

Supplemental Supporting Statement
Amendments to the Telemarketing Sales Rule
16 C.F.R. Part 310
OMB Control # 3084-0097

Overview of Information Collection

On August 28, 2024, the Federal Trade Commission (“FTC” or “Commission”) requested approval for proposed information collections in a Notice of Proposed Rulemaking (“NPRM”) that would amend the Telemarketing Sales Rule (“TSR”) to extend its coverage to inbound telemarketing calls by consumers to technical support services – i.e., calls that consumers make in response to an advertisement through any medium or to a direct mail solicitation.¹ On September 16, 2024, OMB directed the Commission to resubmit its request when the proposed rule was finalized.

The Commission now submits the Final Rule amendments and a Supplemental Supporting Statement to OMB. The Final Rule newly requires these inbound tech support calls to comply with the Rule’s Paperwork Reduction Act (“PRA”) recordkeeping and disclosure requirements. The Final Rule and associated information collections are necessary in light of the widespread deception and consumer injury caused by tech support scams. The Final Rule provides the Commission with the ability to obtain stronger relief in cases involving tech support scams, including civil penalties and consumer redress.

(1-2) Necessity for Collecting the Information/Use of the Information

Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act” or “Act”) in 1994 to curb deceptive and abusive telemarketing practices and provide anti-fraud and privacy protections for consumers receiving telephone solicitations to purchase goods or services.² The Telemarketing Act directed the Commission to adopt a rule prohibiting deceptive or abusive telemarketing practices, including prohibiting telemarketers from undertaking a pattern of unsolicited calls that reasonable consumers would consider coercive or abusive of their privacy, restricting the time of day telemarketers may make unsolicited calls to consumers, and requiring telemarketers to promptly and clearly disclose that the purpose of the call is to sell goods or services.³ The Act also directed the Commission to address in its rule other acts or practices that it found to be deceptive or abusive, including acts or practices of entities or individuals that assist and facilitate deceptive telemarketing, and to consider including recordkeeping requirements.⁴ Pursuant to the Act’s directive, the FTC promulgated the TSR on August 23, 1995,⁵ and has since substantively amended the Rule multiple times to address deceptive acts or practices by scammers employing new technologies and practices.

The NPRM proposed requiring inbound telemarketing calls by consumers to technical support services – i.e., calls that consumers make in response to an advertisement through any medium or to a direct mail solicitation – to comply with the Rule’s PRA recordkeeping and

¹ 89 FR 26798 (Apr. 16, 2024).

² 15 U.S.C. § 6101-6108.

³ 15 U.S.C. § 6102(a)(3).

⁴ 15 U.S.C. § 6101(a).

⁵ 60 FR 43842 (Aug. 23, 1995).

disclosure requirements. The Final Rule adopts the proposed NPRM with one modification to the definition of Technical Support Service. The definition has been modified to avoid any potential confusion as to whether tech support services or products that are related only to software or applications are covered by the Rule. This modification of a definition does not affect the information collections.

(3) Use of Information Technology

The TSR's recordkeeping provisions permit sellers and telemarketers to keep records in whatever form, manner, format, or location they choose in the ordinary course of business. Accordingly, the Rule's recordkeeping provisions are consistent with the requirements of the Government Paperwork Elimination Act ("GPEA").⁶⁵ Moreover, in its NPRM, the Commission sought comment on ways to minimize the burden of the Rule's collections of information on industry and individual firms (including small businesses) that must comply with the Rule. This could include the use of information technology. No commenters objected to the burden imposed by the Rule.

Consistent with the GPEA, nothing in the Rule prescribes that the disclosures be made, records be filed or kept, or signatures be executed, on paper or in any particular format that would preclude the use of electronic methods to comply with the Rule's requirements.

(4) Non-Duplication

None of the newly promulgated disclosure or recordkeeping requirements are duplicated by any other information collection requirements imposed by the Commission.

(5) Burden on Small Businesses

The new disclosure and recordkeeping requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size. The Commission also certified that amending the Rules will not have a significant economic impact on a substantial number of small entities, and provided notice of that certification to the Small Business Administration ("SBA").

