Supporting Statement for
Information Collection Provisions of
The Telemarketing Sales Rule
16 C.F.R. Part 310
(OMB Control No. 3084-0097)

(1) Necessity for Collecting the Information

The Telemarketing Sales Rule ("TSR" or "Rule"), 16 C.F.R. § 310, implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 ("Telemarketing Act"), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act"), Pub. L. 107056 (Oct. 25, 2001). The Act seeks to prevent deceptive or abusive telemarketing practices in telemarketing, which, pursuant to the USA PATRIOT Act, includes calls made to solicit charitable contributions by third-party telemarketers. The Telemarketing Act mandated certain disclosures by telemarketers, and directed the Federal Trade Commission ("Commission" or "FTC") to include recordkeeping requirements in promulgating a rule to prohibit such practices. As required by the Telemarketing Act, the TSR mandates certain disclosures for telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2003, the Commission amended the TSR to include certain new disclosure requirements and to expand the Rule in other ways. See 68 Fed. Reg. 4580 (Jan. 29, 2003). Specifically, the Rule was amended to cover "upsells"[1] (not only in outbound calls, but also in inbound calls) and additional transactions were included under the Rule's purview. For example, the Rule was extended to the solicitation by telephone of charitable donations by third-party telemarketers in response to the mandate of the USA PATRIOT Act. Finally, the amendments established the National Do Not Call Registry ("Registry"), permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls.[2] Accordingly, under the TSR, most sellers and telemarketers are required to

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[1] An "upsell" is the solicitation in a single telephone call of the purchase of goods or services after an initial transaction occurs. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer ("external upsell"). Or, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer ("internal upsell").

[2] 68 Fed. Reg. 4580 (Jan. 29, 2003). The Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third-party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It does not limit calls by political organizations, charities, or telephone surveyors.

refrain from calling consumers who have placed their numbers on the Registry.[3] Moreover, sellers and telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[4]

In 2008, the Commission promulgated amendments to the TSR regarding prerecorded calls, 16 C.F.R. § 310.4(b)(1)(v), and call abandonment rate calculations, 16 C.F.R. § 310.4(b)(4)(i).[5] The amendment regarding prerecorded calls added certain information collection requirements.[6] Specifically, the amendment expressly authorized sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers only 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 and provides an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.[7]

In 2010, the Commission published additional amendments taking effect that year to require specific new disclosures in the sale of a "debt relief service," as that term is defined in Section 310.2(m) to include for-profit credit counseling services, debt settlement, and debt negotiation services. The amendments result in PRA burden for all covered entities -- both new and existing respondents -- that engage in telemarketing of these services. The amendments, among other things: (1) applied the TSR to inbound telemarketing of debt relief services; and (2) added new required disclosures and prohibited representations to curb deceptive practices prevalent in the telemarketing of debt relief services.[8]

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[3] 16 C.F.R. § 310.4(b)(1)(iii)(B).

[4] 16 C.F.R. § 310.4(b)(3)(iv). Effective January 1, 2005, the Commission amended the TSR to require telemarketers to access the Registry at least once every 31 days. See 69 Fed. Reg. 16,368 (Mar. 29, 2004).

[5] *See* 73 Fed. Reg. 51,164 (Aug. 29, 2008).

[6] By contrast, the revised standard for measuring the call abandonment rate did not impose any new or affect any existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the PRA. That amendment relaxed the prior 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 industry requested.

[7] The prerecorded call amendment provided the first ever explicit authorization in the TSR for sellers and telemarketers to place prerecorded telemarketing calls to consumers. The pre-amendment call abandonment prohibition of the TSR implicitly barred 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. The requirements 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.

[8] In 2015, the Commission issued additional anti-fraud and clarifying amendments. 80 Fed Reg. 77,520 (Dec. 14, 2015). The principal anti-fraud amendments, which took effect on June 13, 2016, prohibit both outbound and inbound sellers and telemarketers from accepting four payment methods required only by fraudsters, but not by legitimate members of the telemarketing industry. These methods comprise the use of remotely created payment orders and checks not written or signed by the purchaser, cash-to-cash money transfers and cash reload mechanisms. None of the prohibitions and clarifications in these amendments result in PRA burden for covered entities. *Id.* at 77,558. A separate anti-fraud provision that took effect on February 12, 2016, expands the prohibition against advance fees for loss recoveries, formerly limited to recovery of losses incurred in prior telemarketing transactions, to include losses incurred in any previous transaction. This amendment also has no discernible PRA ramifications because it, too, requires no disclosures or recordkeeping. The clarifying amendments simply make minor revisions

(a) Recordkeeping

The Rule expressly requires that certain records be kept by covered entities. Specifically, records evidencing various aspects of each covered transaction must be kept for a period of 24 months.[9] These records include marketing material, telemarketing scripts, identifying information for prize recipients, identifying information for customers and the goods or services that customers purchased, identifying information for employees engaged in telemarketing, and documents evidencing customers' authorization to be billed. These recordkeeping requirements are essential to the Commission's ability to monitor compliance with the TSR and to identify consumers eligible for monetary redress in law enforcement actions.

(b) Disclosures

The TSR deems the failure to make specified disclosures of material information a deceptive act or practice. These include the failure to disclose the "total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;"[10] failing to disclose "[a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;"[11] failing to disclose "[a]ll material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;"[12] and failing to disclose all material conditions related to negative option offers.[13]

(2) Use of the Information

(a) Recordkeeping

The primary purpose of the recordkeeping requirements is to maintain evidence of compliance with the Rule. The Rule requires the production of records on a case-by-case basis, and the records are used to establish whether the company or persons affiliated with the company have violated the Rule. In addition, the FTC, other governmental agencies, or private litigants may use the records as evidence in administrative or court proceedings, to identify witnesses, and to identify consumers who may be entitled to redress in connection with any law enforcement actions. Without the required records, it would be difficult to ensure that entities are complying with the Rule's requirements and to redress injury that may have resulted from violations of the Rule.

