

for ordinary consumers to hear and understand them.⁶⁰

To be effective, a disclosure also generally must be made contemporaneously with the misleading claim it is intended to qualify. For example, disclosures that subsequently inform consumers of a natively formatted ad's commercial nature after they have clicked on and arrived at another page will not cure any misleading impression created when the ad is presented in the stream of a publisher site. This approach also reflects and is consistent with long-standing public policy, as codified in the CAN-SPAM Act⁶¹ and Telemarketing Fraud Act⁶² and found in Commission cases,⁶³ that material misrepresentations as to the nature or source of a commercial communication are deceptive, even if the truth is subsequently made known to consumers.

B. Misleading Claims About the Nature or Source of Advertising Are Likely Material

Deception occurs when an ad misleads consumers about a material fact.⁶⁴ Material facts are those that are important to consumers' choices or conduct regarding a product.⁶⁵ Misleading representations or omissions about an advertisement's true nature or source, including that a party other than the sponsoring advertiser is the source of the advertising, are likely to affect consumers' behavior with regard to the advertised product or the

advertisement.⁶⁶ Consumers with such a misleading impression, for example, are likely to give added credence to advertising messages communicated and to interact with advertising content with which they otherwise would have decided not to interact.⁶⁷

The Commission presumes that claims made expressly and claims the advertiser intended to make are material.⁶⁸ The Commission also considers certain misleading formats to be presumptively material. Depending on the facts, false claims that advertising and promotional messages reflect the independent, impartial views, opinions, or experiences of ordinary consumers or experts are presumed material.⁶⁹ Similarly, the Commission views as material any misrepresentations that advertising content is a news or feature article,⁷⁰ independent product review,⁷¹ investigative report,⁷² or scientific

⁶⁶ There are some exceptions, where consumers might not act differently if they were to identify certain forms of advertising as such. For example, if a branded product is included in entertainment programming in exchange for payment or other consideration from an advertiser, unless this paid product placement communicates an objective claim about a product, the fact that such advertising was included because of payment is unlikely to affect consumers' decision-making. When no objective claims are made for the product advertised, there is no claim to which greater credence can be given; thus, whether an advertiser had paid for the placement or the product appeared because of the program writer's creative judgment would not likely be material to consumers. See generally Letter from Mary K. Engle, Associate Director, Division of Advertising Practices, Federal Trade Commission to Gary Ruskin, Executive Director, Commercial Alert (Feb. 10, 2005), available at www.ftc.gov/system/files/documents/advisory_opinions/letter-commercial-alert-applying-commission-policy-determine-case-basis-whether-particular/050210productplacemen.pdf (response to a petition from a consumer group to issue guidelines requiring the on-screen disclosure "ADVERTISEMENT," whenever paid product placement occurred in television programming; FTC staff concluded that such a disclosure would not generally be necessary to prevent deception and that when particular instances of paid product placement or brand integration were deceptive, they could be adequately addressed on a case-by-case basis).

⁶⁷ In evaluating materiality, the Commission takes consumer preferences as given rather than considering whether they are objectively justified. *Deception Policy Statement*, 103 F.T.C. at 182 n.46.

⁶⁸ *Deception Policy Statement*, 103 F.T.C. at 182.

⁶⁹ See, e.g., *supra* notes 36, 37, 38, 39 and accompanying text. Regarding the specific issue of advertisers using spokespersons to promote products in programming without disclosing the spokesperson's financial ties to the advertiser, a connection between an advertiser and an endorser that is not reasonably expected by the audience must be fully disclosed. See, e.g., *ADT LLC*, No. C-4460, 2014 FTC LEXIS 142, at *3, 5-6 (June 18, 2014) (consent); Endorsement Guides, 16 CFR 255.5.

⁷⁰ See, e.g., *supra* notes 7, 8, 13, 14 and accompanying text.

⁷¹ See, e.g., *supra* note 10 and accompanying text.

⁷² See, e.g., *supra* notes 12, 13 and accompanying text.

research or other information from a scientific or other organization.⁷³ Commercial communications that mislead consumers that they are from the government,⁷⁴ a legitimate business, such as a well-known bank,⁷⁵ or a marketing surveyor⁷⁶ also are presumed to be material.

