Supporting Statement for
Information Collection Provisions in Final Amendments to the
Telemarketing Sales Rule
16 C.F.R. Part 310
(OMB Control No. 3084-0097)

The current OMB approval for the information collection requirements in the FTC's Telemarketing Sales Rule ("TSR" or "Rule") expires on July 31, 2009. That clearance, issued in 2006, does not encompass the new information collection requirements presented by two recent amendments to the TSR.[1]

As previously proposed, the TSR amendments concerning prerecorded calls and calculation of call abandonment rates did not affect PRA burden.[2] Accordingly, with no changes to staff's prior estimates of PRA burden at that time, no OMB review and approval for the proposed amendments was sought.

The final amendment regarding prerecorded calls, however, adds certain information collection requirements not covered by the current clearance. Specifically, the amendment expressly authorizes sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers if: (1) the seller has obtained written agreements from those consumers to receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.[3] The amendment will apply not only to prerecorded calls that are answered by a consumer, but also to prerecorded messages left on consumers' answering machines or voicemail services.

Given modifications to those proposed amendments at the final rule stage, we are submitting for OMB review and inviting public comment on the PRA burden analysis regarding the two final amendments. We seek expedited emergency processing and request a temporary, 180-day grant of clearance. Consistent with OMB's recent guidance to FTC staff, we will prepare in early 2009 for public comment and OMB review staff's burden analysis for the revised TSR, *as a whole*, in connection with our seeking renewed 3-year clearance for this Rule.

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[1] 73 Fed. Reg. 51,164 (August 29, 2008).

[2] 71 Fed. Reg. 58,716, 58,730-58731 (Oct. 4, 2006).

[3] When it takes effect, the prerecorded call amendment will provide the first ever explicit authorization in the TSR for sellers and telemarketers to place prerecorded telemarketing calls to consumers. The call abandonment prohibition of the TSR now implicitly prohibits such calls by requiring that all telemarketing calls be connected to a sales representative, rather than a recording, within two seconds of the completed greeting of the person who answers. 16 C.F.R. § 310.4(b)(1)(iv).

(1) Necessity for Collecting the Information

The amendments to the TSR covered by this clearance request were adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act").[4] The Telemarketing Act authorizes the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices, and includes a requirement specifically directing the Commission to include in the TSR "a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy."[5]

Amendments to the TSR adopted by the Commission in 2003 accordingly included several provisions designed to protect consumer privacy, including a prohibition against abandoning calls answered in person by a consumer.[6] Because the prohibition specifies that a call is "abandoned" if a telemarketer does not pick up the call within two seconds after it is answered by a consumer, it implicitly prohibited all prerecorded calls.

The call abandonment prohibition is coupled with a safe harbor[7] designed to permit the use of predictive dialers that increase the efficiency and reduce the cost of live telemarketing calls by placing calls in anticipation that a sales agent will be available to take the call if it is answered. Because predictive dialers rely on projections based on statistical sampling of the percentage of calls actually answered by a consumer, their use results in the abandonment of some calls. In response, the safe harbor adopted in 2003 specified that the abandonment rate could not exceed "3 percent per day" to protect consumers from abandoned calls.[8]

In order to protect consumers' privacy from the excesses of prerecorded calls, as directed by the Telemarketing Act, the prerecorded call amendment makes the implicit prohibition of such calls explicit, unless: (a) the seller on whose behalf a prerecorded call is made has first obtained the written agreement of the person called to receive prerecorded messages; and (b) each message includes an automated interactive telephone keypress or voice-activated opt-out mechanism that is disclosed at the outset of the call. The amendment to the method for calculating the call abandonment rate relaxes the "3 percent per day" requirement to a "per 30-day" requirement, because the record shows that the "per day" requirement had the unanticipated effect of preventing the use of predictive dialers with small calling lists, thereby making the efficiencies and cost savings they provide unavailable to small businesses.

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[4] 15 U.S.C. 6101 *et seq.*

[5] 15 U.S.C. 6102(a)(3)(A).

[6] 16 C.F.R. § 310.4(b)(1)(iv) (the call abandonment prohibition); *see generally*, 16 C.F.R. § 310.4(b).

[7] 16 C.F.R. § 310.4(b)(4).

[8] 16 C.F.R. § 310.4(b)(4)(i).

(2) Use of the Information

(a) Recordkeeping

The written agreement requirement of the prerecorded call amendment will substitute the means of compliance under the Commission's forbearance policy[9] and the recordkeeping requirements of the TSR – which now require a record of an established business relationship ("EBR")[10] – with a record of a consumer's agreement to receive prerecorded calls.[11]

(b) Disclosures

For the first of two prerecorded call disclosures, the Commission has set out acceptable, optional language that sellers may use to obtain consumers' agreements to receive prerecorded calls, while emphasizing that the required agreements may be obtained electronically pursuant to the Electronic Signatures In Global and National Commerce Act ("E-SIGN Act" or "E-SIGN").[12] The Commission will also permit sellers, during a one-year phase-in period before the written agreement requirement takes effect, to obtain the required agreement by means of a keypress on a telephone keypad in response to a prerecorded message disclosure and request. Compliance will thereby require only a one-time recording of such a message and/or a one-time revision of any existing credit card or other printed forms, or of any web page or email forms that sellers may wish to use for the required disclosure and agreement.

The second disclosure incorporates a requirement of the enforcement forbearance policy that has permitted prerecorded calls during the pendency of the amendment proceeding.[13] The Federal Communications Commission ("FCC") has required a similar disclosure for all prerecorded calls to consumers since 1993.[14] The amendment will require that prerecorded calls

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[9] 69 Fed. Reg. 67,287, 67,288-62,790 (Nov. 17, 2004). The enforcement forbearance policy has since permitted such calls if they provide either: (1) a telephone keypad mechanism a consumer can use to opt-out of future calls from the seller, or (2) a toll-free telephone number a consumer can call to opt-out. In October 2006, when the Commission proposed to require a prior written agreement for prerecorded calls, it also proposed to terminate the forbearance policy as of January 4, 2007, but was persuaded by several industry petitions to preserve the status quo until the conclusion of the amendment proceeding.

[10] 16 C.F.R. § 310.2(n) (defining an EBR); 16 C.F.R. § 310.5(a)(3) (EBR recordkeeping requirement).

[11] 16 C.F.R. § 310.5(a)(5) (written agreement recordkeeping requirement).

[12] Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. § 7001 et seq.).

[13] 69 Fed. Reg. at 67,290; 71 Fed. Reg. 77,634, at 77,635 (Dec. 27, 2006) (extending the policy pending completion of this proceeding). The enforcement forbearance policy will terminate, and be replaced by the final amendment's disclosure requirement, on December 1, 2008.

[14] 47 C.F.R. § 64.1200(b)(2) (requiring disclosure of a telephone number "[d]uring or after the message" that consumers who receive a prerecorded message call can use to assert a company-specific do-not-call request).

answered by a consumer disclose at the outset the required interactive means by which the consumer can place his or her number on the seller's do-not-call list (*e.g.*, "Press 1 to opt-out"), or if the prerecorded message is left on an answering machine, a toll-free number to call to opt-out.[15] Any incremental burden from substituting the amendment's disclosure requirement for the current one will be *de minimis*.

(3) Consideration of Using Improved Information Technology to Reduce Burden

The TSR's recordkeeping provisions permit sellers and telemarketers to keep records in whatever form, manner, format, or location they choose. Accordingly, the TSR's recordkeeping provisions are consistent with the requirements of the Government Paperwork Elimination Act, Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749 ("GPEA"). Neither of the two amendments alters the TSR's existing recordkeeping requirements, and both are designed to encourage the use of electronic means of compliance.

