

accommodation of a disability, please contact Mr. Hanlon preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: May 18, 2010.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Staff Office.*

[FR Doc. 2010-12617 Filed 5-24-10; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 2010.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *FHB Formation LLC*, Boston, Massachusetts; to become a bank holding company by acquiring up to 60 percent of the voting shares of Northeast Bancorp and Northeast Bank, both of Lewiston, Maine.

**B. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *CapGen Capital Group IV LLC and CapGen Capital Group IV LP*, both of New York, New York; to become bank holding companies by acquiring up to 49.9 percent of the voting securities of Jacksonville Bancorp, and The Jacksonville Bank, both of Jacksonville, Florida.

**C. Federal Reserve Bank of Dallas** (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Icon Capital Corporation*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Icon Bank of Texas, N. A., Houston, Texas.

2. *Texas Banc Financial Corporation*, Fort Worth, Texas; to acquire 100 percent of the voting shares of The Bank, Weatherford, Texas.

Board of Governors of the Federal Reserve System, May 19, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010-12459 Filed 5-24-10; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be

conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 2010.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *CapGen Capital Group IV LLC and CapGen Capital Group IV LP*, both of New York, New York; to become bank holding companies through the acquisition of up to 49.9 percent of the voting shares of Jacksonville Bancorp, Jacksonville, Florida, and thereby indirectly acquire The Jacksonville Bank, Jacksonville, Florida.

Board of Governors of the Federal Reserve System, May 20, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010-12509 Filed 5-24-10; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice.

**SUMMARY:** The FTC proposes to issue compulsory process orders to major food and beverage manufacturers, distributors, and marketers and quick service restaurant companies for information concerning, among other things, their marketing activities and expenditures targeted toward children and adolescents and nutritional information about the companies' food and beverage products marketed to children and adolescents. As required by the Paperwork Reduction Act (PRA), the FTC is submitting the proposed information collection to the Office of Management and Budget (OMB) for review and is seeking public comments on the proposed information collection and the associated PRA burden estimates.

**DATES:** Comments must be filed on or before June 24, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in Part IV of the **SUPPLEMENTARY INFORMATION** section

below. Comments in electronic form should be submitted by using the following weblink: (<https://public.commentworks.com/ftc/foodmarketingPRA2>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be addressed to Carol Jennings, (202) 326-3010, or Sarah Botha, (202) 326-2036, 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, NW, NJ-3212, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Description of the Proposed Information Collection**

In July 2008, the FTC published a report entitled *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* (FTC 2008 Report).<sup>1</sup> The 2008 Report analyzed expenditures and marketing activities by 44 food companies across various promotional activity and food product categories for the year 2006. The report also reviewed policies and initiatives undertaken by companies to encourage healthy eating and lifestyle choices by children and adolescents, and evaluated the extent to which companies had implemented recommendations of the report from a workshop on Marketing, Self-Regulation & Childhood Obesity that the FTC and the Department of Health and Human Services jointly convened in 2005.<sup>2</sup>

The Commission obtained data and information for the 2006 study by issuing compulsory process orders to producers, distributors, and marketers of foods frequently advertised to

children (ages 2-11) and adolescents (ages 12-17), such as carbonated and non-carbonated beverages, snacks, baked goods, cereals, prepared meals, candy, dairy products, and restaurant food. The study found that the reporting companies spent more than \$1.6 billion marketing their products to children and adolescents in 2006, and employed a variety of techniques, including promotion through traditional measured media, the Internet and other “new” media, product packaging, and in-store advertising, as well as integrated campaigns that combined several techniques and cross-promotions with media and entertainment companies.

In addition to presenting the study findings, the FTC 2008 Report included several recommendations, among them that companies marketing food or beverage products should: (1) adopt meaningful, uniform nutrition-based standards for all products marketed to children under age 12; and (2) apply these standards to all advertising and promotional techniques.<sup>3</sup> The Commission indicated it would issue a follow-up report assessing the extent to which the FTC 2008 Report recommendations have been implemented and whether additional measures may be warranted.