III. Conclusion

Although digital media has expanded and changed the way marketers reach consumers, all advertisers, including digital advertisers, must comply with the same legal principles regarding deceptive conduct the Commission has long enforced. This statement sets forth principles of general applicability on which the Commission will rely in determining whether any particular advertising format is deceptive, in violation of Section 5 of the FTC Act. The Commission will find an advertisement deceptive if the ad misleads reasonable consumers as to its nature or source, including that a party other than the sponsoring advertiser is its source. Misleading representations of this kind are likely to affect consumers' decisions or conduct regarding the advertised product or the advertisement, including by causing consumers to give greater credence to advertising claims or to interact with advertising content with which they otherwise would not have interacted.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2016-08813 Filed 4-15-16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0097; Docket 2016-0053; Sequence 6]

Submission for OMB Review; Taxpayer Identification Number Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

⁷³ See, e.g., *supra* note 16 and accompanying text.

⁷⁴ See, e.g., *supra* notes 17, 18, 19 and accompanying text.

⁷⁵ See, e.g., *supra* notes 29, 34 and accompanying text.

⁷⁶ See, e.g., *supra* note 23 and accompanying text.

⁶⁰ See, e.g., Final Order and Judgment at 8, *Direct Mktg. Concepts, Inc.* (radio disclosures must be "in a volume and cadence sufficient for an ordinary consumer to hear"); *Carrot Neurotechnology, Inc.*, No. C-4567, 2016 FTC LEXIS 24, at *4 (Feb. 22, 2016) (consent) (necessary disclosures under the order must be "in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand"); Free Annual Credit Disclosures, 16 CFR 610.4(a)(3)(iv) ("Audio disclosures shall be in a slow and deliberate manner and in a reasonably understandable volume and pitch.").

⁶¹ 15 U.S.C. 7701-7713 at 7704(a)(2).

⁶² 15 U.S.C. 6101-6108 at 6102(a)(3)(C).

⁶³ See, e.g., *supra* notes 22, 25, 34 and accompanying text.

⁶⁴ *Deception Policy Statement*, 103 F.T.C. at 182.

⁶⁵ *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) ("a claim is considered material if it 'involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product'") (quoting *Cliffdale Assocs., Inc.*, 103 F.T.C. at 165). Material information may influence consumer behavior apart from the purchase of a product. *Deception Policy Statement*, 103 F.T.C. at 182 n.45. A material misrepresentation is one "the reasonable person would regard as important in deciding how to act, or one which the maker knows that the recipient, because of his or her own peculiarities, is likely to consider important." *Id.* (citing Restatement (Second) of Torts, section 538(2) (1965)).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Taxpayer Identification Number Information. A notice was published in the **Federal Register** at 81 FR 6514 on February 8, 2016. No comments were received.

DATES: Submit comments on or before May 18, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0097, Taxpayer Identification Number Information". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0097, Taxpayer Identification Number Information" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000-0097, Taxpayer Identification Number Information.

Instructions: Please submit comments only and cite Information Collection 9000-0097, Taxpayer Identification Number Information, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement

Analyst, Contract Policy Division, GSA, 202-501-1448 or email at curtis.glover@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with 31 U.S.C. 7701(c), a contractor doing business with a Government agency is required to furnish its Tax Identification Number (TIN) to that agency. Also, 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. 26 U.S.C. 6050M, as implemented in the Department of Treasury, Internal Revenue Service (IRS) regulations at Title 26 of the Code of Federal Regulations (CFR), requires heads of Federal executive agencies to report certain information to the IRS. 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, requires payors, including Government agencies, to report to the IRS, on form 1099, payments made to certain contractors.

To comply with the requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS in 26 CFR, FAR clause 52.204-3, Taxpayer Identification, requires a potential Government contractor to submit, among other information, its TIN. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government. A contractor is not required to provide its TIN on each contract in accordance with FAR clause 52.204-3, Taxpayer Identification, when FAR clause 52.204-7, Central Contractor Registration, is inserted in contracts. FAR clause 52.204-7 requires a potential Federal contractor to provide its TIN in the Central Contractor Registration (CCR) system.

B. Annual Reporting Burden

Respondents: 39,428.
Responses Per Respondent: 3.
Total Responses: 118,284.
Hours Per Response: 10.
Total Burden Hours: 11,828.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information

is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0097, Taxpayer Identification Number Information, in all correspondence.

Dated: April 13, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016-08871 Filed 4-15-16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0175; Docket 2016-0053; Sequence 5]

Submission for OMB Review; Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Use of Project Labor Agreements for Federal Construction Projects. A notice published in the **Federal Register** at 81 FR 6516 on February 8, 2016. No comments were received.

DATES: Submit comments on or before May 18, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect