

[Billing Code: 6750 - 01-P]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC is soliciting public comments on proposed information requests to food and beverage companies and quick service restaurants. These comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520, of compulsory process orders to major food and beverage manufacturers and quick service restaurant companies in order to obtain information from those companies concerning, among other things, their marketing activities and expenditures targeted toward children and adolescents.

DATES: Comments on the proposed information requests must be received on or before December 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Food Industry Marketing to Children Report: Paperwork Comment; FTC File No. P064504” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex R), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in

paper form, and the first page of the document must be clearly labeled “Confidential.”¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by using the following weblink: <https://secure.commentworks.com/foodmarketingpaperworkcomment> (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the weblink <https://secure.commentworks.com/foodmarketingpaperworkcomment>. If this notice appears at www.regulations.gov, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The Federal Trade Commission Act, 15 U.S.C. §§ 42-58 (FTC Act), and other laws the Commission administers permit the collection of public comments to consider and use as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at www.ftc.gov/ftc/privacy.htm.

¹ Any request for confidential treatment, including the factual and legal basis for the request, must accompany the comment and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 C.F.R. § 4.9(c).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Mary Johnson, 202-326-3115, or Rielle Montague, 202-326-2645, Attorneys, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission. The FTC staff contacts can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue N.W., NJ-3212, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 22, 2005, the President signed a bill appropriating funds for the Commission for FY 2006. Pub. L. No. 109-108. The Conference Report (H. R. Rep. No. 109-272 (2005)) for this law incorporates by reference language from the Senate Report (S. Rep. No. 109-88 (2005)), instructing the FTC to prepare a report on food industry marketing activities and expenditures targeted to children and adolescents.² To prepare the report, the Commission needs relevant information, including empirical data, on the nature and extent of marketing activities and expenditures targeted to children and adolescents.

On March 1, 2006, the FTC published a notice in the *Federal Register* requesting relevant information. 71 FR 10535. In response, the Commission received comments from five food industry associations, two public health advocacy organizations, a marketing trade organization, and one individual.³ In general, the comments suggested resources from which relevant

² The Senate Report requests that the FTC's report:

include an analysis of commercial advertising time on television, radio, and in print media; in-store marketing; direct payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games.

³ The comments are available at <http://www.ftc.gov/os/comments/foodmarketingstudy/index.htm>.

information may be available⁴ and points to consider in developing the report. However, the comments presented minimal information, especially empirical data, on the nature and extent of marketing activities and expenditures targeted to children and adolescents. The Commission thus requires additional data and information in order to complete the report.

The FTC has the authority to compel production of this data and information from food and beverage companies and quick service restaurants under Section 6(b) of the FTC Act, 15 U.S.C. § 46(b). The Commission intends to send its information requests to the ultimate parents of these types of companies to assure that no relevant data from affiliated or subsidiary companies goes unreported. Because the number of separately incorporated companies affected by the Commission's requests will exceed ten entities, the Commission intends to seek OMB clearance under the Paperwork Reduction Act (PRA) before sending any information requests.

Under the PRA, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. § 3502(3), 5 C.F.R. § 1320.3(c). As required by the PRA, 44 U.S.C. § 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB grant the clearance for the proposed information collection requirements.

The FTC invites comments on: (1) whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of

⁴ Many of the suggested resources charge substantial amounts for information. Pub. L. No. 109-108 did not contain any specific funding to acquire information for this study.

the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before December 21, 2006.

A. Information Requests to Food and Beverage Industry Members

1. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to approximately fifty (50) ultimate parent companies of food and beverage and quick service restaurant companies in the United States (“industry members”). The companies that are likely to receive these information requests are those selling the categories of food and beverage products that appear to be advertised to children most frequently. Specifically, these categories of products are likely to include quick service restaurant items, breakfast cereals, snack foods, candy and gum, carbonated and noncarbonated beverages, frozen and chilled desserts, prepared meals, and dairy products, including milk and yogurt. In addition, the FTC proposes to collect information from major marketers of fruits and vegetables to ensure that data are gathered regarding efforts to promote consumption of these foods among children and adolescents.

The information requests will seek data regarding, among other things: (1) the types of foods marketed to children and adolescents; (2) the types of measured⁵ and unmeasured⁶ media techniques used to market products to children and adolescents; (3) the amount spent to communicate marketing messages in measured and unmeasured media to children and adolescents; and (4) the amount of commercial advertising time in measured media directed to children and adolescents that results from this spending.

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership, or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. § 50; *see also* 18 U.S.C. § 1505.

Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act. 5 U.S.C. § 552(b)(4). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. § 57b-2(c), a submitter who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials

⁵ “Measured media” includes methods such as television, print (magazine and newspaper), radio, outdoor advertising, and some forms of Internet advertising.

⁶ “Unmeasured media” includes methods such as in-store marketing (including shelf placement), events, package promotions, and product placement in entertainment media (including television shows, movies, video games, and music recordings).

covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.*, official requests by Congress, requests from other agencies for law enforcement purposes, and administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. *See* 15 U.S.C. § 57b-2; 16 C.F.R. § 4.9-4.11.

Finally, the information presented in the report will not reveal company-specific data. *See* 15 U.S.C. § 57b-2(d)(1)(B). Rather, the Commission anticipates providing information on an anonymous or aggregated basis, in a manner sufficient to protect individual companies' confidential information, to provide a factual summary of food industry marketing activities and expenditures targeted to children and adolescents.

2. Estimated Hours Burden

The FTC staff's estimate of the hours burden is based on the time required to respond to each information request. The Commission intends to issue the information requests to approximately 50 parent companies of food and beverage and quick service restaurant advertisers. Because these companies vary in size, in the number of products that they market to children and adolescents, and in the extent and variety of their marketing and advertising, the FTC staff has provided a range of the estimated hours burden.

Based upon its knowledge of the industries, the staff estimates, on average, that the time required to gather, organize, format, and produce such responses ranges between 80-120 hours per information request for companies that market a single category of product to children and

adolescents. Staff estimates that companies that market multiple categories of products to children and adolescents would spend between 120-300 hours to respond to an information request. The total estimated burden per company is based on the following:

Identify, obtain, and organize sales information, prepare response:	15-35 hours
Identify, obtain, and organize information on advertising and marketing expenditures, prepare response:	15-75 hours
Identify, obtain, and organize media placement information, prepare response:	40-160 hours
Identify, obtain, and organize information regarding marketing policies, prepare response:	10-30 hours
Total	80-300 hours

Assuming that approximately 35 information requests are sent to parent companies that market a single category of product to children and adolescents, staff estimates a total burden for these companies of 3500 hours (35 companies x 100 average burden hours per company).

Assuming that approximately 15 information requests are sent to parent companies that market multiple categories of products to children and adolescents, staff estimates a total of approximately 3150 hours (15 companies x 210 average burden hours per company). Thus, the staff's estimate of the total burden is approximately 6650 hours. 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.

3. Estimated Cost Burden

It is difficult to calculate with precision 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. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The FTC 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 \$250/hour for their labor. Thus, the staff estimates that the total labor costs for the information requests will be \$1,662,500 (($\250×3500 hours for companies that market a single category) + ($\$250 \times 3150$ hours for companies that market multiple categories)).

FTC staff estimates that the capital or other non-labor costs associated with the information requests are 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.

John D. Graubert
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