(4) Efforts to Identify Duplication

The TSR requires sellers and telemarketers to keep records demonstrating compliance with the Rule. The information collection requirements covered by this request affect only the prerecorded call amendment requirement that sellers retain copies of consumers' written agreements to receive such calls, and the scripts used in such calls.[16] Staff is not aware of any other federal or state requirement that may entail the retention of any records required by the amendments, except for FCC requirements mandating the disclosure in prerecorded messages of a telephone number for opt-out requests,[17] and FCC and some state law requirements for the calculation of call abandonment rates.[18] To the extent that the recordkeeping requirements of the amendments may duplicate the information collection requirements of other federal or state government agencies, the Rule does not require that a duplicate set of records be maintained. Staff knows of no instance, moreover, under which either of the amendments and any other law or regulation governing telemarketing requires that a specific disclosure be made in duplicative ways to satisfy the Rule's requirements and the requirements of a parallel law or regulation.

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[15] Technology exists that permits telemarketers to detect when an answering machine or voice mail service picks up, thus permitting sellers and telemarketers to tailor the opt-out message to disclose either a keypress or a toll-free number opt-out option.

[16] 16 C.F.R. §§ 310.5(a)(1) and (5). No specific recordkeeping requirement in the TSR applies to any other provision of the prerecorded call amendment. Telemarketers will continue to have the burden of proof to establish as an affirmative defense that they have complied with the call abandonment safe harbor, and may keep records showing that their call abandonment rates have not exceeded 3 percent over a 30-day period under the abandonment rate calculation amendment. Such record retention, however, is not expressly required by the TSR.

[17] See *supra* note 14 and accompanying text.

[18] 47 C.F.R. § 64.1200(a)(6); *e.g.*,California Public Utilities Commission, Interim Opinion, Rulemaking 02-02-020 (June 27, 2002) at 20.

(5) Efforts to Minimize Burden on Small Businesses

The Commission believes that the two amendments to the TSR that it is adopting are not likely to have a significant impact on small business for several reasons. Most small businesses serve local customers, develop personal relationships with their clientele, and are therefore likely to be able to obtain their customers' agreements to receive useful prerecorded telemarketing messages. Moreover, purely informational prerecorded messages are not covered by the TSR, and the use of such messages to schedule service calls, delivery times, and the like therefore will not be subject to the written agreement requirement. Finally, as a result of the Commission's decision to defer the effective date of the written agreement requirement for twelve months, small businesses with annual service or other contracts with their customers will have ample time to revise their contracts and seek their customers' permission to receive prerecorded telemarketing messages.

For these same reasons, the Commission believes that small business telemarketers providing prerecorded call services to such small business sellers are unlikely to be significantly affected by the prerecorded call amendment. In addition, for more than two years, small and large telemarketers alike, as well as sellers that conduct their own telemarketing, have been governed by the Commission's enforcement forbearance policy for prerecorded messages answered by a consumer, which has mandated an up-front disclosure to consumers of how to opt-out, and encouraged the use of an interactive opt-out mechanism. During that time, according to the comments, many of which came from small business telemarketers, the industry has transitioned to automated interactive message systems that are now affordable and widely available. Consequently, the Commission does not believe that the three months it is allowing until December 1, 2008 for sellers and telemarketers to provide automated interactive opt-out mechanisms will disadvantage either small or large business telemarketers or sellers. Although prerecorded message calls placed on answering machines or voicemail services were not subject to the Commission's enforcement forbearance policy, there is nothing in the record to suggest that application of the requirement of an automated interactive opt-out mechanism to such calls could not be accomplished within the phase-in period, or would disadvantage either small or large business telemarketers or sellers.

Further, the amendment adjusting the method for measuring the permissible call abandonment rate by predictive dialers in live telemarketing campaigns is not likely to have a significant impact on small business. If anything, the change in the standard from a "per day" to a per-30-day calculation should lead to a reduction in the cost of live telemarketing campaigns for both small and large businesses, for the reasons previously stated, and will likely encourage the use of such calls to EBR customers by small and large businesses alike. In fact, small business sellers and telemarketers are likely to derive the greatest benefit from the amendment because the smaller size of their calling lists has prevented full realization of the efficiencies of predictive dialers under the existing measurement standard, an unintended consequence that the amendment will correct.

