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 Commission promulgated the Telemarketing Sales Rule ("TSR" or "Rule") on August 23, 1995, and the Rule became effective December 31, 1995. The Rule was issued in accordance with the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"),[1] enacted on August 16, 1994, which sought to prevent deceptive or abusive telemarketing practices by requiring the Federal Trade Commission ("Commission") to promulgate rules regarding such telemarketing practices, by enhancing the enforcement of those rules, and by increasing the consumer fraud enforcement tools available to the Commission.[2]

The Telemarketing Act also required that the Commission initiate a rule review proceeding no later than five years after the Rule's effective date of December 31, 1995.[3] The Commission has been engaged in this rule review since late November 1999, and conducted numerous forums, reviewed extensive public comment, and contacted outside sources and third parties in the course of its review. Based on this review process, the Commission determined to propose some amendments to the TSR, as discussed below.

Meanwhile, late last year President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act") of 2001, Pub. L. 107-56 (Oct. 25, 2001). This legislation contains provisions that significantly impact the TSR. Specifically, Section 1011 of the USA PATRIOT Act amends the Telemarketing Act to extend coverage of the TSR beyond the marketing of goods or services to charitable fund raising conducted by for-profit telemarketers for or on behalf of charitable organizations. Section 1011(b)(3) of the USA PATRIOT Act amends the definition of "telemarketing" that appears in the Telemarketing Act, 15 U.S.C. § 6106(4), expanding it to cover any "plan, program, or campaign which is conducted to induce . . . a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call . . . ." Moreover, Section 1011(b)(2) adds a new section to the Telemarketing Act directing the Commission to include new requirements in the "abusive telemarketing acts or practices"

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[1] Public Law No. 103-297, 15 U.S.C. §§ 6101-6108.

[2] The Telemarketing Act specified that telemarketing sales rules issued by the Commission must include: (1) requirements prohibiting unsolicited telephone calls which reasonably might be considered to be coercive or abusive to the consumer's right to privacy; (2) restrictions on the hours when unsolicited telephone calls may be made; (3) requirements that the telemarketer disclose promptly and clearly disclose the purpose of the call, as well as make any other disclosures the Commission deems appropriate, including the nature and price of the goods and services; and (4) provisions defining and prohibiting deceptive telemarketing practices. The Telemarketing Act also directed the Commission to consider recordkeeping requirements in promulgating the Rule.

[3] 15 U.S.C. § 6108.

provisions of the TSR.[4] Section 1011(b)(1) amends the "deceptive telemarketing acts or practices" provision of the Telemarketing Act, 15 U.S.C. 6102(a)(2), by specifying that "fraudulent charitable solicitation" is to be included as a deceptive practice under the TSR. The Commission thus proposed additional revisions to the Rule intended to effectuate the goals of the USA PATRIOT Act regarding the telemarketing of charitable solicitations.[5]

As discussed more fully under item #8 below, the Commission proposed changes to the TSR in light of the above, and invited public comment through its notice of proposed rulemaking ("NPRM")[6] and hosted an additional forum for interested parties to provide feedback on the NPRM. Having considered the resulting feedback, the Commission is now issuing a final amended Telemarketing Sales Rule ("amended Rule").

The Commission carefully reviewed the entire record developed in its rulemaking proceeding. The record, as well as the Commission's law enforcement experience, leaves little doubt that important changes have occurred in the marketplace, and that modifications to the original Rule are necessary if consumers are to receive the protections that Congress intended to provide when it enacted the Telemarketing Act. Based on that record and on the Commission's law enforcement experience, the Commission has modified the proposed Rule published in the NPRM and now promulgates an amended Rule, as described in the Commission's Statement of Basis and Purpose ("SBP"), to be published shortly in the Federal Register, and available online at http://www.ftc.gov/os/2002/12/tsrfrn.pdf.

The amended Rule includes certain new disclosure requirements, and expands the Rule's parameters in other ways. In some instances, however, the amendments do not actually increase burden on industry. In other cases, as illustrated by the tables and surrounding text in item #12 of this Supporting Statement, they do.