The FTC proposes to send information requests to 48 food and beverage manufacturers, distributors, and marketers and quick service restaurant companies in the United States, 40 of which were recipients of information requests as part of the Commission’s 2006 study. The companies that will receive these information requests are those marketing and selling the categories of food and beverage products that appear to be advertised to children and adolescents most frequently.<sup>4</sup> Included among the 48 companies to which the FTC proposes sending the information collection are several fruit and vegetable producers, distributors, and marketers. Traditionally, fruit and vegetable

companies have not engaged in significant marketing efforts but, in recent years, some of these fruit and vegetable companies have packaged and promoted their products in ways likely to appeal to children, such as by using licensed characters popular with children in their product labels and displays. Gathering information on these practices will enable FTC staff to compare the marketing techniques and expenditures being used to market fruits and vegetables relative to foods that traditionally have been more frequently marketed to children and adolescents.

The information requests will seek much of the same types of data and information collected for the 2006 study, such as: (1) the categories of foods<sup>5</sup> marketed to children (ages 2-11 years) and adolescents (ages 12-17 years); (2) the types of measured<sup>6</sup> and unmeasured<sup>7</sup> media techniques used to market food products to children and adolescents; (3) the amount spent to communicate marketing messages about food products to youth; (4) the nature of the marketing activities used to market food products to youth; (5) marketing to youth of a specific gender, race, ethnicity, or income level; and (6) marketing policies, initiatives, or research in effect or undertaken by the companies relating to the marketing of food and beverage products to children and adolescents. The FTC also proposes to gather nutrition information about products the companies marketed to children and adolescents in calendar years 2006 and 2009, to evaluate possible changes in the nutritional content, and variety, of youth-marketed foods. Further, the Commission proposes to seek scientific and market research exploring psychological and other factors that may contribute to food advertising appeal among youth.

The proposed information requests will require the companies to provide their marketing activities and expenditures during the calendar year 2009 in 18 different measured and

<sup>1</sup> The study was requested by Congress in conjunction with the Commission’s FY 2006 appropriation (Pub. L. No. 109-108). The Conference Report (H.R. Rep. No. 109-272 (2005)) for this appropriations law incorporated 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.

<sup>2</sup> See Federal Trade Commission & Department of Health and Human Services, *Perspectives on Marketing, Self-Regulation & Childhood Obesity* (2006), at (<http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>).

<sup>3</sup> These advertising and promotional techniques include television, print, and radio; website, Internet, and digital advertising; word-of-mouth and viral advertising; product packaging and retail promotion; movie and video promotion; use of premiums in connection with the sale of a product; product placements, character licensing, and cross-promotion; athletic sponsorship; celebrity endorsements; and in-school marketing.

<sup>4</sup> Among the 48 proposed recipients are the 16 members of Council of Better Business Bureaus Children’s Food and Beverage Advertising Initiative (CFBAI). The CFBAI member companies reportedly account for at least three-fourths of children’s food and beverage television advertising expenditures; therefore, the Commission estimates that the proposed FTC study will account for significantly more than three-fourths of advertising expenditures directed toward children and adolescents.

<sup>5</sup> The specific categories that the FTC will examine are: breakfast cereals; snack foods; candy and frozen desserts; dairy products; baked goods; prepared foods and meals; carbonated beverages; fruit juice and non-carbonated beverages; restaurant foods; and fruits and vegetables.

<sup>6</sup> “Measured media” include methods typically measured by market research companies such as television, radio, print (magazine and newspaper), and some forms of Internet advertising.

<sup>7</sup> “Unmeasured media” include methods for which audience size is not typically measured, such as in-store marketing (including shelf placement), events, package promotions, digital marketing, and product placement in entertainment media (including television shows, movies, video games, and music recordings).

unmeasured media categories,<sup>8</sup> and will require expenditure reporting in each media category by food category, by brand, and, where such advertising exists, by sub-brand. Expenditures will be reported separately for marketing activities directed to children ages 2-11 and for those directed to adolescents ages 12-17. This information will allow the agency to analyze how industry members allocate their promotional expenditures among particular food and beverage products and particular media for each age group. Total marketing expenditures for each food product, and within each promotional activity category, will also be collected to permit the agency to analyze the percentage of marketing expenditures for any product or in any media category that is directed to children or adolescents.

