Cigarette and Smokeless Tobacco Data Collection. 85 Fed. Reg. 67,541. On December 14, 2020, OMB renewed the proposed information collection through December 31, 2023.

In response to the June 25, 2020 Notice, the Commission received a comment from Truth Initiative that among other things recommended that the Commission collect information regarding heated tobacco products with its cigarette Orders. In the October 23, 2020 Notice, the Commission agreed “that heated, non-combusted tobacco products [we]re an important emerging segment of the tobacco market” and stated that it would “monitor these products and ... consider whether and how best to collect information about these products when the market has further developed to make such information collection warranted.”

The Commission now believes that a narrow collection of information related to heated, non-combusted tobacco products is warranted. Heated, non-combusted cigarettes already fall within the definition of cigarettes, which are covered by the currently approved information collection. The electronic devices in which such cigarettes are heated do not fall within the definition of cigarettes and thus are not covered by the approved information collection. Consistent with 5 C.F.R. § 1320.10, the FTC is now publishing a notice seeking public comment on the proposed collections of information contemporaneously with this submission.

(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 disaggregated 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 in 2022 and the ensuing year of requested clearance, this burden estimate is based on

the Commission issuing up to ten 6(b) information requests per year, involving as many as fifteen entities.⁴ This conservative estimate is designed to anticipate future changes in these markets that might warrant obtaining data from other industry members.

These cigarette companies vary greatly in size, in the number of products that they sell, and in the extent and variety of their advertising and promotion. Based upon staff's knowledge, the smaller companies will require zero or one additional hour to gather, organize, format, and produce their responses to the additional information request, while the very largest companies might require 25 hours. The Commission estimates that its additional information requests will take the four largest recipients 100 hours and the smaller companies 6 hours. Thus, the overall estimated burden for a maximum of 10 information requests is 106 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 10 information requests is \$10,600 per year (derived from \$100/hour x 106 annual hours).

(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 \$12,000. In addition, about 10 percent of an economist's work year, approximately \$15,000, will be devoted to processing the data submitted.

⁴ Since three and possibly more of the cigarette manufacturing 6(b) recipients are parent companies that have separately incorporated subsidiaries or affiliates that the FTC anticipates or expects that the parent companies will transmit the collection instrument to and seek information from, the proposal to send up to ten 6(b) Orders could equate to 15 "persons" under the PRA. See 5 CFR 1320.3(c)(4) ("[ten or more persons]...refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including...separately incorporated subsidiaries or affiliates.").

(15) Changes in Burden

The proposed program change would add an estimated 106 annual hours of burden to the currently authorized 2,940 hours per year under the existing clearance.

(16) Statistical Use of Information/Publication of Results

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 the cigarette industry as a whole. Instead, the Commission has focused only on the largest players.

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

Not applicable.