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to existing TSR requirements to more accurately reflect longstanding enforcement policy, and do not impose any new disclosure or recordkeeping requirements.

[9] 16 C.F.R. § 310.5(a).

[10] 16 C.F.R. § 310.3(a)(1)(i).

[11] 16 C.F.R. § 310.3(a)(1)(ii).

[12] 16 C.F.R. § 310.3(a)(1)(v).

[13] 16 C.F.R. § 310.3(a)(1)(vii).

(b) Disclosures

The Rule's disclosure requirements for live telemarketing calls help prevent deceptive or abusive telemarketing acts or practices by ensuring that consumers are informed about the purpose of the call and the terms and conditions of the potential sale or solicitation. Consumers use the disclosed information in making purchasing decisions. The Rule's disclosure requirements are also intended to prevent fraud by making it more difficult for telemarketing companies to mislead consumers and easier for law enforcement officials to identify and take action against those engaged in deceptive or abusive telemarketing practices. The debt relief provisions similarly require disclosures to curb deceptive practices prevalent in the telemarketing of debt relief services.

The disclosure requirements for prerecorded telemarketing calls protect consumer privacy by ensuring that consumers have the same ability as in a live telemarketing call to ask to be placed on a seller's company-specific do-not-call list and terminate the call. The prerecorded call amendment therefore requires that all prerecorded calls disclose at the outset of the message the key to press or what to say to terminate the call and be placed automatically on the seller's do-not-call list. The other disclosure required by the amendment is designed to ensure that consumers who are asked to agree to receive prerecorded calls clearly understand the agreement they are making.

(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 Rule's recordkeeping provisions are consistent with the requirements of the Government Paperwork Elimination Act ("GPEA").[14] The disclosures required by the TSR for the most part are made orally and, secondarily, by direct mail. Thus, electronic disclosures for purposes of implementing the provisions of the GPEA are either inapplicable or impracticable.

None of the 2008, 2010, or 2015 amendments altered the TSR's recordkeeping requirements, and each is designed to encourage the use of electronic means of compliance. As previously noted, the prerecorded call amendment expressly permits the use of electronic means to record the written agreements required by the amendment, as well as the use of electronic media for making required disclosures.

(4) Efforts to Identify Duplication

The TSR's recordkeeping requirements involve the preparation and retention of records demonstrating compliance with the Rule. Other federal and state government agencies may also require the retention of some records that the TSR requires to be retained (e.g., personnel, sales, or donation information). The debt relief and prerecorded call provisions create an obligation under the TSR's existing recordkeeping requirements for sellers to retain electronic or other

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[14] Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749 (1998) codified at 44 U.S.C. § 3501 et seq.

records of consumers' written agreements to receive such calls, and the scripts used in such calls. Staff is not aware of any federal or state requirement that may entail the retention of any records required by either the prerecorded call amendment or debt relief provisions, except for newly effective and substantially identical FCC prerecorded call and call abandonment requirements[15] and some state law requirements for the calculation of call abandonment rates.[16] To the extent that the recordkeeping requirements of the TSR may duplicate the information collection requirements of other federal or state government agencies, the TSR does not require that a duplicate set of records be maintained.

Many state laws require the same or similar disclosures the TSR mandates. Staff knows of no instance, however, under which the TSR (including the most recent 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 a parallel law or regulation's requirements.

(5) Efforts to Minimize Burden on Small Businesses

The TSR's disclosure and recordkeeping requirements are generally consistent with the business practices that most telemarketing organizations would choose to follow, regardless of legal requirements. Moreover, the Rule and its recent amendments have been designed to minimize the burdens on all business entities, including small businesses. For example, the Rule contains an exemption that allows a seller and its telemarketer to place live telemarketing calls to consumers with whom the seller has an established business relationship, even if the consumer has placed his or her telephone number on the National Registry. The effect of this exemption is that businesses—and in particular small businesses—do not need to check their lists of existing customers against the National Registry for live telemarketing calls. In addition, the burden placed on small charities is minimized by the fact that for-profit firms that make fundraising calls on behalf of charitable organizations are not required to ensure that they exclude consumers who have placed their telephone numbers on the National Registry.[17] Rather, they only have to honor individual consumer requests not to be called by the particular charity.[18] Furthermore, the TSR permits all entities accessing the National Registry to obtain the first five area codes of data for free, limiting the burden placed on businesses that only require access to a small portion of the National Registry.

The prerecorded call provisions of the TSR are not likely to have a significant impact on legitimate small business for several reasons. By their nature, 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.

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[15] 47 C.F.R. §§ 64.1200(a)(1)-(3), 64.1200(a)(7), and 64.1200(b)(3). The FCC's opt-out requirements took effect on January 14, 2013. The written agreement requirements took effect on October 13, 2013.

[16] *E.g.,* California Public Utilities Commission, Interim Opinion, Rulemaking 02-02-020 (June 27, 2002) at 20.

[17] 16 C.F.R. § 310.6(a).

[18] 16 C.F.R. § 310.4(b)(1)(iii).

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. In addition, to the extent that, in this Internet age, small businesses may no longer be strictly local businesses, the option provided by the amendment to obtain written agreements to receive prerecorded message calls pursuant to E-SIGN will place them on an equal footing with other businesses.