While some sellers or telemarketers subject to the Rule's requirements are small businesses, staff believes that everything consistent with the requirements of the Rule has been done to minimize compliance burden. The Commission believes that the records required to be retained are already generated and preserved in the ordinary course of business. The Commission sought comment on the impact to small businesses, and no commenters raised objections.

(6) Less Frequent Collection

A less frequent disclosure requirement or recordkeeping requirement would less effectively address the widespread harm caused by deceptive tech support services, which disproportionately impact older consumers compared to younger ones. The recordkeeping requirement requires that sellers retain the required records for a period of not less than five years. Staff believes that a record retention period shorter than this would hamper and frustrate many investigations under the FTC's enforcement program. Given the complexities of identifying the telemarketer and seller responsible for particular telemarketing campaigns

⁶ Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749 (1998), *codified at* 44 U.S.C. § 3501 *et seq.*

and gathering the necessary evidence, a shorter period of time is no longer a sufficient amount of time for the Commission to fully complete its investigations of noncompliance, particularly when the Commission may not investigate noncompliance until well after the conduct was initiated.

(7) Paperwork Reduction Act Guidelines

The amendment's information collection requirements are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2), except for subsection (iv). As noted in the Overview and responses to Specifications #1-2, the Final Rule requires respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years.

(8) Consultation and Public Comments

As noted earlier, the FTC issued an NPRM on April 17, 2024. None of the public comments submitted thereafter addressed the estimated PRA burden included in the NPRM.

(9) Gifts or Payment

Not applicable.

(10-11) Privacy & Confidentiality/Sensitive Questions

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

The amendments will newly require certain inbound tech support calls to comply with the Rule's recordkeeping and disclosure requirements. This will increase the PRA burden for sellers or telemarketers as detailed below.

A. Estimated Annual Hours Burden – 110,568 (derived from 18,318 disclosure + 92,250 recordkeeping)⁷

The Commission estimates the PRA burden of the amendments based on its knowledge of the telemarketing industry and data compiled from the Do Not Call Registry. The annual hours of burden for sellers or telemarketers will consist of two components: the time required to make disclosures, and the costs of complying with the Rule's recordkeeping requirements.

First the Commission estimates that the disclosure burden will take 18,318 hours. Calculating the disclosure burden requires estimating the number of inbound tech support calls that are now be subject to the TSR under the Final Rule. The Commission uses the same methodology it has used in the past to calculate the disclosure burden for categories of calls that

⁷ The burden estimates for the Final Rule are slightly lower than they were for the NPRM, which were 123,816 (derived from 19,566 disclosure + 104,250 recordkeeping). The Commission has since updated the underlying number of complaints and covered entities subject to the new disclosure and recordkeeping requirements.

are excluded from the TSR's exemptions for inbound calls.

As it has in the past, the Commission estimates that there are 1.8 billion inbound telemarketing calls that result in sales, that consumer injury from telemarketing fraud is \$40 billion a year, and that it takes seven seconds to make the disclosures required by the Rule in inbound calls.

The Commission estimates the disclosure burden for particular categories of calls that are excluded from the TSR's exemptions by extrapolating a percentage of those calls based on their complaint rates in the FTC's Consumer Sentinel system. 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) by available data on total consumer and business-to-business telemarketing sales (\$310.0 billion projected for 2016), 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. That number is then rounded to the nearest ten. In 2023, there were 91,196 complaints about tech support and 2,566,261 fraud complaints.

Thus, the general sales disclosure burden is 18,318 (1.8 billion inbound calls x the percentage of fraud complaints for tech support (91,196/2,566,261) x the percentage of telemarketing calls that are estimated to be fraudulent (.13) x the length of the disclosures (8 seconds per disclosure ÷ 3,600 to convert to hours).