Accordingly, the two amendments to the TSR will not have a significant nor disproportionate impact on the costs of small business.

(6) Consequences of Conducting the Collection Less Frequently

(a) Recordkeeping

The TSR requires specified records to be retained for 24 months. A record retention period less than a two-year period would be inadequate for investigations under the FTC's enforcement program. Consumers who complain to the FTC about transactions covered by the Rule often do not do so immediately. Therefore, there may already be a substantial "lag time" between the time the alleged rule violations occurred and the time the FTC learns of the alleged violations. A two-year record retention period allows the Commission staff to gather the information needed to pursue enforcement actions and to identify those persons who have most recently suffered injury from the alleged deceptive or abusive telemarketing practices.

(b) **Disclosures**

The final rule's prerecorded call amendment includes two separate disclosure requirements: (1) a clear and conspicuous disclosure, when sellers seek a consumer's agreement to receive prerecorded calls, that the purpose of the agreement is to authorize the seller to place prerecorded calls to them; and (2) a disclosure at the outset of all prerecorded calls informing consumers how to place their telephone numbers on the seller's company-specific do-not-call list. Preparation of these brief disclosures, whether in print or electronic media, including voice recording, should be a one-time event, although they may be used more than once in seeking consumer consent to be called with prerecorded messages or at the outset of each such message. Compared to the modest cost and burden these disclosures may impose, omitting either one when required by the amendment would defeat the amendment's purpose, which is to protect consumer privacy as mandated by the Telemarketing Act.

(7) Circumstances Requiring Collection Inconsistent With OMB Guidelines

The collection of information in the amended TSR is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

The Commission has twice sought comment from interested parties on both the prerecorded call amendment and the amendment to revise the method for calculating the call abandonment rate. In response to industry requests, the Commission first sought comment on a proposed amendment to permit prerecorded messages when a business had an "established business relationship" with a consumer, so long as each message included a keypress mechanism or toll-free telephone number to opt-out that was disclosed at the outset of the call.[19] The same request for comments also asked for input on an industry proposal to modify the method for calculating the call abandonment rate. While industry comments generally supported both

[19] 69 Fed. Reg. 67,287 (Nov. 17, 2004).

proposals, and a few consumer comments even supported the call abandonment rate calculation amendment, well over 13,000 consumer comments vociferously opposed the proposed prerecorded call amendment.

In response to those comments, the Commission in 2006 reversed course and requested comment from interested parties on a proposed amendment making the implicit prohibition on prerecorded calls in the TSR's call abandonment provision explicit, and permitting such calls only if the seller had first obtained the express agreement, in writing, of a consumer to receive prerecorded calls.[20] The Federal Register notice also sought comment on a proposed amendment to revise the calculation of the call abandonment rate from a "3 percent per day" to a "per 30-day" standard because the "per day" standard was preventing small businesses from using predictive dialers, which are too inaccurate with small calling lists to ensure compliance with the 3 percent requirement.

The Commission received some 229 additional comments from individual consumers and nine consumer advocacy organizations supporting the revised proposed prerecorded call amendment and largely opposing the "3 percent per 30-day" amendment. Sellers, telemarketers, their trade associations and technology providers submitted 73 comments supporting the "3 percent per 30-day" amendment and opposing the "opt-in" approach of the proposed prerecorded call amendment.[21]

The industry comments generally objecting to the amendment's written agreement requirement appear to assume that the agreement must be obtained with pen and paper, notwithstanding similar provisions in the TSR that expressly authorize the use of electronic signatures that comply with the E-SIGN Act. In response, the Commission has added a footnote to the amendment that expressly authorizes the use of electronic signatures under E-SIGN in order to make absolutely clear that nothing in the amendment requires the creation or retention of paper records.[22] This clarification will minimize any paperwork burden in creating and retaining the written agreements the amendment requires.