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[4] Specifically, § 1011(b)(2)(d) mandates that the TSR include "a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made."

[5] The changes are made pursuant to the rulemaking authority granted to the Commission by the Telemarketing Act to protect consumers from deceptive and abusive practices. 15 U.S.C. §§ 6102(a)(1) and (a)(3).

[6] 67 Fed. Reg. 4492 (January 30, 2002).

The scope of the Rule has expanded in two primary ways. First, the amended Rule covers upsells"[7] (not only in outbound calls, but also in inbound calls). The majority of commenters on the NPRM who addressed this issue, including both industry members and consumer groups, supported its express inclusion in the Rule. Second, the limited extension of the amended Rule to telemarketers soliciting charitable contributions is necessary to address emerging business practices that harm consumers, and to respond to the mandate of the USA PATRIOT Act. In addition, certain specific types of transactions, which have proven particularly problematic, have been excepted from the Rule's exemptions, thereby including additional transactions under the Rule's purview.

The Commission believes that the amended Rule strikes a balance, maximizing consumer protections without imposing unnecessary burdens on the telemarketing industry. Each of the amendments is discussed in detail in the SBP. The Commission's decision to retain certain provisions of the original Rule while supplementing or amending others is made pursuant to the Rule Review requirements of the Telemarketing Act,[8] and under the rulemaking authority granted by that Act to the Commission to protect consumers from deceptive and abusive practices,[9] including those that may be coercive or abusive of the consumer's interest in protecting his or her privacy.[10] The Commission's decision to amend the original Rule also is made pursuant to the authority granted to it by § 1011 of the USA PATRIOT Act.

(2) Use of the Information

(a) Recordkeeping

The primary purpose of the recordkeeping requirements is to maintain evidence of compliance with the Rule by companies subject to it. 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 Commission, 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 either to ensure that entities are complying with the Rule's requirements or to redress injury that may have resulted from violations of the Rule.

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

[8] 15 U.S.C. § 6108.

[9] 15 U.S.C. §§ 6102(a)(1) and (a)(3).

[10] 15 U.S.C. § 6102(a)(3)(A).

The Rule revisions involve minor changes to the TSR recordkeeping requirements for already covered entities. They implicate little or no added burden for industry because the records newly required to be maintained under the amended Rule likely are already being kept in the ordinary course of business. See Part II. A. of item #12 ("Retained and/or Adjusted Burden Estimates for Unchanged TSR Collection of Information Provisions"). The expansion of the Rule's coverage to telemarketers soliciting charitable donations also should result in minimal additional PRA burden to affected industry members. See Part IV of item #12.

(b) Disclosures

The purpose of all of the Rule's disclosure requirements, including those newly added in the amended Rule, is to assist in preventing 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, and to avoid being deceived about the terms of the sale or solicitation. The Rule's disclosure requirements also are intended to prevent fraud by making it more difficult for telemarketing companies to mislead consumers and by making it easier for law enforcement officials to identify and take action against those companies or individuals engaged in deceptive or abusive telemarketing practices.

During the rule review, individual and corporate commenters universally praised the Rule's existing disclosure requirements, stating that, by and large, they were effective tools to safeguard consumers against fraud, and did not impose an undue burden on industry. As noted above, however, based on the record as a whole, the Commission determined to amend the Rule to protect consumers against emerging areas of fraud and abuse in telemarketing. The amendments relevant to this Supporting Statement include: (1) in the sale of credit card loss protection, the required disclosure of the limits under 15 U.S.C. § 1643 of a customer's liability for unauthorized use of a credit card; (2) expansion of the current prize promotion disclosures to include a statement that any purchase or payment will not increase a consumer's chances of winning; (3) the narrowing of certain exemptions of the Rule, which exposes certain transactions to § 310.3(a)(1) disclosure requirements for the first time; (4) modification of various provisions throughout the Rule to effectuate expansion of the Rule's coverage to include charitable solicitations, pursuant to Section 1011 of the USA PATRIOT Act, and to add minimal mandatory disclosures in charitable solicitations; (5) required disclosures regarding negative option features; and (6) express expansion of the Rule's coverage to upsell transactions.