Likewise, the Commission has taken care in developing the debt relief provisions to set performance standards, which establish the objective results that must be achieved, but do not establish a particular technology that must be employed in achieving those objectives. For example, the Commission does not specify the form in which required records must be kept. Moreover, the debt relief disclosure requirements are format-neutral; sellers and telemarketers may make the disclosures in writing or orally, as long as they are clear and conspicuous. In sum, the FTC has worked to minimize any significant economic impact on small entities.

Finally, the Commission's recent anti-fraud amendments have been carefully designed to avoid imposing any new disclosure or recordkeeping burdens.[19] For example, although the new prohibitions will apply to inbound sellers and telemarketers, they will retain their exemptions if they do not require or accept any of the payment methods now prohibited. Even if they were to accept such a payment, the amended exemption subjects them to liability only for the violation, without subjecting them to any of the other TSR requirements, including the disclosure and recordkeeping provisions.

(6) Consequences of Conducting the Collection Less Frequently

(a) Recordkeeping

The TSR requires specified records to be retained for 24 months.[20] A record retention period of less than two years would frustrate many 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 occur and the time the FTC learns of the alleged violations. A two-year record retention period allows 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

All of the disclosures required by the Rule provide consumers with information necessary to make informed purchasing decisions or are essential to protect their privacy. Moreover, the Rule's disclosure requirements address specific areas of recurring deception or abuse in

[19] For a discussion of the anti-fraud amendments, *see supra* note 8.

[20] 16 C.F.R. § 310.5.

telemarketing. They have been narrowly crafted to address the specific problems identified in these transactions through law enforcement efforts by the states and the FTC.

(7) Circumstances Requiring Collection Inconsistent With OMB Guidelines

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

(8) Consultation Outside the Agency

Dating back to the Rule's inception, the Commission has had a long history of consultation with outside parties, including affected entities and consumers. As noted above, in connection with the Commission's Congressionally-mandated review of the Rule,[21] the TSR was amended in January 2003 to include certain new disclosure requirements and to expand the Rule's parameters in other ways. During the 2003 Rule review, representatives of the industry informed the FTC that the information collection burdens the Rule imposes are minimal and that some have even lessened over time as technology has improved. During this time, Commission staff also met with federal, state, and local law enforcement agencies to determine, among other things, whether the TSR's recordkeeping requirements were sufficient to facilitate effective enforcement of the Rule.

The Commission also sought and received extensive comment from interested parties on the prerecorded call, debt relief, and anti-fraud amendments. The comments factored significantly in the Commission's tailoring the amendments to minimize burden consistent with the amendments' consumer protection and privacy objectives. However, no public comments addressed the FTC's PRA burden analyses in these rulemakings.

More recently, Commission staff sought public comment in connection with its current PRA clearance request for the TSR, in accordance with 5 C.F.R. § 1320.8(d). See 81 Fed. Reg. 22,082 (Apr. 14, 2016). Public comments ranged from a complaint about receiving repeated unsolicited "junk" telefaxes – to a complaint that the FTC fails to enforce the TSR — to a suggestion that the FTC consider ways to pro-actively thwart unsolicited calls to mobile phones in a vein similar to which "NoMoRobo" (http://www.nomorobo.com) blocks some unwanted robocalls (to date, Nomorobo works only with some landline carriers, and not with cell phones) –– to a suggestion, more generally, "that better automation [be devised] in addressing the illegal calling issue." None of the comments specifically addressed the questions posed about the Commission's PRA analysis.

In response, the FTC notes that Federal Communication Commission rules, not the FTC's TSR, address "junk" telefaxes. To date, the FTC has brought at least 105 enforcement actions against companies and telemarketers for Do Not Call, abandoned call, robocall (i.e., automated dialing technology to make calls that deliver prerecorded messages), and Registry violations (https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement). A variety

[21] 16 USC § 6108.

of new technologies has increased the number of illegal telemarketing calls made to telephone numbers on the Registry. The net effect of these new technologies is that individuals and companies who do not care about complying with the Registry or other telemarketing laws are able to make more illegal telemarketing calls cheaply and in a manner that makes it difficult for the FTC and other law enforcement agencies to find them. The FTC continues to solicit ideas and assistance to combat illegal automated calls: https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated. Moreover, the FTC in tandem with other law enforcement agencies continues to bring actions against illegal telemarketing calls: https://www.ftc.gov/news-events/media-resources/do-not-call-registry/robocalls. The FTC also continues to track how technology affects the Registry and the consumers and telemarketers who access it.

Consistent with 5 C.F.R. § 1320.12(c), the FTC is providing an additional opportunity for public comment contemporaneous with this submission.

(9) Payments or Gifts to Respondents

Not applicable.

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

The collection of information in this 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) Burden Estimate

Estimated Annual Hours Burden: 1,238,670 hours

The estimated burden for recordkeeping is 14,541 hours for all industry members affected by the Rule. The estimated burden for the disclosures that the Rule requires for both the live telemarketing call provisions of the TSR and those regarding prerecorded calls is 1,223,777 hours for all affected industry members and estimated reporting burden is 352 hours. Thus, the total PRA burden is 1,238,670 hours. These estimates are explained below.