The proposed information requests also will require the 48 respondents to provide specific nutritional data for each food product that the companies marketed to children or adolescents in 2009.<sup>9</sup> Recipients of the FTC's previous information requests for the 2006 study likewise must provide the requested nutrition data for each food product that the company identified as marketed to children or adolescents in 2006.<sup>10</sup> The nutrition data to be requested include common nutrient information that typically appears on the Nutrition Facts panel of packaged goods, such as serving size, total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, potassium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron. The Commission also intends to seek 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,

<sup>8</sup> These are: (1) television advertising; (2) radio advertising; (3) print advertising; (4) company-sponsored Internet sites; (5) other Internet and digital advertising; (6) packaging and labeling; (7) movie theater/video/video game advertising; (8) in-store advertising and promotions; (9) specialty item or premium distribution; (10) public entertainment events; (11) product placements; (12) character licensing, toy-co-branding, and cross-promotions; (13) sponsorship of sports teams or individual athletes; (14) word-of-mouth and viral marketing; (15) celebrity endorsements; (16) in-school marketing; (17) advertising in conjunction with philanthropic endeavors; and (18) other expenditures.

<sup>9</sup> If a company reformulated the food product in 2009, the company must provide nutritional data for the last of the formulations in 2009.

<sup>10</sup> For ease of reporting, the FTC will provide each company that submitted a Special Report for calendar year 2006 with a pre-populated spreadsheet showing the products that the company previously identified as marketed to youth.

nuts, and beans). This information will enable the Commission to effectively analyze the nutritional profile of foods marketed to children and adolescents.

In sum, the proposed information requests seek comprehensive information about activities and expenditures to promote food and beverages to children and adolescents, and the nutritional composition of the products marketed to youth. As explained above, this information will allow the agency to analyze how industry members allocate their promotional activities and expenditures among various media and for different food products. In addition, the FTC will be able to evaluate the impact of self-regulatory efforts on the nutritional profiles of foods marketed to children and adolescents.

The FTC has the authority to compel production of these data and information from food and beverage manufacturers, distributors, and marketers, and quick service restaurant companies under Section 6(b) of the FTC Act, 15 U.S.C. 46(b). Under the PRA, the FTC must seek approval from OMB for the information collection, because the number of separately incorporated companies affected by the Commission's requests will exceed nine entities. 44 U.S.C. 3501-3520. As required by the PRA, the FTC published a **Federal Register** Notice seeking comments from the public concerning the proposed collection of information from food and beverage companies and quick service restaurants. See 74 FR 48072 (Sept. 21, 2009) (hereinafter "September 2009 Notice"). In response, the FTC received six comments (discussed below). Pursuant to the OMB regulations (5 CFR part 1320) that implement the PRA, the FTC is providing this second opportunity for public comment while requesting that OMB grant the clearance for the proposed collection of information. All comments should be filed as prescribed in Part IV of this **SUPPLEMENTARY INFORMATION** section, and must be received on or before June 24, 2010.

## II. Public Comments

In response to the September 2009 Notice, the Commission received comments from the Robert Wood Johnson Foundation Center to Prevent Childhood Obesity (RWJF Center), Children Now, Food Marketing to Children Workgroup (FMC Workgroup), the African American Collaborative Obesity Research Network (AACORN), the Children's Food and Beverage Advertising Initiative (CFBAI), and the Grocery Manufacturers Association

(GMA).<sup>11</sup> Two of the commenters expressly favored the proposed data collection, and none of the commenters opposed the data collection. All commenters made suggestions for enhancing the quality, utility, and clarity of the information to be collected, and one commenter offered suggestions for reducing the burden on the companies.

### A. General Support for the Data Collection

The RWJF Center commented that the proposed information collection will contribute to the body of knowledge regarding youth-directed food and beverage marketing practices. The FMC Workgroup offered strong support for the proposed data collection, viewing it as necessary and useful.

### B. Utility of the Information Collection

In its September 2009 Notice, the FTC invited comments on 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. The RWJF Center commented that the FTC's proposed information collection is important to expanding knowledge of food and beverage marketing given changes that have occurred in the marketing landscape in the past few years, such as novel new media and market research techniques. The FMC Workgroup commented that collecting 2006 and 2009 data will allow the FTC to assess the extent to which companies have implemented the Commission's 2008 recommendations, and to identify additional actions that may be warranted. The FMC Workgroup also agreed that collecting nutritional data will allow the Commission to better evaluate the impact of self-regulatory pledges.

### C. Suggestions for Improvements to Proposed Information Collection

The FTC invited comments in its September 2009 Notice on ways to enhance the quality, utility, and clarity of the information to be collected. The FTC received several suggestions for enhancing the FTC's proposed collection of marketing data by collecting the following: (1) exposure data for measured media and new media (e.g., Internet, digital, and viral marketing); (2) additional data for new media, including certain expenditure data and measures of ad effectiveness;

<sup>11</sup> The comments are available at (<http://www.ftc.gov/os/comments/foodmktgkids-2/index.shtm>).