(3) Consideration of the Use of Improved Information Technology to Reduce Burden

The TSR's recordkeeping provisions permit sellers and telemarketers to keep records in whatever form, manner, format, or place they choose. Accordingly, the Rule'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"). Disclosures, 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.

(4) Efforts to Identify Duplication

Both the original requirements and those included in the amended Rule involve the preparation and retention of documents demonstrating compliance with the Rule. They do not duplicate any other information collection requirements by the Commission. Other federal and state government agencies may also require retention of some of the same records that the TSR requires be retained (e.g., personnel and sales or donation information). To the extent that the requirements 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.

(5) Efforts to Minimize Burden on Small Businesses

Corporate commenters -- both large and small business owners -- supported the original Rule, and stated that the Rule was effective and not overly burdensome to them. As was the case regarding the original Rule, the Commission has sought, in drafting the Rule revisions, to minimize as much as possible burden on affected entities. Neither the original Rule nor the amended Rule impose any reporting requirement upon sellers or telemarketers. The Rule's disclosure and recordkeeping requirements are generally consistent with the business practices that most telemarketing organizations would choose to follow, regardless of legal requirements.

Many of the NPRM commenters did not focus specifically on the costs faced by small businesses relative to those that would be borne by other firms. Rather, they argued that the costs to be borne by all firms – including small firms – would be excessive. In response to these comments, the Commission has made multiple modifications in the amended Rule. These changes should significantly reduce the burden on all businesses, including small businesses. For example, as discussed in the SBP, the Commission has decided to alter the "do-not-call" provision proposed in the NPRM to create an exemption that will allow a seller and its telemarketer to call consumers with whom the seller has an established business relationship, even if the consumer has placed her telephone number on the "do-not-call" registry. The effect of this change will be that businesses—and in particular small businesses—will not need to check their lists of existing customers against the national "do-not-call" registry. There will also be no need to obtain express verifiable permission before calling someone with whom the business has an established business relationship. Thus, most, if not all, of the costs complained of by industry commenters will not be faced by small businesses.

The burden placed on small charities by the "do-not-call" requirements has also been significantly reduced. As discussed above, the Commission has determined that for-profit firms that make fundraising calls on behalf of charitable organizations will not be required to ensure that they are not making calls to consumers who have placed their telephone numbers on the national "do-not-call" registry.[11] Rather, they will only have to honor individual consumer requests not to be called by the particular charity.[12]

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[11] Amended Rule § 310.6(a).

[12] Amended Rule § 310.4(b)(1)(iii).

Another change that should reduce the burden on small firms involves the procedures a firm may use to obtain the consumer's express verifiable authorization to use an account other than the consumer's credit card or debit card to pay for a purchase. In the NPRM, the Commission proposed to eliminate a procedure by which a firm was permitted to obtain authorization by sending the consumer written confirmation prior to the time the account was charged. In part this proposal was based on the impression that very few firms used this method of obtaining express verifiable authorization.[13] However, commenters indicated that this was not the case and that many smaller firms -- particularly newspapers -- used this method.[14] In response, the Commission has decided to retain the written confirmation method of obtaining express verifiable authorization, with certain modifications, including an exception that makes it unavailable in cases where the transaction involves a "free-to-pay conversion" feature and preacquired account information.[15]

Another proposal in the NPRM that attracted considerable business opposition was the prohibition on the disclosure or receipt of any consumer's billing information. Commenters argued that such a prohibition on the use of preacquired account information would increase the costs of telemarketing. While these costs were not argued to be specific to small businesses, the costs faced by small businesses would be increased along with those of larger ones.

As discussed in the SBP, the Commission has decided not to prohibit the acquisition and use of preacquired account information. Instead, the Commission is limiting the prohibition to the sale of unencrypted account information and is requiring that telemarketers and sellers obtain the consumer's express informed consent before any purchase is charged to a consumer's account using preacquired account information. Except for transactions that involve a "free-to-pay conversion" feature combined with preacquired account information, the only steps a seller or telemarketer is required to undertake to obtain this consent are to provide the consumer with sufficient information for the consumer to understand the account that will be charged and to obtain the consumer's express agreement to have the purchase charged to that account. Since both of these are practices that an honest business would follow even in the absence of a rule provision, the additional costs businesses argued would follow from the original proposal have been eliminated.