Number of Respondents: As a preliminary matter, only telemarketers and sellers, not telefunders (third-party telemarketers soliciting contributions on behalf of charities), are subject to the Registry provisions of the Rule, and only sellers, not telemarketers or telefunders, are subject to the new express agreement obligations attributable to the prerecorded call disclosure

requirements.[22] The Registry data does not separately account for telefunders; they are a subset of the overall number of telemarketing entities known to access the Registry for any given year.[23]

In calendar year 2015, 22,401 telemarketing entities accessed the Registry. Of these entities, 498 were "exempt" entities obtaining access to data.[24] By definition, none of the exempt entities are subject to the TSR. In addition, 16,248 sellers and 5,259 telemarketers accessed the Registry. Of those, however, 11,250 sellers and 3,612 telemarketers with independent access to the Registry obtained data for just one state. Staff assumes that these entities are operating solely intrastate, and thus would not be subject to the TSR.[25] Applying this Registry data, staff estimates that 7,041 telemarketing entities (22,401 - 498 – 11,250 – 3,612) are currently subject to the TSR, of which 4,998 (16,248 – 11,250) are sellers and 1,647 (5,259 – 3,612) are telemarketers.[26]

(a) Recordkeeping Hours

Staff estimates that the above-noted 7,041 telemarketing entities subject to the Rule each require approximately one hour per year to file and store records required by the TSR for an annual total of 7,041 burden hours. The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours.[27] These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities, including those offering debt relief services and making prerecorded calls,[28] is 14,541 hours.

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[22] Telemarketers and telefunders must comply, however, with the abandoned call provisions of the TSR and the opt-out requirements of the 2008 amendments.

[23] For the sake of simplicity and to err conservatively, FTC staff's burden estimates for provisions less likely to be applicable to telefunders (*e.g.*, prize promotion disclosure obligations for outbound live calls, under 16 C.F.R. 310.4(d)) will not be reduced by a separate estimate for the subset of telemarketers that are telefunders. Conversely, estimates of the number of new-entrant telemarketers will incorporate new-entrant telefunders.

[24] An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

[25] These entities would nonetheless likely be subject to the Federal Communications Commission's ("FCC") Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the Registry.

[26] For purposes of these calculations, staff assumes that telemarketers making prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, because the latter may consume much more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

[27] This figure includes new entrants making prerecorded calls and offering debt relief services, based on prior estimates that neither would require more than 100 hours to comply with those requirements. *See* 74 Fed. Reg. 11,952, 11,954 n.17 (Mar. 20, 2009); 75 Fed. Reg. 48,458, 48,504 (Aug. 10, 2010); 78 Fed. Reg. 19,483, 19,484 n. 15 (Apr. 1, 2013).

[28] The recordkeeping requirements for prerecorded calls are de minimis, and are subsumed within the PRA estimates above for existing and new telemarketing entities. As in its prior estimates, staff continues to believe that any ongoing incremental burden on sellers to create and retain electronic records of written agreements by new customers to receive prerecorded calls should not be material since the agreements may be obtained and recorded

(b) Disclosure Hours

Staff believes that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden." 16 C.F.R. 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought 3-year OMB clearance for this Rule, staff estimates that most of the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule.[29] Accordingly, staff has continued to estimate that the hours burden for most of the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.

Based on previous assumptions, staff estimates that of the 7,041 telemarketing entities noted above, 3,235 conduct inbound telemarketing.[30] Inbound calls from consumers in response to direct mail solicitations that make certain required disclosures are exempt from the TSR.[31]

Although such calls are exempt from the Rule, the Commission believes it is likely that industry members choosing to make the requisite disclosures in direct mail solicitation might do so only in an effort to qualify for the exemption. Thus, Commission staff believes it is appropriate to include in the relevant burden hour calculation both the burden for compliance with the Rule's oral disclosures and the burden incurred by entities that make written disclosures in order to qualify for the inbound direct mail exemption. Accordingly, consistent with its previous analyses, staff estimates that, of the 3,235 entities that conduct inbound telemarketing, approximately one-third (1,078) will choose to incorporate written disclosures in their direct mail solicitations that exempt them from complying with the Rule.[32]

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electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, "E-SIGN"). Although telemarketers (and telefunders) that place prerecorded calls on behalf of sellers or charities 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 obligation extends both to live and prerecorded telemarketing calls, and is also subsumed within the PRA estimates above.

[29] 78 Fed. Reg. at 19,485.

[30] While staff does not have information directly stating the number of inbound telemarketers, data last appearing in the DMA 2009 Statistical Fact Book (February 2009), p. 18, shows that 17% of all direct marketing in 2008 was by inbound telemarketing and 20% was by outbound telemarketing. Accordingly, based on such relative weighting, staff estimates that the number of inbound telemarketers is approximately 3,235 ((7,041 x 17) ÷ (17 + 20)).

[31] Some exceptions to this broad exemption exist, including solicitations regarding prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, advertisements involving goods or services described in 310.3(a)(1)(vi), advertisements involving goods or services described in 310.4(a)(2)-(4); and any instances of upselling included in such telephone calls.

[32] Since only sellers, and not telemarketers, would make the written disclosures, and this estimate includes both, it conservatively overstates the number of entities subject to the requirement.

Consistent with its past practice, staff necessarily has made additional assumptions in estimating burden. From the total volume of outbound and inbound calls, staff first calculated disclosure burden for initial transactions that resulted in sales, derived from external data and/or estimates drawn from a range of calendar years (2001-2012). Staff recognizes that disclosure burdens may still be incurred regardless of whether or not a call results in a sale. Conversely, a substantial percentage of outbound calls result in consumers hanging up before the seller or telemarketer makes the required disclosure(s). However, because the requirements in § 310.3(a)(1) for certain disclosures before a consumer pays for a telemarketing purchase apply only to sales, early call cessation (i.e., consumers hanging up before any disclosure or before full disclosure) is excluded from staff's burden estimates for § 310.3(a)(1).