(3) additional market research data; (4) other marketing data based on race, ethnicity, age, and other demographic indicators; and (5) data regarding nutrition information and specific food categories.

#### 1. Exposure data

Children Now, the RWJF Center, and the FMC Workgroup suggested that gathering exposure data is important to accurately evaluate child and adolescent exposure to measured media and various interactive media techniques. The RWJF Center and Children Now suggested the FTC gather data on exposure and impressions, and the RWJF Center also suggested gathering data on the demographic makeup of the audiences (e.g., distributions by age group and among racial and ethnic minority populations). The FMC Workgroup requested that exposure data be collected and disaggregated among different types of new media.

The Congressional appropriations language upon which the FTC 2008 Report was based instructed the FTC to prepare a report on food industry marketing activities and expenditures “targeted toward” children and adolescents. In other words, Congress asked the FTC to examine food advertising intentionally marketed to youth. Because it was not feasible for the Commission to make ad-by-ad, fact-intensive determinations of intent, the FTC relied on objective criteria. For television, an ad was deemed to be child-targeted if the company’s marketing plan so indicated or if the advertisement appeared during a program that had a 30% child audience; a 20% threshold was used for adolescent-targeted ads. The percentage threshold for child-targeted Internet advertising was 20% (as opposed to 30% for television) because relatively fewer children are active Internet users. The FTC chose these percentages because they are approximately double the percentages of children and adolescents in the medium’s overall audience. The Commission inferred that a company intended to target children or adolescents by advertising on a show or website that disproportionately attracted youth to such a high degree.

Although the “percentage of audience” approach runs some risk of under-inclusiveness – i.e., by not capturing ads placed on programs that have a relatively low percentage, but high number, of child or adolescent viewers – it established an adequate benchmark for future assessments of whether food advertisers have altered their youth-targeted marketing. By comparison, an approach that focuses

on overall child or adolescent exposure to food ads runs a much higher risk of over-inclusiveness. An exposure approach does not distinguish between ads placed on children’s programming and ads placed on general audience or adult programs that happen to have many child viewers. Although exposure data might show whether children and adolescents are seeing more or fewer ads in particular food categories,<sup>12</sup> these data would not aid the Commission’s assessment of whether the level of intentional targeting of youth with food and beverage ads has changed over time.

Separately, an exposure approach could substantially increase the compliance burden on the companies. An ad for a food product might generate a substantial number of youth impressions simply because it ran on programs with large general audiences, such as *American Idol* or *The Simpsons*. Yet, the same ad might never have run on shows watched predominantly by children or adolescents. Thus, an exposure approach potentially could encompass many more food products than the percentage of the audience approach.<sup>13</sup>

Finally, the Commission notes that the FTC<sup>14</sup> and several outside researchers have conducted exposure analyses of food and beverage television advertising.<sup>15</sup> In addition, the Commission’s follow-up report will include: an analysis of television expenditures on the top five broadcast shows for children and adolescents based on audience share; data on online display ad impressions for foods generated on child- or teen-oriented websites; and an analysis of time spent by youth on websites operated by food companies based on data purchased from media research firms.

<sup>12</sup> To do this comparison, the Commission also would have to collect this data for 2006, thereby increasing the compliance burden on the companies.

<sup>13</sup> Indeed, GMA commented that the FTC’s criteria of a “30% Children Audience” and a “20% Adolescent Audience” are too broad to determine if certain types of advertising are directed to children or adolescents.

<sup>14</sup> Federal Trade Commission, Bureau of Economics Staff Report, *Children’s Exposure to Television Advertising in 1977 and 2004: Information for the Obesity Debate* (2007), at ([www.ftc.gov/os/2007/06/cabecolor.pdf](http://www.ftc.gov/os/2007/06/cabecolor.pdf)).

<sup>15</sup> E.g., Harris, et al., Rudd Center for Food Policy & Obesity at Yale Univ., *Cereal F.A.C.T.S.* (2009), available at ([www.cerealfacts.org/media/Cereal\\_FACTS\\_Report.pdf](http://www.cerealfacts.org/media/Cereal_FACTS_Report.pdf)); Powell, et al., *Nutritional Content of Television Food Advertisements Seen by Children and Adolescents in the United States*, 120 *Pediatrics* 576-83 (2007); Powell, et al., *Exposure to Food Advertising on Television Among U.S. Children*, 161 *Archives of Pediatrics & Adolescent Med.* (2007).

