



FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension and Modification

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) has clearance from the Office of Management and Budget (“OMB”) to send information requests, pursuant to compulsory process, to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. The information sought includes, among other things, data on the manufacturers’ annual sales and marketing expenditures for cigarettes, smokeless tobacco products, and electronic devices used to heat non-combusted cigarettes, and sales of tobacco-free nicotine lozenges and pouches. The current OMB clearance expires on August 31, 2024. The Commission plans to ask OMB for renewed three-year clearance to collect this information, and to modify its existing clearance to allow for the collection of additional information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies.

DATES: Comments must be filed by **[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; PRA Comment: FTC File No. P072108” on your comment, and file your comment online at <https://www.regulations.gov> 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, N.W., Suite CC-5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Mailstop CC-10507, Washington, DC 20580, (202) 326-2699.

SUPPLEMENTARY INFORMATION:

Title: FTC Cigarette and Smokeless Tobacco Data Collection.

OMB Control Number: 3084-0134.

Type of Review: Revision and extension of currently approved collection.

Likely Respondents: Parent companies of the largest cigarette companies and smokeless tobacco companies.

Estimated Annual Burden Hours: 3,540 disclosure hours.

Estimated Annual Labor Costs: \$407,100.

Abstract: Pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b), the Commission collects information on sales and/or marketing of cigarettes, smokeless tobacco products, tobacco-free nicotine lozenges and pouches, and electronic devices used to heat non-combusted cigarettes (collectively, “subject products”) from manufacturers of cigarettes and smokeless tobacco products. Depending on the type of product a manufacturer produces, the Commission requests the information using two different instruments—that is, a Cigarette Order and a Smokeless Tobacco Order. The Commission compiles and publishes the data in two periodic reports.

Using compulsory process under section 6(b) of the FTC Act, the Commission plans to continue sending information requests annually to the ultimate parent companies of the largest cigarette companies and smokeless tobacco companies in the United States (collectively, “industry members”). The information requests will seek data regarding, among other things: (1) the cigarette or smokeless tobacco sales of industry members; (2) how much industry members spend advertising and promoting their cigarette or smokeless 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 cigarette or smokeless tobacco 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 cigarette or smokeless tobacco usage; (5) the events, if any, during which industry members' cigarette or smokeless tobacco brands are televised; and (6) how much industry members spend on public entertainment events promoting their companies but not specific cigarette or smokeless tobacco products or such products generally. The information requests will also seek information from the cigarette companies pertaining to the annual sales, give aways, and marketing expenditures for electronic devices used to heat non-combusted cigarette products.

While, in previous years, the information requests only sought information pertaining to the annual unit and dollar sales of tobacco-free nicotine lozenges and pouches, the Commission plans to seek a modification of its existing clearance in order to collect information concerning advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches. The need to collect this information is predicated upon the fact that sales of tobacco-free nicotine lozenges and pouches more than doubled between 2020 and 2022, and these products appear to be especially popular with youth.

The current PRA clearance to collect this information is valid through August 31, 2024 (OMB Control No. 3084-0134). As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB renew the clearance for the PRA burden associated with the proposed collection, and the proposed modification.

Burden Statement

Estimated Annual Burden Hours: 3,540.

The FTC staff's estimated hours of burden is based on the time required each year to respond to the Commission's information requests. Because the potential recipients of the information requests vary greatly in size, the number of products they sell, and the extent and variety of their advertising and promotion, FTC staff distinguishes between the four largest

industry members and smaller industry members for the purpose of calculating the estimated annual burden hours. This burden analysis first discusses the burden hours that industry members will incur in providing information on their sales and marketing expenditures for cigarettes and smokeless tobacco products.