Another proposal contained in the NPRM that businesses argued would significantly increase the costs of telemarketing was the proposal to prohibit telemarketers from "abandoning" telemarketing calls -- that is, to prohibit making a call unless a telemarketing sales representative is available to talk to the consumer if she answers. As discussed in the SBP, the Commission has determined to create a safe harbor to the prohibition on abandoned calls. This safe harbor will allow firms to avoid being cited for violation of this provision of the Rule if they play a recording that identifies the seller and provides the seller's phone number when a sales representative is not available to handle a call and provided that this occurs in three percent or less of calls that are answered by a consumer. This change

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[13] 67 Fed. Reg. at 4,508.

[14] See, for example, the June 2002 Tr. III at 32-33 (Newspaper Association of America).

[15] See amended Rule § 310.3(a)(3)(iii).

should substantially reduce the burden that would have been imposed by a total prohibition on abandoned calls.[16]

Finally, the Commission has eliminated an unintended burden that would have resulted from treating any upsell as a separate outbound telemarketing call. As several people have noted, this would have required telemarketers who receive inbound calls to comply with the "do-not-call" provisions of the Rule as well as the calling hours provision before offering any upsell product.[17] Such a requirement would have imposed substantial burdens on sellers who receive inbound telemarketing calls. However, it was never the intention of the Commission to require compliance with either the "do-not-call" provisions or the calling hour provisions in this context.[18] Accordingly, this requirement has been eliminated in the amended Rule as it provides a separate definition of an upsell and clarifies that these provisions do not apply to an upsell.

(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 Commission's enforcement program. Consumers who complain to the agency 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 Commission 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 disclosures required by the original Rule provide consumers with information necessary to make informed purchasing decisions. The additional disclosures of the amended Rule specific to sales transactions (e.g., disclosures regarding negative option offers, credit card loss protection plan offers, and prize promotions) have been inserted to address specific areas of recurring deception or abuse in telemarketing, and have been narrowly crafted to address the specific problems identified in these transactions through law enforcement efforts by the states and FTC, as well as through review of the comments received in response to the Rule Review and NPRM.

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[16] As Consumer Choice Coalition ("CCC") testified at the workshop, "[W]hat we found out is that ... below 5 percent or 4 percent or 3 percent [rate of abandonment], you're really beginning to raise costs ...." June 2002 Tr. I at 212 (CCC).

[17] See, for example, the June 2002 Tr. I at 210 (CCC); June 2002 Tr. II at 214-15 (Direct Marketing Association).

[18] June 2002 Tr. I at 210-11 (FTC); June 2002 Tr. II at 215 (FTC).

Additionally, the minimal disclosures of new Rule provision 310.4(e), which were crafted in furtherance of the mandate of the USA PATRIOT Act, like the original disclosure requirements, are material to consumers' decision making -- in this case, whether to make a charitable contribution over the telephone -- and will provide needed protection against emerging areas of fraud and abuse. To require less than this would defeat the purpose of the Telemarketing Act, as amended by the USA PATRIOT Act, which is to ensure that each consumer be provided with material disclosures necessary to properly evaluate a particular sales offer or donation solicitation.

(7) Circumstances Requiring Collection Inconsistent With OMB Guidelines

The additional collection of information in the amended Rule revisions is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2). The revisions do not include any new reporting or recordkeeping requirements that impose any significant burden on industry, and those already existing under the Rule do not call for frequency of reporting or length of record retention beyond the limits stated in the OMB guidelines.

The only reporting requirement contained in the Rule is mandated by statute, and requires government or private litigants to notify the Commission if they file an action under the Telemarketing Act; it does not call for predetermined periodic submissions. The Rule requires that specified records be maintained for 24 months. Occasionally, the Commission may require persons covered by the Rule to submit information as part of a law enforcement investigation. However, as also noted under items ##10-11, any information provided to the Commission in connection with such law enforcement investigations is treated as confidential under Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2.