#### 2. New media

The RWJF Center and Children Now suggested that the FTC gather additional expenditure data for new media, such as information on paid search term and display advertising, email marketing, mobile marketing, digital marketing, social media marketing, and behavioral targeting. Both commenters referenced increased use of emerging digital media practices in the last few years. The RWJF Center also requested that the Commission assess the effectiveness of online and mobile marketing by evaluating companies’ implementation of self-regulatory policies and use of other measures of advertising effectiveness.

As it did for the FTC 2008 Report, the Commission will request expenditure data for the forms of new media identified above, including online display advertising, e-mail marketing, mobile marketing, and digital marketing. In addition to reporting on expenditures and promotional activities for these types of marketing, the follow-up report will include an analysis of online display advertising that may be targeted to youth and time spent at food company websites by youth, using data acquired from comScore and Nielsen Online. The Commission also will obtain data from comScore’s Ad Metrix Mobile service to evaluate how much mobile marketing teens see and the amount of food ads they see relative to ads for other types of products on the mobile platform. For data on the effectiveness of online and mobile marketing and the use of behavioral targeting, the Commission will obtain marketing research studies from the food companies; to the extent the companies have researched the appeal and effectiveness of new media platforms and behavioral targeting to individuals under the age of 18, the Commission will evaluate and report on that research.

#### 3. Market research data

The RWJF Center requested that the FTC obtain information and expenditures on neuroscience and biometric studies used for developing or implementing food advertising, as well as research on advertising effectiveness. The FMC Workgroup agreed that the FTC should seek information on novel market research techniques (e.g., neuromarketing and biometric measures).

The FTC has incorporated into the proposed information requests specific requests for market research on advertising effectiveness and neurological or other factors that may

contribute to food advertising appeal among youth. More generally, the Commission believes the wording of the proposed Specification on market research is sufficiently broad to yield the type of information described by the commenters.

#### 4. Targeted demographics data

Several comments supported the Commission's proposal to collect information on food and beverage marketing directed to youth based on gender, race, ethnicity, or income level. The Commission believes this information is important to collect given the prevalence of obesity within particular minority youth populations.<sup>16</sup> The FMC Workgroup and the AACORN noted that ethnic minority youth are the fastest growing segment among the youth population, and at the same time are at greater risk for obesity and related diseases. In addition, the AACORN cited to research indicating that African-American and Hispanic youth are exposed to more food marketing for less nutritious foods than youth in the general population.

The FMC Workgroup and the AACORN suggested that the FTC obtain information on the ethnic minority youth groups targeted, the manner in which they are selected, the campaigns and products directed to those groups, and expenditure and exposure data for new media targeting those groups. The Commission's proposed Specification on targeted youth marketing based on gender, race, ethnicity, or income level seeks information on most of the issues identified by the commenters. For example, companies must identify the specific sub-populations to which reported expenditures and activities relate. In addition, companies must identify which of their policies and market research pertain to marketing to individuals of a specific gender, race, ethnicity, or income level.

#### 5. Nutrition information and data on certain food product categories

A key recommendation of the FTC 2008 Report was for industry to improve the nutritional profile of foods marketed to children and adolescents.<sup>17</sup> To adequately assess the scope of

nutritional improvements between 2006 and 2009, the Commission will gather detailed nutrition information from food and beverage companies.

For purposes of evaluating changes in the nutrition profile of foods marketed to youth, the CFBAI recommended that the Commission consider the nutritional density of products and meals (e.g., servings of fruit or vegetable in a food). In addition, the CFBAI requested that the FTC analyze reductions in calories, fat, sugars, and sodium in products advertised by CFBAI participants between 2006 and 2009. The CFBAI also requested that the Commission examine marketing expenditures based on the food groups (e.g., fruit, dairy) contained in products and meals marketed to youth. The RWJF Center requested that FTC gather data on the specific products promoted by quick service restaurants in their advertising (e.g., kids meals, value meals).

