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June 24, 2010

By Electronic Filing

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Food Industry Marketing to Children Report: Paperwork Comment; Project No. P094511

Dear Sir or Madam:

Enclosed is the Grocery Manufacturers Association (“GMA”) comment in response to the Federal Trade Commission’s request for comment on the topic of the proposed information request to approximately 48 food and beverage manufacturers, distributors, and marketers and quick service quick service restaurant (“QSR”) companies.

We appreciate the work the Commission is doing to understand the complexities of this issue and look forward to working jointly to address any concerns.

Sincerely,

/ s /

William C. MacLeod

**Comment of the Grocery Manufacturers Association  
Federal Trade Commission Request for Comments**

**on**

**Food Industry Marketing to Children Report: Paperwork Comment; Project No. P094511**

**Introduction**

The Grocery Manufacturers Association (“GMA”) is pleased to provide these additional comments for the record in response to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comment on proposed information requests to approximately 48 food and beverage manufacturers, distributors, and marketers and quick service quick service restaurant (“QSR”) companies (Food Industry Marketing to Children and Adolescents Study: Paperwork Comment; Project No. P094511).<sup>1</sup> The orders will seek information as part of the FTC’s follow-up to the study it published in 2008 regarding food marketing to children and adolescents.

The Commission proposes to seek information in keeping with the 2008 study, as well as additional factors. GMA members responded to the 2007 orders leading to the 2008 study of food marketing to children and adolescents, and are committed to assisting the Commission in this follow-up effort. In this spirit, and in reliance on lessons learned from responding to the 2007 orders, GMA offers a limited number of suggestions to make the data collection and reporting process more efficient and informative.

In summary, GMA is pleased the Commission intends to keep the new orders essentially consistent with the 2007 request, as it was refined during the course of the data collection, while adopting some GMA suggestions. GMA has further limited recommendations, particularly with respect to the burden that will be imposed on the responding companies.

GMA represents the world’s leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps ensure the safety and security of consumer packaged goods through scientific excellence. The GMA board of directors comprises chief executive officers from the Association’s member companies. The \$2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over \$1 trillion in added value to the nation’s economy. For more information, visit the GMA Web site at [www.gmaonline.org](http://www.gmaonline.org).

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<sup>1</sup> Federal Trade Commission, Agency Information Collection Activities; Submission for OMB Review; Comment Request, 75 Fed. Reg. 29,340 (May 25, 2010) (“*Notice*”). GMA previously provided comments in response to the FTC’s September 2009 *Notice*. Federal Trade Commission, Agency Information Collection Activities; Proposed Collection; Comment Request, 74 Fed. Reg. 48,072 (Sept. 21, 2009).

**The Commission has underestimated the burden of the proposed collection.**

While GMA appreciates the Commission including GMA's input to determine an accurate burden estimate, GMA believes the cost of complying with the Commission's orders will far exceed the Commission's revised estimated total cost burden of \$5,265,000 for 48 companies. GMA believes the cost estimate is particularly low considering the Commission's decision to include additional requests relating to historical and current nutritional data. A thorough vetting of a company's marketing expenditures and nutritional data to accurately respond to an FTC order requires a substantial dedication of company time and resources.

In 2007, GMA submitted a Comment anticipating an estimated cost burden of expenses associated with collecting the data designated in the Information Request are likely to total \$14 to \$28 million (\$500,000 and \$1 million per company with multiple products in multiple categories and \$50,000 to \$100,000 for those companies with few products in one category).<sup>2</sup> That estimate was conservative in 2007, as the effort turned out to be much more burdensome than expected. With the additional data requested in the current request, the estimated burden is likely to be well above the upper range of the last estimate, and far exceed the Commission's current estimated burden of \$5,265,000 for 48 companies.

**The Commission should reconsider the nutritional information it intends to request.**

The Commission intends to collect "specific nutritional data for each food product that the companies marketed to children or adolescents in 2009," including not only Nutrition Facts Panel data, but also "certain other information, including added sugar, all grain content and whole grains content, fruit and fruit juice content, vegetable and vegetable juice content, dairy content, and information on certain protein-rich foods (e.g., fish, lean meat/poultry, egg, nuts, and beans)."<sup>3</sup>

The Commission initially announced its intention to collect nutritional data in September 2008, issuing letters to affected companies asking them to preserve Nutrition Facts Panel information for products marketed during 2006 and subsequent years. Producing such data would be a manageable effort, though there are some complications (addressed further below in this comment) that should be resolved regarding products that are reformulated during a particular year and products that have multiple flavors or varieties with slightly varying Nutrition Facts data.