(8) Consultation Outside the Agency

Since the original Rule became effective, Commission staff has consulted affected entities regarding the Commission's law enforcement activities and affected entities' questions about the Rule's interpretation. In those discussions, affected businesses generally have not expressed any particular concern regarding the cost or time burdens associated with the Rule's recordkeeping or disclosure requirements.

In connection with the Commission's required Rule review,[19] Commission staff conducted its "Do-Not-Call" Forum on January 11, 2000, limited to examination of issues relating to the "do-not-call" provision of the Rule, and seeking applications to participate in the forum.[20] Seventeen associations, individual businesses, consumer organizations, and law enforcement agencies, each with an affected interest and an ability to represent others with similar interests, were selected to engage in the Forum's roundtable discussion, held at the FTC offices in Washington, DC. Related discussions

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[19] See page 1 of this Supporting Statement.

[20] 64 Fed. Reg. 66,124 (Nov. 24, 1999).

encompassed the possibility of a national do-not-call registry[21] and its impact on industry, as well as the availability of Caller ID transmission technology. Commission staff also independently consulted with industry members on these issues to develop still greater familiarity with the facts and issues surrounding these matters.

The Commission thereafter broadened the scope of its inquiry to address the overall effectiveness of all the Rule's provisions.[22] This notice announced a second public forum to discuss the provisions of the Rule other than the "do-not-call" provision.[23] In response, the Commission received 92 comments from representatives of industry, law enforcement, and consumer groups, as well as from individual consumers.

During the rule review, representatives of the industry informed the Commission that the information collection burdens the Rule imposes are minimal and that some have even lessened over time as technology has improved. Staff also met with federal, state, and local law enforcement agencies to determine, among other things, whether the current recordkeeping requirements were sufficient to facilitate effective enforcement of the Rule.

In its January 30, 2002 NPRM, the Commission proposed a number of changes, including creating a national "do-not-call" registry maintained by the FTC, a ban on receiving from or disclosing to a third party a consumer's billing information, a prohibition against blocking caller identification information, and a requirement that sellers or telemarketers accepting payment via novel payment methods obtain the customer's express verifiable authorization. During the course of this NPRM proceeding, the Commission received about 64,000 electronic and paper comments from representatives of industry, law enforcement, consumer and privacy groups, and from individual consumers. On June 5, 6, and 7, 2002, the Commission held a forum to discuss the issues raised by commenters regarding the FTC's proposed revisions. The forum was open to the public, and time was reserved to receive oral comments from members of the public in attendance. During the forum, the Commission announced that it would accept supplemental comments until June 28, 2002. The forum proceeding was transcribed and placed on the public record. The public record, including many comments and all forum transcripts, has been placed on the Commission's website on the Internet.[24]

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[21] Apart from the discussion of the cost to the federal government in item #14, the national do-not-call registry will be addressed again for PRA purposes when the Commission seeks further comment regarding registry user fee issues. Previously, staff provisionally addressed it in the aforementioned NPRM. See 67 Fed. Reg. at 4534. Commission staff's preliminary PRA analysis concluded that the incremental effects would be minimal and, possibly lead to reduced burden for telemarketers. Since then, to ease associated burden further, the Commission has posited requiring quarterly "scrubbing" of telemarketers' call lists, rather than monthly as was originally proposed. The Commission will create the registry as soon as it receives Congressional approval for funding, and collects and spends the money that is needed for the system.

[22] 65 Fed. Reg. 10,428 (February 28, 2000).

[23] Id. The Commission extended the comment period from April 27, 2000 to May 30, 2000. 65 Fed. Reg. 26,161 (May 5, 2000).

[24] Much of the record in this proceeding is on the FTC's website at http://www.ftc.gov/bcp/rulemaking/tsr/tsr-

(continued...)