The Commission believes the types of nutrition data it proposes to collect are in keeping with the recommendations of the CFBAI and the RWJF Center. The FTC proposes to collect information on the nutritional density of products and meals marketed to youth, such as the fruit, vegetable, whole grain, and protein content per food serving. Likewise, the FTC will be able to analyze changes in calories, fat, sugars, and sodium of youth-marketed food products based on the nutrition data the Commission proposes to collect. The Commission will ask restaurant companies to list specific menu items, including those offered as children's meal combinations, and to provide expenditure and nutrition data for each item advertised to youth in 2009 and 2006. The Commission intends to evaluate youth-directed food marketing nutrition data in a manner consistent with the approach it took for analyzing the 2006 expenditure data, and will report nutrition trends on an aggregated basis by food category and media category.<sup>18</sup>

#### *D. Suggestions for Minimizing the Burden of the Information Collection*

In the September 2009 Notice, the FTC invited comments on ways to

minimize the burden of the collection of information on those who are to respond. GMA responded; no individual companies submitted suggestions.

GMA suggested that the FTC eliminate or consolidate collection of data from categories that accounted for few expenditures or activities based on the 2006 information collection. The Commission consolidated the collection of certain categories of information, such as combining the candy and frozen dessert food categories and the word-of-mouth and viral advertising categories.

GMA urged the Commission to wait until after March 30, 2010 to issue the information requests, because 2009 calendar year data would not likely be available until late in the Second Quarter of 2010. This is a reasonable request and, under the current proposed time frame, the Commission would not issue the information requests until Summer 2010. GMA also requested that the Commission allow companies 120 days, rather than 90 days, to respond to the requests. The Commission believes that 90 days is a reasonable deadline. The Commission will 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 asked that the FTC apply narrower criteria for youth-directed reportable expenditures than those used in the 2007 Orders to avoid over-reporting. For example, GMA asserted that some of the FTC's data requests were not tied to actual or potential audience thresholds, resulting in over-reporting of ad expenditures for programs in which seventy percent or more of the audience were not youth. GMA also indicated that it was overbroad to use "G" and "PG" ratings as criteria for defining youth-directed movie theater spending, and "E" ratings to define youth-directed video game spending. The Commission has narrowed the criteria for adolescent-directed movie theater and video game advertising by omitting reference to "PG" and "E" ratings and instead basing the determination on whether the viewing audience constituted at least 20% of persons ages 12-17. For assessing child-directed advertising, the Commission believes it is reasonable to maintain use of the "G" movie rating and the "EC" rating for video games.

GMA suggested that the Commission drop the request for expenditure data on advertising purchased during the "Top 5" television shows – that is, the five broadcast programs with the largest number of adolescent viewers. In the FTC 2008 Report, the Commission did not include these expenditures in the

<sup>16</sup> For example, data from the Centers for Disease Control and Prevention (CDC) indicate disparities among adolescent racial and ethnic minorities, with prevalence of obesity highest among Hispanic adolescent boys and African-American adolescent girls. CDC website at (<http://www.cdc.gov/obesity/childhood/trends.html>). See also U.S. Dept. Health and Human Services, *The Surgeon General's Vision for a Healthy and Fit Nation 2-3* (Jan. 2010), at (<http://www.surgeongeneral.gov/library/obesityvision/obesityvision2010.pdf>)

<sup>17</sup> See, e.g., FTC 2008 Report, at 67.

<sup>18</sup> As an alternative to providing nutritional information for each product advertised to youth, GMA suggested that the Commission extrapolate changes in the nutritional content of foods marketed to children and adolescents from 2006 to 2009 by collecting samples of product nutrition labels and allowing companies to estimate the number of products to which the labels apply. The Commission does not believe that GMA's suggested approach will provide accurate and reliable information upon which to evaluate the nutritional profiles of foods marketed to youth today as compared to those marketed in 2006.

aggregated figures of money spent on advertising to children and adolescents. Rather, the information was "noted separately . . . to illustrate the point that children and adolescents are exposed to a great deal of advertising that is directed to a general, primarily adult, audience."<sup>19</sup> The Commission has decided not to request 2009 expenditure data for the "Top 5" television shows; instead the FTC will purchase those data from a media research firm.

Finally, GMA expressed concern about the burden of collecting nutritional data from companies. The Commission does not believe that requiring companies to provide the information is burdensome. First, the nutrient data that the FTC proposes to seek are limited and are commonly analyzed in evaluating the nutritional quality of food marketed to children.<sup>20</sup> Second, food and beverage companies often maintain databases with detailed ingredient information about their products in order to observe proper compliance control issues and food safety and labeling standards. The Nutrition Labeling and Education Act of 1990 and FDA regulations require packaged foods to bear nutrition labeling, which contains the majority of the nutrition content data that the Commission seeks.<sup>21</sup>

#### *E. Accuracy of Estimated Burden of the Information Collection*

In the September 2009 Notice, the FTC invited comments on the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used. The Commission estimated the total hours burden to be 12,250 and the total cost burden to be \$3,675,000. The FTC offered broad ranges for estimated costs, which were separated into single-category and multiple-category company ranges, to account for differences in the number of brands and the amount of marketing the companies engage in for each brand.