For transactions in which a sale is not a precursor to a required disclosure, i.e., the upfront disclosures required in all outbound telemarketing calls and outbound or inbound "upsell" calls by § 310.4(d), consistent with past estimates, staff has continued to calculate burden for initial transactions based on estimates of the total volume of outbound and inbound calls, discounted for anticipated early hang-ups. For transactions in which a sale is a precursor to required disclosure, i.e., § 310.3(a)(1), the calculation is based on the volume of direct sales.

Based on industry data and further FTC extrapolations,[33] staff estimates that 2.3 billion outbound telemarketing calls are subject to FTC jurisdiction, that 450 million of these calls result in direct sales,[34] and that there are 1.8 billion inbound calls that result in direct sales. Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds[35] for telemarketers to recite the required pre-sale disclosures plus 3 additional seconds[36] to disclose the information required in the case of an upsell. Staff also retains its longstanding estimates that at least 60 percent of sales calls result in "hang-ups" before the telemarketer can make all the required disclosures and that "hang-up" calls allow for only 2 seconds of disclosures.[37]

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[33] Staff employs the methodology, assumptions, and studies it has consistently used since their development for the 2003 TSR amendments to determine, indirectly from external sales data and the relative percentages of inbound and outbound calls, the number of telemarketing calls and resulting number of sales because no call or sales number totals are otherwise available. Staff relies on its own prior estimates that of the $134.7 billion of sales from outbound calls to consumers in 2012 (DMA 2013 Statistical Fact Book, at 5), 92.8% of those sales, or $125 billion, are subject to FTC jurisdiction, with the average value of a sale being $85, and 20% of outbound calls resulting in a sale.

[34] For staff's PRA burden calculations, only direct sales orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR's recordkeeping and disclosure provisions. The direct sales transactions total of 450 million is based on an estimated 1.5 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is derived from the only known available outside direct sales data for telephone marketing to consumers. *See* DMA Statistical Fact Book (2001), p. 301.

[35] *See, e.g*., 60 Fed. Reg. 32,682, 32,683 (June 23, 1995); 63 Fed. Reg. 40,713, 40,714 (July 30, 1998); 66 Fed. Reg. 33,701, 33,702 (June 25, 2001); 71 Fed. Reg. 28,698, 28,700 (May 17, 2006); 74 Fed. Reg. 11,952, 11,955 (Mar. 20, 2009); 78 Fed. Reg. at 19,485.

[36] 71 Fed. Reg. 3302, 3304 (Jan. 20, 2006); 71 Fed. Reg. at 28,700; 78 Fed. Reg. at 19,485.

[37] *See, e.g*., 60 Fed. Reg. at 32,683; 78 Fed. Reg. at 19,485.

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer -- whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls.[38] Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell before the seller or telemarketer makes the full required disclosures.

Based on the above inputs and assumptions, staff estimates that the total time associated with these pre-sale disclosure requirements is 826,389 hours per year: [(2.3 billion outbound calls x 40% lasting the duration x 7 seconds of full pre-sale disclosures ÷ 3,600 (conversion of minutes to hours) x 25% burden = 447,222 hours) + (2.3 billion outbound calls x 60% terminated after 2 seconds of disclosures ÷ 3,600 x 25% burden = 191,667 hours) + (450 million outbound calls resulting in direct sales x 40% upsell conversions x 3 seconds of related disclosures ÷ 3,600 x 25% burden = 37,500 hours) + (1.8 billion inbound calls x 40% upsell conversions x 3 seconds ÷ 3,600 x 25% burden = 150,000 hours)] = 826,389 hours).

The TSR also requires several general sales disclosures in telemarketing calls before the customer pays for goods or services.[39] These disclosures include the total costs of the offered goods or services, all material restrictions, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer).

Staff estimates that the general sales disclosures for telemarketing calls require 352,695 hours annually. This figure includes the burden for written disclosures (1,078 inbound telemarketing entities estimated to use direct mail[40] x 10 hours[41] per year x 25% burden = 2,695 hours), as well as the figure for oral disclosures [450 million outbound calls x 8 seconds ÷ 3,600 x 25% burden = 250,000 hours) + (450 million outbound calls x 40% upsell attempts x 20% sales conversion x 8 seconds ÷ 3,600 x 25% burden =20,000 hours) + (1.8 billion inbound calls x 40% upsell attempts x 20% sales conversion x 8 seconds ÷ 3,600 x 25% burden = 80,000 hours)] = 352,695 hours.[42]

To estimate the time required to provide the general sales disclosures for calls offering debt relief services, staff employs different assumptions and calculations set forth when the debt relief amendments were issued.[43] Employing that analysis, as modified in response to a public

[38] This assumption originated with industry response to the Commission's 2003 Final Amended TSR. *See* 68 Fed. Reg. 4580, 4597 n.183 (Jan. 29, 2003). Although it was posited specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, absent the receipt of any information to the contrary.

[39] 16 C.F.R. 310.3(a)(1)(i)-(iii).

[40] *See supra* text preceding note 32.

[41] FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff believes this estimate remains reasonable.

[42] The percentage and unit of time measurements are FTC staff estimates.

[43] 75 Fed. Reg. at 48,504-05.

comment to account for inbound debt relief sales,[44] staff continues to assume that outbound calls to sell and inbound calls to buy debt relief services are made only to consumers who are delinquent on one or more credit cards.[45] For simplicity, and lacking specific information or prior comment to the contrary, staff further assumes that each such consumer will receive one outbound call and place one inbound call for these services.