Second, the estimated recordkeeping burden is 92,250 hours. Estimating this burden requires estimating how many new telemarketing entities will be subject to the TSR under the Final Rule. To create this estimate, staff first estimates the number of existing telemarketing entities that engage in tech support sales. In calendar year 2023, 10,350 telemarketing entities accessed the Do Not Call Registry; however, 566 were "exempt" entities obtaining access to data. Of the non-exempt entities, 6,318 obtained data for a single state. Staff assumes that these 6,318 entities are operating solely intrastate, and thus would not be subject to the TSR. Therefore, staff estimates that approximately 3,466 telemarketing entities (10,350 – 566 exempt – 6,318 intrastate) are currently subject to the TSR. To estimate the percentage of those entities that sell tech support products and services, staff again relies on the percentage of fraud complaints for tech support out of the total fraud complaints. (91,196/2,566,261), which is multiplied by the number of telemarketing entities (3,466), to produce the estimate that 123 telemarketing entities receive tech support calls.

The Final Rule will likely cover additional businesses. For example, tech support companies that advertise their products through general advertisements and do not engage in upselling may be subject to the Rule for the first time. On the other hand, companies that market through a combination of advertisements and outbound telemarketing are already subject to the Rule. Companies that receive inbound calls from consumers with questions about their products who then engage in upsells of technical support services are also already subject to the Rule. The Commission estimates that the proposed amendment will increase the number of telemarketing entities that receive inbound tech support calls by a factor of 5, which would mean that an additional 615 entities will be covered by the Rule.

The Commission estimates that after implementation of the separate Final Rule proceeding which, among other things, requires telemarketers and sellers to maintain additional records of their telemarketing transactions, complying with the TSR's current recordkeeping requirements requires 150 hours for new entrants to develop recordkeeping systems that comply with the TSR, for a total annual recordkeeping burden of 92,250 hours.

Estimated Revised Annual Labor Cost Burden: \$3,270,518.⁸

The Commission estimates annual labor costs by applying appropriate hourly wage rates to the burden hours described above. The Commission estimates that the annual labor cost for disclosures will be \$323,130. This total is the product of applying an assumed wage of \$17.64/hour for 18,318 hours of disclosures.⁹ The Commission estimates that the annual labor cost for recordkeeping will be \$2,947,388.¹⁰ This is calculated by applying a skilled labor rate of \$31.95/hour to the estimated 150 burden hours for the estimated 615 entities that will now be covered by the Rule ($\$31.95 \times 150 \times 615$).

(13) Capital and other Non-Labor Costs

The Commission estimates that the annual non-labor costs are \$55 a year, derived from \$5 for electronically storing audio files, and \$50 for storing the required records. The Commission thus estimates that the annual non-labor costs will be \$33,825 (615 entries x \$55).

(14) Estimated Cost to the Government

Staff does not estimate any additional costs to the Federal Government.

(15) Program Changes or Adjustments

This is a program change, not an adjustment. The estimated additional annual hours of burden will be 110,568, and the estimated additional annual labor costs will be \$3,270,518. The newly added recordkeeping requirements will add annual non-labor costs of \$33,825 in total for the 615 covered entries (\$55 each).

(16) Publicizing Results

There are no plans to publish for statistical use any information required by the Rule.

(17) Display of Expiration Date for OMB Approval

This is not applicable, since the Commission will display the expiration date of the clearance.

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

Not applicable. The FTC certifies that this collection of information is consistent with the requirements of 5 C.F.R. § 1320.9, and the related provisions of 5 C.F.R. § 1320.8(b)(3), and is not seeking an exemption to these certification requirements.

⁸ This estimate is slightly lower than the \$3,544,614 estimate used for the NPRM. That prior estimate was based on annual hours of burden estimates set out in footnote 7 while also relying on Bureau of Labor Statistics’ estimates from May 2022 that have since been updated.

⁹ This figure is derived from the mean hourly wage shown for Telemarketers. See the Bureau of Labor Statistics’ “Occupational Employment and Wages–May 2023,” U.S. Department of Labor, (Apr. 3, 2024) Table 1 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2023”), available at https://www.bls.gov/oes/current/oes_nat.htm.

¹⁰ This figure is derived from the mean hourly wage shown for Computer Support Specialists from the U.S. Department of Labor source set out in the prior footnote.