The one comment directly addressing the PRA, which also appears to assume that pen and paper agreements are required, objects that the Commission's analysis in the NPRM ignored the initial cost for sellers of reprinting credit card and loyalty applications and revising systems and procedures to obtain the required agreements from existing and new customers.[23] While

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[20] 71 Fed. Reg. 58,716 (Oct. 6, 2006).

[21] Many of the industry comments argued that the Commission instead should permit prerecorded calls so long as they provided an interactive opt-out mechanism.

[22] For this reason, if a seller nonetheless elects to use paper records, any attendant cost or other burden is self-imposed, rather than imposed by the amendment.

[23] Comment by SmartReply, Inc., at 18-19 (November 1, 2006), *available at* http://www.ftc.gov/os/comments/tsrrevisedcallabandon/525547-00105.pdf. In response to these concerns, the

there will be some initial burden in converting from EBR records to agreement records, which staff has included in revised burden estimates below, the Commission has taken two additional steps designed to reduce that burden significantly. First, the Commission will accept agreements obtained by consumers' use of a keypress on a telephone keypad. Second, the Commission has provided a phase-in that defers the written agreement requirement until September 1, 2009, during which time sellers may continue to place low-cost prerecorded calls to their EBR customers that could include a request for agreement to receive prerecorded calls in the future with a simple keypress.

(9) Payments or Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The collection of information in this proposed Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2). To the extent that information covered by a recordkeeping requirement of the Rule is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, will apply.

(12) Hours Burden

Estimated incremental annual hours burden: 82,865 hours

When the FTC last sought renewed PRA clearance for the Rule, staff estimates were based on data from the FTC's Do-Not-Call Registry ("Registry"). The most recent full-year data then available was for the period from 3/1/05 - 2/28/06. In order to focus strictly on the incremental PRA burdens posed by the final Rule amendments, we use data for the same time period in this burden analysis.[24] To obtain figures for sellers only, however (because only they, not telemarketers, will have new compliance obligations attributable to the final amendments), we have analyzed the 2006 data in greater detail.

In seeking the 2006 clearance, staff estimated that 15,000 telemarketing entities (sellers

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Commission has acted to minimize any such unavoidable costs and burdens by deferring the effective date of the written agreement requirement until September 1, 2009 to allow time for the orderly phase-in of revised credit card and other applications, and the implementation and use of other systems and procedures to obtain the required agreements from existing and new customers.

[24] We will update our population estimates in early 2009 when preparing our next PRA clearance request for the amended TSR as a whole for the period from July 31, 2009 - July 31, 2012.

and the telemarketers that serve them) were subject to the Rule.[25] New Registry data for the period 3/1/05 - 2/28/06 that we believe is more accurate shows that the total number of telemarketing entities subject to the TSR is 19,208.[26] Of that total, there were 4,393 sellers and also 2,635 telemarketers with independent access to the Registry that downloaded telephone numbers from more than one state (to avoid TSR violations by automated "scrubbing" of the numbers on the Registry from their calling lists).[27] The number of *seller*s subject to the TSR, therefore, is 16,573 (19,208 telemarketing entities - 2,635 telemarketers =16,573 sellers).

Recordkeeping: Under the amendment, no prerecorded call may be placed by or on behalf of a seller unless the seller has obtained a written agreement from the person called to receive such calls. Thus, the recordkeeping obligations of the prerecorded call amendment fall on sellers rather than telemarketers.[28]

In view of the phase-in and the amendment's clarification allowing written agreements to be created and maintained electronically pursuant to E-SIGN, any initial burden caused by the transition from EBR records to written agreement records should not be material. Once the necessary systems and procedures are in place, any ongoing incremental burden to create and retain electronic records of agreements by new customers to receive prerecorded calls should be minimal.[29]

Staff estimates that each of the 16,573 sellers subject to the prerecorded call amendment will require approximately 1 hour to prepare and maintain records required by the amendment; thus, 16,573 total recordkeeping hours. This reflects a one-time modification of existing customer databases to include an additional field to record consumer agreements.