To estimate the number of consumers who are delinquent on one or more credit cards, staff assumes that couples constitute a single decision-making unit, as do single adults (widowed, divorced, separated, never married) within each household. According to the most current U.S. Census Bureau data available, there are 162,016,000 decision-making units.[46] Of these, 116,975,552 have one or more credit cards,[47] and there are 3,193,433 decision-making units with at least one delinquent credit card account.[48]

Accordingly, since reciting the general sales disclosures takes eight seconds, staff estimates that the general sales disclosure burden for inbound debt relief calls is 1,774 hours (3,193,433 inbound debt relief calls to decision-making units with at least one delinquent credit card account x 8 seconds ÷ 3,600 x 25% burden).

The general sales disclosures required by § 310.3(a)(1)(i)-(iii) must also be made by sellers and telemarketers for some inbound calls that are excluded from the general media and direct mail exemptions from the TSR for inbound calls;[49] namely, calls in response to ads for investment opportunities, certain business opportunities,[50] credit card loss protection ("CCLP"),[51] credit repair,[52] loss recovery services,[53] and advance fee loans.[54]

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[44] Debt relief sales in outbound calls have always been subject to the general sales disclosure requirements, and are subsumed in the outbound general sales disclosure totals.

[45] By extension upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

[46] U.S. Census Bureau, *Income and Poverty in the United States: 2014*, (September 2015), p. 6, *available at* http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf (reflecting 124,587,000 households in 2014); U.S. Census Bureau, *Sharing a Household: Household Composition and Economic Well Being: 2007-2010* (June 2012), Table 2, p. 4, *available at* www.census.gov/hhes/www/poverty/publications/P60-242.pdf (reflecting 37,429,000 adults living with a householder that is neither a spouse nor cohabiting partner in 2010).

[47] The estimate of consumers with one or more credit cards is derived by multiplying the estimated decision making units (162,016,000) by the percentage of consumers with one or more credit cards (72.2%). Federal Reserve Bank of Boston, Consumer Payments Research Center, *The 2009 Survey of Consumer Payment Choice* (April 2011), p. 8, *available at* www.bostonfed.org/economic/ppdp/2011/ppdp1101.pdf.

[48] The estimate of consumers with a delinquent account is derived by multiplying the estimate of consumers with one or more credit cards (116,975,552) by the delinquency rate for credit cards (2.73%). Board of Governors of the Federal Reserve System, *Charge Off and Delinquency Rates on Loans and Leases at Commercial Banks*, *available at* http:\\www.federalreserve.gov/releases/chargeoff/delallsa.htm (reporting a 2.73% delinquency rate for credit cards for the fourth quarter of 2012).

[49] 16 C.F.R. 310.6(b)(5) (general media) and § 310.6(b)(6) (direct mail).

[50] Staff has previously accounted only for the business opportunity exclusion, which so significantly overstated the number of complaints not covered by the Franchise Rule or Business Opportunity Rule that it served as a proxy for all the other exclusions. *See infra* note 59. With the recent burgeoning increase in advance fee loan complaints, that

Staff's estimates for each of these types of **non-exempt inbound calls** begins by comparing the number of complaints reported to the FTC's Consumer Sentinel system in the most recent complete year to the total number of reported fraud complaints for that year. The resulting percentage of total fraud complaints must be adjusted to reflect the fact that only a relatively small percentage of telemarketing calls are fraudulent. To extrapolate the percentage of fraudulent telemarketing calls, staff divides a Congressional estimate of annual consumer injury from telemarketing fraud (40 billion)[55] by recent available data on total consumer and business-to-business telemarketing sales ($305.1 billion in 2012),[56] or 13%. The two percentages are then multiplied together to determine the percentage of the 1.8 billion annual inbound telemarketing calls represented by each type of fraud complaint.

Thus, for the 7,355 Sentinel complaints in 2015 about investment opportunities covered by the TSR,[57] or 0.6% of the 1,246,849 total fraud complaints reported that year,[58] the **general sales disclosure burden** is **3,200 hours** (1.8 billion inbound calls x 0.0008 [0.006 x 0.13] x 8 seconds ÷ 3,600). Likewise, the burden for **business opportunity sales** (10,059 complaints), including complaints for multi-level marketing/pyramids/chain letters) is **4,000 hours** (1.8 billion x .001 [0.008 x 0.13] x 8 seconds ÷ 3,600);[59] for **advance fee loan sales** (19,908 complaints), **8,000 hours** (1.8 billion x 0.002 [0.016 x 0.13] x 8 seconds ÷ 3,600); for **credit repair sales** (1,751 complaints), **400 hours** (1.8 billion x 0.0001 [0.001 x 0.13] x 8 seconds ÷ 3,600); for **loss recovery services** (2,509 complaints), **400 hours** (1.8 billion x 0.0001 [0.001 x 0.13] x 8 seconds ÷ 3,600); for **CCLP sales** (266 complaints) **120 hours** (1.8 billion x 0.00003 [0.0002 x 0.13] x 8 seconds ÷ 3,600). The exceptions to the TSR's inbound call exemptions therefore add an additional 16,120 hours to the general sales disclosure burden.

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may no longer be the case, and staff accordingly now accounts for all the exclusions, even though some may seem trivial.

[51] 16 C.F.R. 310.3(a)(1)(vi).

[52] 16 C.F.R. 310.4(a)(2).

[53] 16 C.F.R. 310.4(a)(3).

[54] 16 C.F.R. 310.4(a)(4).

[55] The FBI believes that this estimate now overstates telemarketing fraud losses as a result of its investigations and closings of once massive telemarketing boiler room operations. *See* FBI, *A Byte Out of History: Turning the Tables on Telemarketing Fraud* (Dec. 8, 2010), *available at* https://www.fbi.gov/news/stories/2010/december/telemarketing_120810/telemarketing_120810. *See also* Internet Crime Complaint Center, 2009Annual Report on Internet Crime (citing $559.7 million of losses claimed in consumer complaints), available at http://www.justice.gov/criminal-fraud/mass-marketing-fraud.

