

Closed Session

1. Staff Briefing Concerning International Affairs.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523 5725.

Karen V. Gregory,
Secretary.

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FEDERAL TRADE COMMISSION**Agency Information Collection Activities; Submission for OMB Review; Comment Request**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The FTC seeks public comments on proposed information requests by compulsory process to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. The information sought would include, among other things, data on manufacturer annual sales and marketing expenditures. The current FTC clearance from the OMB to conduct such information collection expires January 31, 2015. The Commission intends to ask OMB for renewed three-year clearance to collect this information.

DATES: Comments must be submitted by January 5, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Tobacco Reports: Paperwork Comment, FTC File No. P054507” on your comment. File your comment online at <https://ftcpublish.commentworks.com/ftc/tobaccoreportspra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be addressed to Shira Modell, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mailstop CC-10528, Washington, DC 20580. Telephone: (202) 326-3116.

SUPPLEMENTARY INFORMATION:

Title: FTC Cigarette and Smokeless Tobacco Data Collection.

OMB Control Number: 3084-0134.

Type of Review: Extension of currently approved collection.

On August 13, 2014, the Commission sought comment on the information collection requirements associated with the Cigarette and Smokeless Tobacco Data Collection. 79 FR 47463 (“August 13, 2014 Notice”). Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the information the FTC proposes to seek from cigarette manufacturers and smokeless tobacco manufacturers.

In response to the August 13, 2014 Notice, the Commission received comments from Altria Client Services (“Altria”), the Campaign for Tobacco-Free Kids (“CTFK”), Legacy, and Professor M. Jane Lewis (“Lewis”) of the Rutgers School of Public Health.

Three of the comments (Legacy, Lewis, and CTFK) specifically noted the utility and importance of the Commission’s Cigarette and Smokeless Tobacco Reports, and urged the agency to continue collection and reporting industry sales and marketing expenditure data.¹ Legacy and CTFK also noted that these data are not available from other sources.

Three of the commenters (Altria, CTFK, and Legacy) responded to questions raised in the Commission’s 60-day notice concerning the future collection of data on cigarette tar, nicotine, and carbon monoxide yields. Altria stated that the Commission should not require the manufacturers to provide yield data on all varieties of cigarettes they sell and should cease requiring the cigarette manufacturers to report any smoke constituent data, given the Food and Drug Administration’s (“FDA”) new statutory authority to collect such data. Altria stated further that if the Commission retains or

expands the existing reporting requirements (which require the companies to provide yield data only for those varieties for which such data already exist), it should require all cigarette manufacturers, not just the major companies, to submit those data. Altria, at 3.

CTFK acknowledged that tar, nicotine, and carbon monoxide yield data may be important for researchers and regulatory agencies, but noted that “the tobacco industry’s history of manipulating this self-reported data raises concerns about its accuracy and validity,” and urged the Commission to coordinate with FDA “to establish a coherent set of product testing requirements that will best serve the statutory missions of both agencies.” CTFK, at 3.

Legacy encouraged the Commission to cease its collection and reporting of these cigarette yield data, citing their potential to mislead consumers about health risks, the limitations of existing testing methodologies to produce yield results consistent with those actually experienced by smokers, and the “potential unintended consequences among people of low literacy and low numeracy” to understand information on smoke constituent yields. Legacy, at 2-3. Instead, Legacy noted, the Commission and the FDA should work together to determine the best methodology for determining the yields of harmful or potentially harmful smoke constituents, and the best means of disseminating that information in a way that protects public health.

The FTC and FDA staff have long worked together on the many areas where the two agencies share jurisdiction, and the Commission fully expects this tradition to continue now that the agencies share jurisdiction over cigarettes and smokeless tobacco. The Commission further agrees that FDA should be the primary agency to determine the best test methodology. The Commission is not aware, however, of another means of preserving the existing record of cigarette yield trends unless it continues to collect these data. Freedom of Information Act requests filed with the Commission also suggest that researchers remain interested in these data. Accordingly, the Commission intends to continue collecting the data to the extent recipients of the 6(b) Orders possess them.²

¹ CTFK and Legacy also urged the Commission to collect and report sales and marketing data for cigars and electronic cigarettes, as well as for conventional tobacco cigarettes and smokeless tobacco. CTFK, at 2-3; Legacy, at 5-6. The Commission will consider those recommendations.