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[25] See 71 Fed. Reg. 28,698 (May 17, 2006) and the associated May 2006 supporting statement submitted to OMB for the details underlying this estimate.

[26] This figure, derived from data provided from the Registry's current contractor, is determined as follows: 65,768 total entities accessing the Registry - 933 exempt entities - 45,627 non-exempt entities that accessed telephone numbers solely intrastate (and thus not subject to the TSR) = 19,208. (This calculation employs the same methodology as was used in the 2006 clearance request.)

[27] Staff assumes that telemarketers that make prerecorded calls download telephone numbers listed on the Registry rather than conduct online searches as the latter may consume considerably more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

[28] Although telemarketers that place prerecorded telemarketing calls on behalf of sellers must capture and transmit to the seller any requests they receive to place a consumer's telephone number on the seller's entity-specific do-not-call list, this *de minimis* obligation extends both to live and prerecorded telemarketing calls, and was accounted for in the 2006 estimates. Moreover, software that automates this process for prerecorded calls is widely available and in use.

[29] If it is not feasible to obtain a written agreement at the point of sale after the written agreement requirement takes effect, sellers could, for example, obtain a customer's email address and request an agreement via email to receive prerecorded calls.

Disclosure: Staff estimates that the 16,573 sellers will require, on average, 4 hours each -- 66,292 hours cumulatively -- to implement the incremental disclosure requirements posed by the final rule amendments. This estimate is comprised of the following tasks: (1) one-time creation, recording, and implementation of a brief telephone script requesting a consumer's agreement via a telephone keypad response;[30] (2) modify or create electronic forms or agreements for use in emails to consumers or on a website;[31] (3) one-time revision of any existing paper forms (*e.g*., credit card or loyalty club forms, or printed consumer contracts) to include a request for the consumer's agreement to receive prerecorded calls;[32] and (4) legal consultation, if needed, regarding compliance.

Any remaining time needed to make the required opt-out disclosure for all prerecorded calls would pose no greater time increment, and arguably less, than the pre-existing FCC disclosure provision.[33] In any event, because this disclosure applies only to prerecorded calls, which are fully automated, no additional manpower hours would be expended in its delivery.

Other: The revised standard for measuring the three percent call abandonment rate will not impose any new or affect any existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the PRA. The amendment relaxes the present requirement that the abandonment rate be calculated on a ''per day per campaign'' basis by permitting, but not requiring, its calculation over a 30-day period as requested by the industry. Sellers and telemarketers already have established automated recordkeeping systems to document their compliance with the current standard. The proposed amendment likely will reduce their overall compliance burden because it relaxes the current requirement. The current "per day" requirement has forced telemarketers to turn off their predictive dialers on many occasions when unexpected spikes in call abandonment rates occur late in the day, and thereby prevented realization of the cost savings that predictive dialers provide.

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[30] During the one-year phase-in before the written agreement requirement takes effect, the Commission will permit sellers to use prerecorded message calls made to existing customers to secure their agreements to receive prerecorded calls by pressing a key on their telephone keypad. Once a script is written and recorded, it can be used in all calls made by or on behalf of the seller to obtain the required agreements. Sellers will be able to include the request for the agreement in their regular prerecorded calls, thus making the time necessary to request the required agreements, and the cost of doing so, *de minimis* during the year-long phase-in that will overlap with the final year of the current PRA clearance.

[31] This figure includes both the minimal time required to create the electronic form and the time to encode it in HTML for the seller's website.

[32] As previously noted, the Commission has provided suggested language for this purpose that should minimize the time required to modify any paper disclosures.

[33] *See supra* note 14 and accompanying text.

Estimated incremental labor cost burden: $3,488,000, rounded

Recordkeeping: As indicated above, staff estimates that existing sellers making use of prerecorded calls will require 16,753 hours, cumulatively, to comply with the amendment's recordkeeping requirements during the final year of the current PRA clearance. Staff assumes that the aforementioned tasks will be performed by managerial and/or professional technical personnel, at an hourly rate of $38.93.[34] Accordingly, incremental labor cost in the final year of the current clearance would be $652,194.

