

[Billing Code: 6750-01P]

Request for Information and Comment: Food Industry Marketing Practices to Children and Adolescents

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice Requesting Information and Comment.

SUMMARY: The Conference Report of Public Law 109-108 instructs the FTC to submit a report to Congress by July 1, 2006 on “marketing activities and expenditures of the food industry targeted toward children and adolescents.” To assist in the preparation of this report, the Commission seeks relevant information and empirical data regarding food and beverage industry marketing to children and adolescents.

DATES: Written or electronic comments must be submitted on or before Monday, April 3, 2006.

ADDRESSES: Comments should refer to “Food Marketing to Children and Adolescents Report to Congress -- Comment, Project No. P064504” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex H), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because standard postal mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).¹

¹ Any request for confidential treatment, including the factual and legal basis for the request, must accompany the comment 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* Commission Rule

Comments filed in electronic form should be submitted by clicking on the following weblink: <https://secure.commentworks.com/foodmarketing> 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 available at <https://secure.commentworks.com/foodmarketing>.

The Federal Trade Commission Act, 15 U.S.C. §§ 42-58 (FTC Act), and other laws the Commission administers permit the collection of public comments to consider and use as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at www.ftc.gov. 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 www.ftc.gov/ftc/privacy.htm.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, 202-326-3115, or Rielle Montague, 202-326-2645, FTC, Bureau of Consumer Protection. The FTC staff contacts can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue N.W., NJ-3212, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Background: On July 14 and 15, 2005, the Federal Trade Commission and the Department of Health and Human Services (HHS) jointly sponsored a public workshop on food and beverage marketing to children, self-regulation, and childhood obesity. The public workshop provided a

4.9(c), 16 C.F.R. § 4.9(c).

forum for representatives from food and beverage companies, medical and nutrition experts, media representatives, consumer groups, advertising specialists, and other experts to discuss industry self-regulation concerning the marketing of food and beverages to children, and initiatives to educate children and parents about nutrition. In connection with the workshop, the FTC and HHS sought public comment on food and beverage marketing to children and various other issues related to industry self-regulation and childhood obesity. 70 FR 25060 (May 12, 2005). The agencies received relatively little empirical data addressing the extent of food and beverage marketing to children in connection with the workshop.

On November 22, 2005, the President signed a bill appropriating funds for the Commission for FY 2006. Pub. L. No. 109-108. The Conference Report (H. R. Rep. No. 109-272 (2005)) for this law incorporates by reference the following language from the Senate Report (S. Rep. No. 109-88 (2005)):

The Committee is concerned about the growing rate of childhood and adolescent obesity and the food industry's marketing practices for these populations. The Committee directs the FTC to submit a report to the Committee by July 1, 2006, on marketing activities and expenditures of the food industry targeted toward children and adolescents. The report should include an analysis of commercial advertising time on television, radio, and in print media; in-store marketing; direct payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games.

Information Requested: To prepare the report, the Commission seeks relevant information, including empirical data, on the nature and extent of marketing activities and expenditures targeted to children and adolescents. The FTC is interested in receiving publicly available information that can be used to prepare the report. However, because it is unlikely that information sufficient to prepare the report is publicly available, the Commission likely will later issue orders under Section 6(b) of the FTC Act (15 U.S.C. § 46(b))² to obtain needed information from food industry members.³ To assist the Commission in drafting such requests so that they elicit the necessary information without imposing any unnecessary burdens, the FTC seeks comment on how food and beverage companies record and maintain information about their marketing activities and expenditures targeted to children and adolescents – for example, whether they record and maintain marketing expenditure information based on product category, brand, specific product, etc., and how long they keep marketing information.⁴ The FTC also seeks comment on how food and beverage companies record and maintain information about

² Section 6(b) of the FTC Act (15 U.S.C. § 46(b)) authorizes the FTC to require corporations, partnerships, and persons “engaged in or whose business affects commerce” (excepting specified entities such as certain banking institutions) “by general or special orders . . . [to file] annual or special, or both annual and special, reports or answers in writing to specific questions” to obtain information about “the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals”

³ See, e.g., Institute of Medicine of the National Academies, *Food Marketing to Children and Youth: Threat or Opportunity?* (Dec. 2005), at ES-6 (reporting difficulty in assessing the nature and extent of food and beverage marketing to children because “[s]ubstantial proprietary market research data was not publicly accessible, or available only for purchase at considerable cost and with prohibitive constraints on public use of the data”).

⁴ Note that the Commission intends to report only aggregated information on marketing activities and expenditures, rather than reporting information for specific brands or products. To aggregate the data, it will be important to have similar categories of data from the various companies.

commercial advertising time on television, radio, and in print media and information about exposure to products through the use of other marketing techniques.

In particular, the FTC requests information and invites comment on the following subjects. Commenters should respond with as much specificity as possible.

1. Types of foods and beverages marketed to children and adolescents;
 - a. The categories or subcategories used to describe these products.
 - b. The extent to which food and beverage marketing to children and adolescents varies based on age, and the age groups used to target such marketing (*e.g.*, 2-5, 6-11, 12-17).
2. Types of media used in advertising to children and adolescents (*e.g.*, broadcast and cable television, radio, print, the Internet, outdoor advertising, etc.);
 - a. The total amount of advertising expenditures for each medium for all foods and beverages marketed to children and adolescents.
 - b. The amount of advertising expenditures for each medium for each category or subcategory of food and beverages marketed to children or adolescents.
 - c. The extent to which the medium used to advertise to children and adolescents varies based on age, and the age groups used to target such advertising (*e.g.*, 2-5, 6-11, 12-17).
 - d. The amount of such advertising time on each medium.
3. Types of techniques used in marketing to children and adolescents (*e.g.*, preferential shelf placement and other in-store marketing; licensing and cross-promotion of movie, television or electronic game programs or characters; product placement; celebrity

endorsements; word-of-mouth marketing; event-related marketing; product packaging; toys and similar prize promotions; in-school marketing, etc.);

- a. The total amount of marketing expenditures for each of these techniques for all foods and beverages marketed to children.
 - b. The amount of marketing expenditures for each of these techniques for each category or subcategory of food and beverages marketed to children or adolescents.
 - c. The extent to which techniques used to market to children and adolescents varies based on age, and the age groups used in targeting such marketing (*e.g.*, 2-5, 6-11, 12-17).
 - d. The product exposure generated for each of these techniques for each category or subcategory of food and beverages marketed to children and adolescents.
4. All Internet activities related to the marketing of food and beverages to children and adolescents, including advergaming:
- a. The type of Internet activities related to the marketing of food and beverages to children and adolescents.
 - b. The amount of marketing expenditures for each of these activities.
 - c. The extent to which such activities used to market to children and adolescents varies based on age, and the age groups used in targeting such marketing.

Form and Availability of Information and Comments

The FTC requests that interested parties submit written information and comments on the above questions and other related issues to foster greater understanding of these topics.

Especially useful are any studies, surveys, research, and empirical data. All comments should be filed as prescribed in the “ADDRESSES” section above, and must be received on or before Monday, April 3, 2006.

By direction of the Commission.

Donald S. Clark
Secretary