² The Commission will consider Altria’s recommendation that all cigarette manufacturers be required to provide yield data if the major manufacturers are required to do so, although it believes that the five major cigarette manufacturers

Two commenters (CTFK and Lewis) suggested modifications to the Commission's reports. CTFK recommended that the Commission: (1) Report price discount expenditures for retailers and wholesalers separately; (2) clarify the definitions of certain expenditure categories—specifically, in which category coupons obtained online are to be counted; (3) report data on a company-specific or brand-specific basis, rather than on a fully aggregated basis, and on a state-level basis, as well as nationally; and (4) require manufacturers to report expenditures related to corporate sponsorships and advertisements, and expenditures related to promotion of their youth tobacco prevention programs. CTFK, at 2.

The Commission agrees that separating the existing category for price discounts (which have accounted for more than 70% of cigarette industry expenditures and more than 20% of smokeless tobacco industry expenditures in recent years) into two separate categories would be useful, and consistent with past decisions to disaggregate certain expenditure categories when they represent a significant proportion of overall spending.³ Regarding CTFK's suggestion that data be reported on other than a fully aggregated, nationwide basis, the cigarette and smokeless tobacco companies assert that those data are confidential and, as CTFK acknowledges, the Commission cannot publicly release trade secrets or certain commercial or financial information. *Id.* at 2 n.2. CTFK's contention that much of the information that the companies claim to be confidential is actually available from other sources seems inconsistent with its assertion that:

The FTC is currently the primary source for data on cigarette and smokeless tobacco companies' marketing and promotional expenditures. No other agency collects and publishes such information directly from the companies, making the FTC reports the most accurate and reliable assessment of tobacco marketing and promotion expenditures available.

Id. at 1. Similarly, when the Commission has previously inquired about the feasibility of requiring expenditures to be reported on a state-by-state basis, rather than nationally, the major cigarette companies have stated

that have received its Orders in recent years already represent at least 95% of domestic cigarette sales.

³ For example, the Commission reported spending on a single "promotional allowances" category through 2001, at which time separate categories were created for price discounts and promotional allowances paid to retailers, wholesalers, and others.

that this was not possible. The Commission again asks for comment on this question.

The Commission already requires the recipients of its 6(b) Orders to report certain expenditures made in the name of the company, rather than any of its brands,⁴ although it does not include them in its Cigarette and Smokeless Tobacco Reports. The Commission will consider whether those expenditures should be reported in the future. Similarly, the companies do report to the Commission the amount they spend on advertising directed to youth or their parents that are intended to reduce youth smoking or smokeless tobacco use (depending on the Order). The Commission includes this information in the textual portions of its industry Reports (unless only one company reported such spending), not in the annual expenditure-by-category tables.

Lewis noted that the Commission's reports do not define the term "expenditure," and she recommended that the reports clearly state what costs (*e.g.*, contracted outside services, in-house costs, and personnel) are covered. Lewis, at 2. The Commission agrees that this would be a useful addition to its Reports.

Lewis stated that the Commission's reports underestimate direct mail spending because the costs of items distributed by direct mail (*e.g.*, coupons and specialty items) are reported in other categories, and recommended that the Commission require the companies to include the costs of those items in their calculations of their direct mail expenditures.⁵ Lewis also recommended that the Commission clarify whether spending for brand-specific Web sites should be reported as advertising on the company's Web site, or as spending on the Internet other than on the company's own Web site, and specify whether expenditures for electronic mail messages should be reported as direct mail or as advertising on the Internet other than on the company's own Internet Web site.⁶ Lewis, at 2–3.

⁴ Both the cigarette and smokeless tobacco Orders require submission of data on "Public entertainment events (including, but not limited to, concerts and sporting events) bearing or otherwise displaying the name of the Company or any variation thereof but not bearing or otherwise displaying the name, logo, or an image of any portion of the package" of any of its cigarettes or smokeless tobacco products, or otherwise referring to those products.

⁵ As noted above, CTFK also asked about the reporting of coupons obtained online.

⁶ Lewis correctly noted that the category for spending other than on the company's Web site specifically references "direct mail advertising using electronic mail messages." Based on her review of recent Commission reports, however, she

The Commission will clarify in future Orders that spending on brand-specific Web sites should be counted as spending on the company's Web sites. However, the Commission does not believe that its Orders should distinguish between, for example, expenditures on coupons delivered through direct mail and coupons delivered by other means. The full impact of couponing by the major cigarette and smokeless tobacco manufacturers can be seen only if expenditures for all coupons are reported together, regardless of how those coupons are delivered to consumers.