Individual consumers generally favored the Commission's proposals, particularly with regard to a national "do-not-call" registry. Consumer groups and state law enforcement representatives also generally supported the proposed amendments, although they expressed concern about the effect of the proposal on state "do-not-call" and other laws. Business and industry commenters generally opposed the proposal, but suggested changes that they believed would make the proposed amendments less burdensome on legitimate business while still achieving the desired consumer protections. Comments from charitable organizations focused primarily on the FTC proposal which would require for-profit telemarketers who solicit on behalf of charitable organizations to comply with the proposed "do-not-call" registry. Charitable organizations consistently opposed such a requirement.

As noted in #1 above, the Commission carefully reviewed the entire rulemaking record to, in its view, attain a balance between maximizing consumer protection and seeking to minimize incremental burdens on the telemarketing industry.

(9) Payments or Gifts to Respondents

Not applicable. The Commission makes no payments or gifts to respondents in connection with information collection under the Rule.

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

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. The Rule's information collection requirements generally do not call for the collection or disclosure of sensitive information.

(12) Hours Burden

I. Introduction

Throughout the history of the TSR rulemaking process -- from establishment of the original Rule, to the Rule Review and proposed Rule, to the amended Rule discussed herein -- the Commission has expressly sought input from affected entities on the potential paperwork burdens associated with the various provisions, proposed and final, of the TSR. More specifically, the Commission consistently requested data from the telemarketing industry or third parties that would enable it to determine as concretely as possible the costs associated with the disclosure and recordkeeping requirements set forth in the Rule. Until the comment period following the Notice of Proposed Rulemaking published on January 22, 2002, however, the Commission received no such data from affected entities on the impact of the Rule. Rather, Commission staff was able, through its own research and a series of educated assumptions, to set forth its best estimations of the PRA-related burden imposed by the Rule. These

[24] (...continued)
review.htm. In addition, the full paper record is available in Room 130 at the FTC, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number: 1-202-326-2222.

estimates, and the analysis underlying them, were published regularly, and comment was sought on them in several Federal Register notices. No additional information was received from industry.

The January 22 NPRM elicited extensive comment, including, for the first time, some statistical information on the telemarketing industry—such as number of calls made per year, and average value of a consumer telemarketing transaction – that can be used as bases for determining paperwork burden calculations. While this information did not appear to be fully accurate or complete, it did provide tools to create a better framework with which to approach the PRA analysis of the Rule. Consequently, FTC staff has revisited the burden analyses for the original Rule. For ease of reference, the reanalysis of the original rule's burden and the effect of the amendments are presented separately. See Part II of item #12.

The burden calculations for new disclosure requirements contained in § 310.3(a)(1)(vi)-(vii) and § 310.4(e) of the amended Rule (e.g., negative option disclosures, an additional prize promotion disclosure, a disclosure particular to solicitations of charitable donations), and by extended application of most disclosure provisions to upsells, not just for those following outbound calls, but now also upsells following inbound calls. See Parts III-IV of item #12. These calculations are set upon the foundation of the revised analysis related to the original Rule's burden estimates.

A. Base Calculations: Tables 1 & 2

All calculations and projections that follow are predicated on an estimated number of outbound and inbound calls. Commission staff's past estimate of the total number of calls subject to the Rule was 9 billion. However, based on data provided in response to requests for data on costs and burdens during the Rule Review and NPRM processes, as well as data obtained from outside industry sources such as the Direct Marketing Association's 2001 Statistical Fact Book, this number has been revised to 9.6 billion. Additionally, with the amended Rule's application to upsells following inbound calls, staff now also provides estimates regarding these transactions.[25]

The sum of staff's estimates for all outbound calls (Table 1 below) and inbound calls (Table 2 below) is 9.6 billion calls. This total includes not only "direct order" calls, but also "traffic generation" and "lead generation calls."[26]

As discussed in greater detail below, not all disclosure requirements set forth in the amended Rule are required in every one of these calls. For example, none of the § 310.3(a)(1) disclosures are

[25] Most inbound telemarketing calls were not subject to the original Rule's requirements, by virtue of various exemptions in § 310.6. Thus, neither the original burden estimates, nor the revised estimates for the original Rule include calculations for inbound initial transactions. That burden is accounted for in the estimates of various *upsell* scenarios flowing from inbound initial transactions.

