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**FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request**

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

ACTION: Notice.

SUMMARY: 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 Office of Management and Budget (“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 on the proposed information requests must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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, and file the comment online at <https://ftcpublic.commentworks.com/ftc/tobaccoreportspra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver 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 or copies of the proposed collection of information should be addressed to Shira Modell, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mailstop CC-10507, Washington, DC 20580. Telephone: (202) 326-3116.

SUPPLEMENTARY INFORMATION: For over forty-five years, the FTC has published periodic reports containing data on domestic cigarette sales and marketing expenditures by the major U.S. cigarette manufacturers. The Commission has published comparable reports on smokeless tobacco sales and marketing expenditures for over twenty-five years. Originally, both reports were issued pursuant to statutory mandates. After those statutory mandates were terminated, the Commission continued to collect and publish information obtained from the cigarette and smokeless tobacco industries pursuant to Section 6(b) of the FTC Act, 15 U.S.C. 46(b). As noted above, the current PRA clearance to collect this information is valid through January 31, 2015 (OMB Control No. 3084-0134).

The Commission plans to continue sending information requests annually to the ultimate parent company of several of the largest cigarette companies and smokeless tobacco companies in the United States (“industry members”). The information requests will seek data regarding, *inter alia*: (1) the tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their products or brand imagery in television shows, motion pictures, on the

Internet, or on social media; (4) how much industry members spend on advertising intended to reduce youth tobacco usage; (5) the events, if any, during which industry members' tobacco brands are televised; and (6) for the cigarette industry, the "tar", nicotine, and carbon monoxide yields of their cigarettes. The information will again be sought using compulsory process under Section 6(b) of the FTC Act.

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the proposed collection of information.

The Commission invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Commission also specifically invites comment on whether it should require submission of "tar," nicotine, and carbon monoxide yields for all cigarettes sold by the companies. The Commission did require submission of all such data for many years, but most

recently has only required the companies to submit those data if they possess them – i.e., if a company does not have yield data on a particular cigarette variety, it does not have to conduct testing on that variety.

The Commission uses the data provided by the cigarette manufacturers to prepare its Cigarette Report, which, in addition to data on cigarette sales and marketing expenditures, includes information on, among other things, the market share of cigarettes filtered versus unfiltered cigarettes, and of regular versus menthol cigarettes.¹ The Report has also included for many years data analyzing sales-weighted “tar” yields: specifically, Tables 4 and 4A present the Domestic Market Share of Cigarettes by “Tar” Yield, identifying the market share of cigarettes having “tar” yields of 15 mg. or less, 12 mg. or less, 9 mg. or less, 6 mg. or less, and 3 mg. or less.² The percentage of cigarette varieties for which “tar” yields have been provided has fluctuated in recent years: yields were provided for 717 of the 752 varieties of cigarettes (95 percent) sold in 2012, but for only 645 of the 807 varieties (80 percent) the companies reported selling in 2011. Continuing to permit the companies to report “tar,” nicotine, and carbon monoxide yield data only to the extent they possess those data could render the data in those tables less useful for purposes of analysis within a specific year or over time.

The Commission therefore requests comment on the following:

- (1) Whether the market share data in Tables 4 and 4A is still relevant and useful;
- (2) Whether the Commission should continue to require the major cigarette manufacturers only to provide yield in their possession, or return to its previous

¹ The data are also used by researchers outside the Commission.

² See, e.g., Federal Trade Commission Cigarette Report for 2011 (2013) , at Tables 4 and 4A, *available at* <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-cigarette-report-2011/130521cigarettereport.pdf>. Table 8, which also contains sales weighted “tar” yield data was added to the Report in the mid-1990s.

approach of requiring the companies to provide yield data on all varieties of cigarettes they sell;

- (3) The additional burden on the companies that would be associated with requiring the companies to provide yield data on all varieties of cigarettes they sell; and
- (4) Whether the relevance of the data in Tables 4 and 4A outweighs the additional costs to the manufacturers of conducting the testing necessary to provide data on every variety they sell.

Estimated hours burden: The FTC staff's estimate of the hours burden is based on the time required each year to respond to the Commission's information request. Although the FTC currently anticipates sending information requests each year to the five largest cigarette companies and the five largest smokeless tobacco companies, the burden estimate is based on up to 15 information requests being issued per year to take into account any future changes in these industries. These companies vary greatly in size, in the number of products they sell, and in the extent and variety of their advertising and promotion.

The companies have not taken issue with the staff's burden estimates in prior requests for PRA reauthorization,³ suggesting that the time most companies would require to gather, organize, format, and produce their responses would range from 30 to 80 hours per information request for the smaller companies, to as much as hundreds of hours for the very largest companies. As an approximation, staff continues to assume a per company average of 180 hours for the ten largest recipients of the Commission's information requests to comply – cumulatively, 1,800 hours per year.

Staff anticipates that if the Commission decides to issue information requests to any additional companies, those companies would be smaller than the primary ten recipients and that

³ *E.g.*, 76 FR 47187 (Aug. 4, 2011); 76 FR 72706 (Nov. 25, 2011).

the response burden per additional recipient would be less than for the larger companies. Staff believes that the burden should not exceed 60 hours per entity for the smaller recipients of the information requests. Cumulatively, then, the total burden for five additional respondents should not exceed 300 hours per year. Thus, the overall estimated burden for a maximum of 15 recipients of the information requests is 2,100 hours per year. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

Estimated cost burden: Commission staff cannot calculate with precision the labor costs associated with this data production, as those costs entail varying compensation levels of management and/or support staff among companies of different sizes. The staff assumes that paralegals and computer analysts will perform most of the work involved in responding to the Commission Orders, although in-house legal personnel will be involved in reviewing the actual submission to the Commission. The staff continues to use a combined hourly wage of \$100/hour for the combined efforts of these individuals.⁴ Using this figure, staff's best estimate for the total labor costs for up to 15 information requests is \$210,000 per year. Staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

⁴ Commission staff believes this estimate is conservative: according to data from the Bureau of Labor Statistics, the mean hourly wages for these three occupations are as follows: \$24.60 for paralegals; \$41.40 for computer and information analysts; and \$63.46 for lawyers. Economic News Release, Bureau of Labor Statistics, Table 1 – National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013 (Apr. 1, 2014) (Table 1), available at <http://www.bls.gov/news.release/ocwage.t01.htm>. Even if employees of the major cigarette and smokeless tobacco manufacturers earn more than these hourly wages, the staff believes its \$100/hour estimate is appropriate.

Request for comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days from FEDERAL REGISTER date of publication]. 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 Website, 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 Website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn’t include any sensitive personal information, such as 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, such as 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). In particular, do not include competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names. 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). 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/tobaccoreportspra>, 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 website.

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 or deliver 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 [INSERT DATE 60 DAYS FROM FEDERAL REGISTER DATE OF PUBLICATION]. You can find more information,

including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,
Principal Deputy General Counsel.

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