GMA commented that the Commission underestimated the burden to companies to respond to the proposed data collection. GMA instead anticipated the cost to be \$100,000 or more for each company that markets a single product category and \$1 million or more for each company that markets multiple product categories. As

indicated in Section III below, the Commission has revised its burden estimates from those stated in the September 2009 Notice to reflect estimated burden hours of 17,550 hours and an estimated total cost of \$5,265,000. However, for the following reasons, the FTC does not believe the likely burden to be as high as GMA's estimate. First, the FTC proposes to send the information requests to virtually the same group of companies that received the information requests in 2007, and it anticipates that the companies' experience in answering the 2007 requests will inform their responses to the proposed requests, thus lessening the time needed to compile and submit the data to the FTC. Second, the Commission has incorporated into the proposed information requests detailed guidance, instructions, and templates for companies to use when responding, in order to promote clarity and efficiency.

#### *F. Other Requests Contained in Comments*

Children Now requested that the FTC obtain information from children's media companies regarding their policies for, and revenues from, licensing characters used to promote food and beverage products. The FMC Workgroup also requested that the Commission gather information from media companies. To be consistent with the FTC's prior information collection, the Commission does not intend to expand the scope of the proposed recipients to include children's media companies. The Commission believes it will be able to glean relevant information about media companies' policies and practices on use of licensed characters in food marketing via the information on cross-promotions and use of licensed characters that will be provided by the food and beverage companies.<sup>22</sup>

The FMC Workgroup suggested that the FTC collect information on: (1) the extent to which companies gather personally identifiable information from children and teens; and (2) the scope of data profiles that companies maintain on youth populations. These issues are outside the scope of Commission's focus on food marketing to children and adolescents.

### **III. Burden Estimates, Document Retention, and Confidentiality**

#### *A. Estimated Hours Burden: 17,550 hours*

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 48 parent companies of food and beverage and quick service restaurant advertisers. Because these companies vary in size, in the number of products 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 and experience with the 2007 Orders and input from the GMA, the staff estimates, on average, that the time required to gather, organize, format, and produce responses to the 6(b) Orders will range between 150-300 hours per information request for companies that market a single category of product to children and adolescents; thus, an average of 225 hours. Similarly, the FTC staff estimates that companies that market multiple categories of products to children and adolescents will spend between 300-900 hours to respond to an information request; thus, an average of 600 hours. The total estimated burden per company is based on the following assumptions:

Identify, obtain, and organize product information; prepare response: 25-175 hours

Identify, obtain, and organize information on marketing expenditures; prepare response: 50-250 hours<sup>23</sup>

Identify, obtain, and organize information on, and samples of, marketing activities; prepare response: 25-200 hours

Identify, obtain, and organize information regarding product nutrition information and healthy initiatives; prepare response: 30-200 hours

Identify, obtain, and organize information regarding market research and marketing to youth of a specific gender, race, ethnicity, or income level; prepare response: 20-75 hours

Total: 150-900 hours

<sup>23</sup> For companies that use substantial amounts of unmeasured media for advertising and promotional activities, the hours required to respond will be greater than for companies that utilize only small amounts of unmeasured media.

<sup>19</sup> FTC 2008 Report at Appendix A, at A-4.

<sup>20</sup> The data provide a snapshot comparing calendar years 2006 to 2009; the FTC does not propose to seek information on each nutritional change that occurred between 2006 and 2009 for individual products.

<sup>21</sup> 21 U.S.C. 343(q); 21 CFR 101.9.

<sup>22</sup> In a separate inquiry, the FTC staff is analyzing information about how media companies license their character properties and attendant policies for their use.

The Commission intends to send 30 information requests to parent companies that market a single category of product to children and adolescents. As a result, the staff estimates a total burden for these companies of approximately 6,750 hours (30 companies x 225 average burden hours per company). The Commission intends to send 18 information requests to parent companies that market multiple categories of products to children and adolescents. As a result, the staff estimates a total burden for these companies of approximately 10,800 hours (18 companies x 600 average burden hours per company). Thus, the staff's estimate of the total burden is approximately 17,550 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the parent company that has received the information request.