[26] "Direct order" denotes calls specifically designed to solicit sales consummated over the telephone. "Lead generation" calls are outbound telemarketing calls designed to generate interest in a product or service, or to provide the customer with additional information. "Traffic generation" calls aim to motivate a prospective customer to visit a store. Winterberry Group, *Industry Map: Teleservice Industry – Multi-Channel Marketing Drives Universal Call Centers*, January 2001 at 1.

required in calls intended solely to generate leads or traffic -- they are required only when a sale is about to be finalized during a call (i.e., the consumer indicates the intention to buy the product or service, subject to coming to agreement on the payment terms). By contrast, other disclosures are required regardless whether a sale occurs. See §§ 310.4(d) and (e). The distinction between § 310(a)(1) and § 310.4(d), for example, relates to staff's PRA burden calculations for an initial transaction in a telephone call and, where applicable, to upsells that follow the initial transaction. Thus, the grand total of 9.6 billion calls is not the appropriate figure to use as a basis for most calculations that follow, but rather must be further refined in light of the specific transaction and the specific disclosures required in each call. Tables 1 and 2, however, set forth the foundation for further burden estimates in later tables.

Table 1: Estimated # of Outbound Telemarketing Calls

Item	Value (2001)	Source
(1) $ sales from outbound calls	$276.6 billion	DMA Statistical Fact Book 2001 p. 300
(2) Percentage of telemarketing sales subject to FTC jurisdiction	92.8%[1]	Extrapolated from DMA Statistical Fact Book 2001 p. 302; Winterberry Group, "Industry Map: Teleservice Industry – Multi-Channel Marketing Drives Universal Call Centers" (January 2001), at 9
(3) $ sales from outbound calls subject to FTC jurisdiction	$256.7 billion	(1) x (2), rounded
(4) Average value of a sale	$85	Miller Study, Attach. 1, Line 2
(5) Number of sales transactions from outbound calls subject to FTC jurisdiction	3.0 billion	(3) ÷ (4), rounded
(6) Percentage of outbound calls resulting in a sale	20%	Miller Study, Attach. 1, Line 4
(7) Number of total outbound calls subject to FTC jurisdiction	15.0 billion	(5) ÷ (6)
(8) Percentage of telemarketing sales attributable to direct orders	30%	DMA Statistical Fact Book 2001 p. 301
(9) Number of direct sales[2] transactions from outbound calls subject to FTC jurisdiction	900 million	(5) x (8)
(10) Number of outbound calls subject to FTC jurisdiction	4.5 billion	(7) x (8)

[1] The % is calculated as follows:

(a) According to the *DMA Statistical Fact Book 2001* p. 302, two of the top 10 consumer direct marketing ("DM") industries by sales volume includes industries that, *apart from telemarketing performed for them by third-party providers*, are exempt from FTC jurisdiction and, consequently, the TSR: insurance carriers/agents and depository institutions. Combined DM for these two otherwise exempt industries in 2001 was $84.786 billion ($44.894 billion and $39.892 billion, respectively).

(b) According to the Winterberry Group, January 2001, 13.1% of teleservice expenditures in 2001 were outsourced. Assuming that relative sales volume attained by exempt in-house telemarketers and non-exempt third-parties are directly proportionate to their relative degree of teleservice expenditures, then 86.1% (100% - 13.1%) of the combined DM sales volume for insurance carriers/agents and depository institutions, roughly $73.7 billion, is exempt. Total consumer DM sales in 2001 was $1,019.2 billion. Thus, the exempt portion of insurance- and depository institution-related sales, $73.7 billion, is 7.2% of total consumer DM sales. If these two areas alone were exempt from the TSR, apart from the third-party exception, then 92.8% of consumer DM sales would be subject to the TSR.