However, in neither the 2008 requests to preserve Nutrition Facts data, nor in any other subsequent statement (until the current *Notice*), did the Commission indicate that companies would need to preserve and report the "certain other information" – like added sugar and fruit

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<sup>2</sup> Comments of the Grocery Manufacturers Association, Federal Trade Commission Request for Information and Comment on Food Industry Marketing to Children Report; Paperwork Comment; FTC File No. P094511 (Nov. 23, 2009).

<sup>3</sup> *Notice* at 29,342.

content – that the Commission now says it intends to seek. Information such as this is not readily available or ascertainable.

For one thing, many ingredients are not susceptible to straightforward classification into any single category. For example, does fruit juice concentrate count toward both fruit content and added sugar content, or is it split between the two, and if so in what proportion? Is whey “dairy”? What about nonfat milk solids?

Even assuming that the Commission provided guidance regarding how to treat ingredients like these, there is no easy way for a food manufacturer to determine values for many items, given the range of ingredients that manufacturers source from different suppliers, many of which may have arguable amounts of content that may or may not fall within various categories.

Consider the following example involving “added” sugar: If a food manufacturer puts raisins in a product, is the sugar that naturally occurs in the raisin “added” sugar? If the raisins are yogurt-coated raisins, how does the manufacturer get the added sugar calculation from the supplier of these yogurt-coated raisins? Milk would not be thought to contain “added” sugar on its own. But if the supplier of the yogurt coating uses milk as an ingredient, is the sugar in the milk now an “added” sugar in the product containing the raisins? If so, why? If not, why not? And even were a manufacturer to attempt to determine these values, there is no assurance that all manufacturers would resolve these complex questions in a similar fashion, so it would not be valid to aggregate the data across various manufacturers. Given that the Nutrition Facts Panel data will already contain information on total sugars, it is hard to see the justification for devoting this level of burden and complication toward the pursuit of arbitrarily classifying the proportion of this sugar that is “added” versus the proportion that is inherent in product ingredients, a distinction that has no scientific relevance in any event.<sup>4</sup>

We have picked added sugar as an example, but the whole list of additional nutritional information being sought (beyond the Nutrition Facts Panel) presents these sorts of challenges. Limiting the request to what the Commission proposed in September 2008 – i.e., seeking Nutrition Facts Panel data alone – would provide the Commission with all information relevant to its inquiry without placing enormous burdens on respondents to arbitrarily classify ingredients into various subjective categories. Respondents would also not be asked to recover information from 2006 that they were not asked to preserve.

In addition, as mentioned above, GMA would like to suggest various ways in which the Commission could address the complications associated with presenting Nutrition Facts Panel data for products that undergo a reformulation during a particular year, or that have multiple varieties or flavors. In this regard, GMA suggests the Commission consider asking companies to gather information about food products produced within a narrow date range during the year – e.g. a month at year end – rather than a broad date range.

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<sup>4</sup> All sugars, regardless of source and regardless of arbitrary classifications as “added” or not, are metabolized the same way. Laboring to draw these subjective distinctions is therefore a wasted effort.

Also, reporting a representative product or package size or flavor, rather than each variation of the product and package, would significantly lessen the burden on responding companies. A single product could have multiple Nutrition Facts Panels, for example, when packages of different sizes have different Panels reflecting the number of servings in the packages. The value of collecting information from every Panel would not justify the burden of doing so.

**The Commission should reconsider the deadlines it intends to impose on responding companies.**

GMA requested the Commission allow companies 120 days, rather than 90 days, to respond to the requests. The Commission stated in the *Notice* that 90 days is a reasonable deadline and would entertain requests for limited extension of the deadline on a case-by-case basis as it did in connection with the 2006 data collection. GMA continues to believe the 90 day deadline is difficult for the companies to meet, especially if burden on the companies is considered. Given the additional data that the Commission intends to collect, the collection effort the companies face (and the analytical effort the bureaus face) will be significantly greater than in 2006.

Less burden would be imposed on responding companies if they had adequate time to gather the information, which an additional 30 days may afford. This is especially true depending upon when in the corporate/calendar year the 90 days falls, considering corporate quarter and year-end internal and external reporting obligations, as well as personnel issues relevant during the summer or holiday months. An expansion to 120 days is particularly warranted for those companies that market multiple products in multiple categories, which may justify a timeframe that differs from those companies with few products in one category.