[56] DMA 2013 Statistical Fact Book (January 2013), p. 5.

[57] FTC, Consumer Sentinel Network Data Book for January – December 2015 (February 2016) ("Sentinel Data"), Appendix B3, p. 83, available at https://www.ftc.gov/reports/consumer-sentinel-network-data-book-january-december-2015.

[58] Sentinel Data at 7.

[59] Sentinel Data at 7, 80. While this total excludes "Franchises/Distributorships" covered by the Franchise Rule and thus not subject to the TSR, the data cannot additionally be segregated to omit "Work-At-Home" opportunities now covered by the Business Opportunity Rule and thus also not subject to the TSR. Staff therefore believes this total significantly overstates the opportunities subject to the TSR.

Altogether, the general sales disclosure burden thus is 370,589 hours (352,695 hours for outbound sales + 1,774 hours for debt relief inbound sales + 16,120 hours for non-exempt inbound sales).

Additional **specific disclosures** are required if the call involves a **prize promotion**,[60] the sale of **credit card loss protection** products,[61] an offer with a **negative option** feature,[62] or the sale of a **debt relief service**.[63] Staff estimates that the specific sales disclosures other than for debt relief services will require 22,363 hours annually [(450 million direct sales transactions from outbound calls x 5% [estimate of percentage of sales transactions involving **prize promotions**] x 3 seconds ÷ 3,600 x 25% burden = **4,688 hours**) + 450 million direct sales transactions from outbound calls x 0.1% [estimate of percentage of sales transactions involving **CCLP**] x 4 seconds ÷ 3,600 x 25% burden = **125 hours**) + (450 million sales transactions from **outbound calls** x 40% attempted upsell conversions x 20% sales conversions x 0.1% [estimate of percentage of outbound calls **involving CCLP upsells**] x 4 seconds x 25% burden ÷ 3,600 = **10 hours**) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 0.1% [estimate of percentage of **inbound calls involving CCLP upsells**] x 4 seconds x 25% burden ÷ 3,600 = **40 hours**) + (450 million sales transactions from outbound calls x 10% [estimate of percentage of **outbound calls involving negative options**] x 4 seconds ÷ 3,600 x 25% burden = **12,500 hours**) + (450 million sales transactions from outbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of **outbound calls involving negative option upsells**] x 4 seconds x 25% burden ÷ 3,600 = 1,000 hours) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of **inbound calls involving negative option upsells**] x 4 seconds ÷ 3,600 x 25% burden = **4,000 hours**).

Staff estimates that reciting the **specific sales disclosures in each debt relief sales** call will take ten seconds, and therefore the disclosure burden associated with the debt relief disclosures is 4,436 hours (3,193,433 **outbound debt relief calls** x 10 seconds x 25% burden = **2,218 hours**) + (3,193,433 **inbound debt relief calls** x 10 seconds x 25% burden = **2,218 hours**).

Thus, the total specific sales disclosure burden is 26,799 hours annually (22,363 for non-debt-relief calls) + 4,436 (for debt relief calls).

Cumulatively, therefore, the total annual burden for all of the sales disclosures is 397,388 hours (370,589 hours general sales disclosures + 26,799 hours specific sales disclosures).

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[60] 16 C.F.R. 310.3(a)(1)(iv)-(v).

[61] 16 C.F.R. § 310.3(a)(1)(vi). It is neither staff's understanding nor belief that CCLP sales occur through inbound calls. Staff anticipates, however, the potential for such sales in an upsell following an inbound call.

[62] 16 C.F.R. 310.3(a)(1)(vii).

[63] 16 C.F.R. 310.3(a)(1)(viii).

(c) Reporting Hours

Finally, any entity that accesses the Registry, regardless whether it is paying for access, must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR.

As it has since the Commission's initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information annually.[64] Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 235 burden hours (7,041 entities x 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 117 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 352 hours per year.

Cumulative of the foregoing components, disclosure burden for new and existing telemarketing entities, including those making debt relief and prerecorded calls,[65] is 1,223,777 hours (826,389 hours [pre-sale disclosures] + 370,589 hours [general sales disclosures] + 26,799 hours [specific sales disclosures]).

Thus, total recordkeeping, disclosure, and reporting burden is 1,238,670 hours (14,541 hours + 1,223,777 hours + 352 hours).

Estimated Annual Labor Cost: $15,893,001

(a) Recordkeeping Labor Cost

Assuming a cumulative burden of 7,500 hours a year to set up compliant recordkeeping systems for new telemarketing entities (75 new entrants/year x 100 hours each), and applying to

[64] *See* 67 Fed. Reg. 37,366 (May 29, 2002). The two-minute estimate likely is conservative. The OMB regulation defining "information" under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g*., the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 C.F.R. 1320.3(h)(1).

[65] The required opt-out disclosure for all prerecorded calls mandated by the 2008 amendments would not require any material time expenditure, and arguably less time than a pre-existing and now identical FCC disclosure requirement. In any event, because the "opt-out" disclosure applies only to prerecorded calls, which are fully automated, no additional worker hours would be expended in its electronic delivery.

that a skilled labor rate of $26.92/hour,[66] labor costs would approximate $201,900 yearly for all new telemarketing entities. As indicated above, staff estimates that existing telemarketing entities require 7,041 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical wage rate of $15.33/hour,[67] recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $107,939. Thus, the estimated labor cost for recordkeeping associated with the TSR for both new and existing telemarketing entities, including prerecorded and debt relief calls, is $309,839.