Requests for Information on Cigarettes and Smokeless Tobacco: For the information requests on the sales and marketing expenditures for cigarettes and smokeless tobacco products, the Commission currently anticipates sending information requests to the four largest cigarette companies and the five largest smokeless tobacco companies each year. However, in order to take into account any future industry changes, the burden estimate is based on up to 15 information requests being issued per year. The Commission assumes that six of the 15 information requests will be issued to the four largest industry members, and the remaining nine information requests will be issued to nine smaller industry members.¹

FTC staff estimates that each of the four largest industry members will incur, on average, a burden of 400 hours per response per year, resulting in a cumulative burden of approximately 2,400 hours per year (6 requests x 400 hours per year). Additionally, FTC staff estimates that the remaining nine smaller recipients of the Commission's information requests will each incur, on average, a burden of 60 hours per request per year, resulting in a cumulative burden of approximately 540 hours per year (9 requests x 60 hours).

Accordingly, FTC staff estimates that, for the purpose of providing information on their sales and marketing for cigarettes and smokeless tobacco products industry members will incur a cumulative burden of approximately 2,940 hours per year (2,400 hours per year + 540 hours per year).

Requests for Information on Tobacco-Free Nicotine Lozenges and Pouches: In the past, the Commission's Smokeless Tobacco Orders have also sought information pertaining to the

¹ Based on their product variety, two of the four largest industry members receive both a Cigarette Order and a Smokeless Tobacco Order.

annual unit and dollar sales of tobacco-free nicotine lozenges and pouches by the smokeless tobacco manufacturers or related companies. The Commission is proposing to amend its existing OMB clearance to also collect data on smokeless tobacco manufacturers' annual advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches. FTC staff estimates that, as a result of this modification, the Commission will seek this information from the five largest smokeless tobacco manufacturers each year. However, in order to take into account any future industry changes, the burden estimate is based on up to five additional information requests being issued per year to smokeless tobacco companies that sell, or have related companies that sell, tobacco-free nicotine lozenges and pouches.

FTC staff estimates that each of the ten recipients will incur, on average, a burden of 50 hours per request per year. Accordingly, FTC staff estimates that, for the purpose of providing information on the sales and marketing expenditures for tobacco-free nicotine lozenges and pouches, the recipients will incur a cumulative burden of approximately 500 hours per year (10 requests x 50 hours per year).

Requests for Information on Devices to Heat Non-Combusted Cigarettes: The Commission's Cigarette Orders have also sought sales and marketing expenditure information for electronic devices used to heat non-combusted cigarettes. At this time, there is no longer any industry member that sells such devices in the United States, but FTC staff anticipates that at least one of the four largest industry members will re-enter this market segment over the next three years. FTC staff assumes that, as a result of the Commission's information requests, it will take any of the largest cigarette companies that sell electronic devices used to heat non-combusted cigarettes approximately 25 hours per year to compile the information on their sales and marketing expenditures for such devices, and that as many as four of the largest industry members may sell such devices, for a possible burden of 100 hours (4 requests x 25 hours per year).

Accordingly, FTC staff estimates that, as a result of the Commission's requests for information on sales and marketing for the subject products, market participants will incur a cumulative burden of approximately 3,540 hours per year (2,940 hours per year + 500 hours per year + 100 hours per year). This estimate includes any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that receives the information request.

Estimated Annual Cost Burden: \$407,100.

FTC 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. FTC staff assumes that paralegals and computer analysts will perform most of the work involved in responding to the Commission information requests, although in-house legal personnel will be involved in reviewing the actual submission to the Commission. FTC staff will use a combined hourly wage of \$115/hour for the combined efforts of these individuals.² Using this figure, FTC staff's best estimate for the total annual labor costs is \$407,100 per year (\$115 per hour x 3,540 hours).

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

FTC 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.

Request for Comment:

² FTC staff believes that this estimate is conservative. According to data from the Bureau of Labor Statistics, the mean hourly wages for these three occupations are as follows: \$30.21 for paralegals; \$53.15 for computer and information analysts; and \$78.74 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 2022 (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, FTC staff believes its \$115/hour estimate is appropriate.

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

You can file a comment online or on paper. Due to the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write "Tobacco Reports; PRA Comment: FTC File No. P072108" 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.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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, your comment should not include any "trade secret or any commercial or financial information which . . . is

privileged or confidential”—as provided by 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)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled “Confidential,” and (3) comply with FTC Rule 4.9(c). 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). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

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 AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

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