The Commission believes that its Orders have been clear that spending on electronic mail messages should be reported as advertising expenditures on the Internet other than on the company's Web site, and that the absence of reported expenditures does not mean that those costs are being categorized incorrectly.⁷ However, Lewis's comment raises a question about whether spending on electronic mail messages should continue to be reported in the "other Internet" category or should be reported as direct mail expenditures. The Commission requests comment on that question.

Finally, the Commission requests comment on two additional subjects: (1) Its intention to have the cigarette and smokeless tobacco companies that receive these Orders submit two separate datafiles (one containing sales-related data, the other containing data on marketing expenditures), rather than one; and (2) whether it should cease collecting expenditure data on transit advertising.

The Commission's Orders require that sales data be reported in actual dollars, while advertising and promotional expenditures are reported in thousands of dollars; sales data are also reported for each individual variety of cigarette and smokeless tobacco sold by the company, while expenditure data are reported at the brand level. The Commission believes that requiring the recipients of these Orders to submit separate datafiles for sales and marketing expenditure data will both help avoid errors in the preparation of the companies' submissions and expedite the agency staff's processing of those data, without imposing additional costs on the Order recipients.

questioned whether the companies might actually be reporting those costs as direct mail.

⁷ For example, companies do not report the costs of employing full-time employees. If those employees are producing the electronic mail messages, their salaries would not show up in the companies' submissions to the Commission.

The Commission has collected and reported data on transit advertising (currently defined as “advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any other transportation facility”) for decades. However, the 1998 Tobacco Master Settlement Agreement prohibited transit advertising, and the major cigarette manufacturers have reported no such spending since 2000, while the major smokeless tobacco companies have never reported any transit spending.⁸

*Burden Statement:*⁹

Estimated Annual Burden: 2,100 hours.¹⁰

Estimated Number of Respondents: 15 maximum.

The estimated number of respondents include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

Estimated Average Burden per Year per Respondent: 140 hours.

(a) Information requests to the five largest cigarette companies and five largest smokeless tobacco companies, at a per company average each year of 180 hours = 1,800 hours, cumulatively, per year; and

(b) Information requests to five additional respondents, of smaller size, at a per company average each year of 60 hours = 300 hours, cumulatively, per year.

Estimated Annual Labor Cost: \$210,000.

Estimated Capital or Other Non-Labor Cost: de minimis.

Request for Comment:

You can file a comment online or on paper. For the FTC to consider your

comment, we must receive it on or before January 5, 2015. Write “Tobacco Reports: Paperwork Comment, FTC File No. P054507” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’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. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do 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). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹¹ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/tobaccoreportspra2> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also

may file a comment through that Web site.

If you file your comment on paper, write “Tobacco Reports: Paperwork Comment, FTC File No. P054507” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that 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 on or before January 5, 2015. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>. For supporting documentation and other information underlying the PRA discussion in this Notice, see <http://www.reginfo.gov/public/jsp/PRA/pradashboard.jsp>.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5806.

David C. Shonka,

Principal Deputy General Counsel.

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FEDERAL TRADE COMMISSION

[File No. 141 0141]

GlaxoSmithKline, PLC and Novartis AG; Analysis of Proposed Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

⁸ See Federal Trade Commission Cigarette Report for 2011 (2013), at Tables 2B–2E, available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-cigarette-report-2011/130521cigarettereport.pdf>; Federal Trade Commission Smokeless Tobacco Report for 2011 (2013), at Tables 3B–3H, available at <http://www.ftc.gov/reports/federal-trade-commission-smokeless-tobacco-report-2011>.

⁹ The details and assumptions underlying these estimates were set forth in the August 13, 2014 **Federal Register** notice.

¹⁰ The Commission intends to use this PRA clearance renewal to collect information from the companies concerning their marketing and sales activities for the years 2014, 2015, and 2016. The Commission expects to issue compulsory process orders seeking this information annually, but it is possible that orders might not be issued in any given year and that orders seeking information for two years would be issued the next year. The figures set forth in this notice for the estimated hours and labor costs associated with this information collection represent average annual burden over the course of the prospective PRA clearance.

¹¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).