(b) Disclosure Labor Cost

The estimated annual labor cost for disclosures for all telemarketing entities is $15,578,681. This total is the product of applying an assumed hourly wage rate of $12.73[68] to the earlier stated estimate of 1,223,777 hours pertaining to the pre-sale, general and specific disclosures.

(c) Reporting Labor Cost

Estimated labor cost supplying basic identifying information to the Registry operator is $4,481 (352 hours x $12.73 per hour).

Thus, cumulatively for both new and existing telemarketing entities, including prerecorded and debt relief calls, total labor costs are $15,893,001 [($309,839, recordkeeping) + ($15,578,681 disclosure) + ($4,481, reporting)].

(13) Estimated Annual Non-Labor Cost: $4,757,647

(a) Recordkeeping

Staff believes that the capital and start-up costs associated with the TSR's recordkeeping provisions are de minimis. They mandate that companies maintain records, but not in any particular form. While the requirements necessitate that affected entities have a means of storage, industry members should have that already for business purposes independent of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life.

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[66] This figure is derived from the mean hourly wage shown for "Computer Support Specialist." "Occupational Employment and Wages–May 2015," Bureau of Labor Statistics, U.S. Department of Labor, released March 30, 2016, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014"), *available at* http://www.bls.gov/news.release/ocwage.t01.htm.

[67] This figure is derived from the mean hourly wage shown for "Office Clerks, General." *See id.*

[68] This figure is derived from the mean hourly wage shown for "Telemarketers." *See supra* note 66. It is applied additionally to the ensuing calculation of reporting labor cost regarding the Registry operator.

Affected entities may need some storage media such as file folders, computer back-up tapes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, consistent with its prior analyses, staff estimates that the estimated 7,041 telemarketing entities subject to the Rule continue to spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden for both new and existing telemarketing entities, including those making prerecorded calls, of $352,050.

(b) Disclosure

Consistent with its past practice of applying the disclosure estimates discussed above, and totaling 1,223,777 hours, to a retained estimated commercial calling rate of 6 cents per minute ($3.60 per hour), staff estimates a total of $4,405,597 in telephone charges.[69]

Staff believes that the inbound telemarketing entities choosing to comply with the Rule by making written disclosures incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business. Adding the disclosures required by the direct mail exemption to that written information likely requires no supplemental non-labor expenditures.

Thus, cumulatively for both new and existing telemarketing entities, including prerecorded and debt relief calls, total capital and/or other non-labor costs are $4,757,647 ($352,050 (office supplies) + $4,405,597 (telephone charges)).

(14) Estimated Cost to the Federal Government

The Commission has also amended the TSR several times in order to impose fees on entities that must pay for access to the National Registry.[70] In the Do-Not-Call Registry Fee Extension Act of 2007, Congress directed the FTC to make a moderate reduction in the TSR's fees for access to the National Registry, and to expand the definition of "exempt" entities eligible to access the National Registry without charge.[71] Accordingly, the Commission amended the Rule to comply with that directive.

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[69] Staff believes that other non-labor costs would be incurred largely by affected entities in the ordinary course of business and, beyond that, would not materially exceed those ordinary costs.

[70] The Do-Not-Call Implementation Act enacted by Congress shortly after the Commission amended the TSR in 2003 authorized the Commission to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]." Pub. L. 108–10, 117 Stat. 557 (2003) at § 2. After receiving that authority, the Commission conducted annual amendment proceedings to set and adjust the National Registry access fees to cover the costs of the Registry and Do Not Call enforcement. See 68 Fed. Reg. 45,134 (July 31, 2003); 69 Fed. Reg. 45,580 (July 30, 2004); 70 Fed. Reg. 43,273 (July 27, 2005); 71 Fed. Reg. 43,040 (July 31, 2006). The fees were not revised in 2007.

[71] Pub. L. 110–188, 122 Stat. 635 (2008). The Commission subsequently reduced the access fees in compliance with the Act. See 73 Fed. Reg. 43,354 (July 25, 2008). The Act also requires that the National Registry access fees be adjusted annually after fiscal year 2009 to reflect the amount by which the average monthly Consumer Price Index for urban consumers for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12 month period ending June 30, 2008, provided the increase is at least one percent. Accordingly, the Commission has

Notwithstanding the recent access fee reduction, staff believes there will be no annualized net cost to the Federal Government to implement and enforce the TSR during the three-year clearance sought. Staff anticipates that, to the extent Registry and enforcement costs are not fully offset by the fees collected, the FTC's budget will cover the shortfall.

(15) Adjustments

The instant cumulative burden estimate of 1,238,670 hours is reduced from the FTC's prior cleared burden estimate in 2013 of 1,320,796. Estimated annual non-labor cost is reduced from $5,102,718 to $4,757,647. These reductions are largely attributable to staff's reduced estimates for the number of telemarketing entities subject to the TSR, based on updated National Registry data.

(16) Statistical Use of Information

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

(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.

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issued yearly notices of any fee adjustments made pursuant to the Act. See 74 Fed. Reg. 42,771 (Aug. 25, 2009); 75 Fed. Reg. 55,269 (Sept 10, 2010); 76 Fed. Reg. 53,636 (Aug. 29, 2011); 77 Fed. Reg. 51,697 (Aug. 27, 2012); 78 Fed. Reg. 53,642 (Aug. 30, 2013); (79 Fed. Reg. 51,477 (Aug, 29, 2014); 80 Fed. Reg. 59,778 (Oct. 2, 2015).