Disclosure: Staff estimates that approximately 75% of the disclosure-related tasks previously noted would be performed by managerial and/or professional technical personnel, again, at an hourly rate of $38.93, with 25% allocable to legal staff, at an hourly rate of $54.35.[35] Thus, of the 66,292 total estimated disclosure burden hours, 49,719 hours would be attributable to managerial and/or professional technical personnel, with the remaining 16,573 hours attributable to legal staff. This yields $1,935,561 and $900,743, respectively, in labor cost – in total, $2,836,304.

Cumulatively, for recordkeeping and disclosure, labor cost would total $3,488,498 for the final year of the current clearance.

(13) Capital and Other Non-labor Cost

Other than the initial recordkeeping costs, the amendment's written agreement requirement will impose *de minimis* costs, as discussed above. The one possible exception that might arise involves credit card or loyalty program agreements that retailers revise to request agreements from consumers to receive prerecorded calls. Retailers might have to replace any existing supplies of such agreements. Staff believes, however, that the one-year phase-in of the written agreement requirement will allow retailers to exhaust existing supplies of any such preprinted forms, so that no material additional cost would be incurred to print revised forms.

Similarly, staff has no reason to believe that the amendment's requirement of an automated interactive opt-out mechanism will impose other than *de minimis* costs, for the reasons discussed above. The industry comments on the amendment uniformly support the view that automated interactive keypress technologies are now affordable, cost-effective, and widely

[34] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations. See http://www.bls.gov/oes/current/oes_nat.htm#b11-0000.

[35] This cost is derived from the median hourly wage for lawyers from the "National Compensation Survey: Occupational Wages in the United States, June 2006," Table 2. See http://www.stats.bls.gov/ncs/ocs/sp/ncbl0910.pdf.

available.[36] Moreover, most, if not all of the industry telemarketers who commented, including many small business telemarketers, said they are currently using interactive keypress mechanisms. Thus, it does not appear that this requirement will impose any material capital or other non-labor costs on telemarketers.

(14) Estimated Cost to the Federal Government

In the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006,[37] Congress directed the FTC to collect fees from sellers and telemarketers sufficient to implement and enforce the TSR.[38] In the rulemaking to establish the appropriate fees to charge sellers and telemarketers, the Commission stated that the fees would offset costs the Commission expected to incur in the following areas: (1) operation of the Registry; (2) all FTC law enforcement efforts; and (3) ongoing agency infrastructure and administration costs associated with the operation of the Registry and enforcement of the TSR.[39] As mandated by the Do-Not-Call Registry Fee Extension Act of 2007,[40] the Commission recently reduced these fees as of October 1, 2008.[41] Although the fees have been reduced, it is anticipated that, as in the past, the FTC's expenditures will continue to be less than or equal to the fees collected. Consequently, although enforcement of the amendments may require reallocation of resources available for TSR enforcement, there will be no incremental increase in the costs to the federal government.

(15) Adjustments

As detailed above, staff estimates that in the final year of the current clearance, incremental burden resulting from the Rule amendment concerning prerecorded calls will be 82,865 hours and approximately $3,488,000 in associated labor costs.

(16) Statistical Use of Information

There are no plans to publish any information for statistical use.

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[36] See, e.g., Comment by IAC/InterActiveCorp & HSN LLC (December 18,2006), at 3, *available at* http://www.ftc.gov/os/comments/tsrrevisedcallabandon/525547-00600.pdf.

[37] Pub. L. No. 109-108, 119 Stat. 2290 (2005).

[38] 119 Stat. at 2330.

[39] 71 Fed. Reg. 43048, 43052 (July 31, 2006).

[40] Pub. L. 110–188, 122 Stat. 635.

[41] 73 Fed. Reg. 43,354 (July 25, 2008).

(17) Exceptions for the Display of the Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to the "Certification for Paperwork Reduction Act Submissions"

Not applicable.