#### *B. Estimated Cost Burden: \$5,265,000*

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 \$300/hour for their labor. Thus, the staff estimates that the total labor costs for the information requests will be approximately \$5,265,000 ((\$300 x 6,750 hours for companies that market a single category) + (\$300 x 10,800 hours for companies that market multiple categories)).

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

#### *C. Document Retention and Confidentiality*

##### 1. Document Retention

Potential recipients of the compulsory process orders must retain potentially responsive documents and information. 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.

##### 2. Confidentiality

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 Section 6(f) material. Although materials 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 CFR 4.9-4.11.

Finally, the information presented in the report will not reveal company-specific data, except data that are public. *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: (1) food industry marketing activities and expenditures targeted to children and adolescents; and (2) nutritional information about the companies' food and beverage products marketed to children and adolescents.

#### **IV. Instructions for Submitting Comments**

Interested parties are invited to submit written comments electronically or in paper form. All comments must be received on or before June 24, 2010. Comments should refer to the "Food Industry Marketing to Children Report:

Paperwork Comment; Project No. P094511" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . ." as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>24</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comment in electronic form. Comments filed in electronic form should be submitted by using the following weblink:

(<https://public.commentworks.com/ftc/foodmarketingPRA2>) (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 (<https://public.commentworks.com/ftc/foodmarketingPRA2>) weblink. If this Notice appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that (<http://www.regulations.gov>) forwards to it. You may also visit the FTC website at (<http://www.ftc.gov/>) to read the Notice and the news release describing it.

<sup>24</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, 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* FTC Rule 4.9(c), 16 CFR 4.9(c).

A comment filed in paper form should include the reference "Food Industry Marketing to Children and Adolescents Study: Paperwork Comment; Project No. P094511" both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments on the proposed reporting requirements, which are subject to OMB review under the PRA, should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). 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 (<http://www.ftc.gov/ftc/privacy.shtm>).

**David C. Shonka,**

*Acting General Counsel.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60 Day-10-10DT]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

#### Proposed Project

Monitoring and Reporting System for Chronic Disease Prevention and Control Programs—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Chronic diseases are the leading causes of death and disability in the United States, accounting for seven of every ten deaths and affecting the quality of life for 90 million Americans. Chronic diseases represent 83% of all U.S. health care spending.

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) provides funding to health departments in States, territories, and the District of Columbia to implement and evaluate chronic

disease prevention and control programs. Traditionally, support has been provided through cooperative agreements that are specific to a chronic disease or condition. In 2009, CDC announced a new cooperative agreement program for collaborative chronic disease prevention and health promotion programs (RFA DP09-901; authorized under sections 301, 307, 310, and 311 of the Public Health Service Act [42 U.S.C. 241 and 247(b)(k)]. The new program streamlines funding, communication and collaboration in four areas that have previously been funded and evaluated independently: Tobacco control, diabetes prevention and control, State-based surveillance through the Behavioral Risk Factor Surveillance System (BRFSS), and the Healthy Communities initiative. Awardees are the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The new cooperative agreement encourages each awardee to collaborate with partners (both internal and external to the State health department) to develop and implement a multi-year, statewide strategic plan.

CDC requests OMB approval to collect information from the four specified State programs through a new, electronic Management Information System (MIS). Upon approval, the new information collection system will replace two previously approved information collections for tobacco control programs (OMB No. 0920-0601, exp. 5/31/2010), and diabetes prevention and control programs (OMB No. 0920-0479, exp. 4/30/2013), and harmonize their content. In addition, the new MIS will provide a common progress reporting framework for State-based BRFSS programs and Healthy Community programs, which have previously reported progress information to CDC using standard progress reporting forms for cooperative agreement awardees (OMB No. 4040-0004, exp. 3/31/2012).

Information will be collected on each program's objectives, planning activities, resources, partnerships, policy and environmental strategies for preventing or controlling chronic diseases, and progress toward meeting goals. The increased emphasis on partnership and collaboration is intended to identify priorities, gaps in chronic disease prevention and health promotion activities, and opportunities to leverage CDC and State (Federal and non-Federal) resources. Information will be collected electronically through a new Management Information System (MIS). The collection of information, in a uniform and efficient manner, will reduce duplicative reporting