(c) Information for areas outside of the top 10 list is not provided in the above-referenced DMA tabulation. At least two other industries outside the top 10 list would also be exempt (e.g., long-distance telecommunications, airlines) apart from the third-party exception. Conversely, these figures do not reflect business-business nondurable office supplies, which are subject to the Rule. Lacking further data to more precisely account for these additional factors, staff will assume that their relative volumes are roughly equivalent. Accordingly, staff will apply to its further calculations the above-noted estimated percentage of sales subject to the TSR, 92.8%.

[2] Lacking superior information, staff will use external data for the percentage of telemarketing *dollar* sales attributable to direct orders as a proxy to derive the *number of calls* for which § 310.3(a)(1) disclosures apply.

Table 2: Estimated # of Inbound Calls

Item	Value	Source
(1) Number of total outbound calls subject to the TSR	15.0 billion	Table 1, Line (7)
(2) Ratio of inbound calls to outbound calls	55:45[1]	DMA Statistical Fact Book 2001
(3) Total inbound calls subject FTC jurisdiction	18.3 billion	(1) x (2)
(4) Percentage of inbound calls that are sales-oriented	35%	Miller Study, Attach. 3, Line 8
(5) Sales-oriented inbound calls subject to FTC jurisdiction	6.4 billion	(3) x (4)
(6) Percentage of inbound calls resulting in a sale	80%[2]	Staff estimate
(7) Number of direct initial sales from inbound calls subject to FTC jurisdiction	5.1 billion	(5) x (7)

[1] In 2001, inbound teleservice expenditures constituted 55% of total expenditures. *DMA Statistical Fact Book 2001* (p. 112). By inference, and for simplicity (barring clear industry data for the total number of inbound calls), staff assumes that the relationship between the relative call volume pertaining to these calls is proportionate to the relative expenditures for inbound and outbound calls.

[2] While a 20% sales ratio has been assumed for outbound calls (see Table 1, line 6), staff has not obtained independent data or an external estimate for sales conversion applicable to inbound calls. Recognizing that this ratio would likely be substantially higher for inbound calls but anticipating that a sizeable minority of callers might not purchase a product or service upon obtaining further information in the call, staff will assume an 80% conversion rate.

B. Base Assumptions

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 mostly from external data and/or estimates for calendar year 2001. Staff recognizes that disclosure burdens may still be realized regardless whether a transaction results

in a sale. It also recognizes, however, as it has in the past, that a substantial percentage of outbound calls result in consumers hanging up before the seller or telemarketer makes further disclosure that the Rule requires. See Table 3 below. Staff applies similar assumptions regarding telefunders' solicitation of charitable donations. See Table 11 below. However, because § 310.3(a)(1) disclosures apply only to sales, early call cessation (i.e., consumers hanging up pre-disclosure or before full disclosure) is excluded in staff's calculations of burden associated with § 310.3(a)(1).

For transactions in which a sale is not a precursor to required disclosure, i.e., § 310.4(d), staff has calculated burden for initial transactions based on the Table 1 and 2 total volumes of outbound and inbound calls, respectively, discounted, to a degree, for anticipated early call terminations. For transactions in which a sale is a precursor to required disclosure, i.e., § 310.3(a)(1), however, staff bases its calculations on the volume of direct sales (see Table 1, Line 9; Table 2, Line 7).

Staff bases all upsell calculations, which appear in certain ensuing tables, on the volume of direct order sales from initial transactions, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial transaction -- whether through an outbound or an inbound call. Using externally received estimates, staff assumes an upsell conversion rate of 40% for inbound calls. Lacking such input regarding upsells from outbound calls, however, staff will apply the same 40% upsell conversion rate to them as well. Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell before the seller or telemarketer makes the full disclosure(s).

As it has done in other PRA submissions in recent years, staff estimates that the disclosures the Rule requires would be made in at least 75 percent of telemarketing presentations even absent the Rule. See 63 Fed. Reg. 40,713 (July 30, 1998); 66 Fed. Reg. 33,701 (June 25, 2001); 67 Fed. Reg. 4492 (January 30, 2002). Staff received no comments refuting this estimate. Accordingly, staff determined that the hours burden estimate for the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.[27] The disclosure tables that follow for §§ 310.4(d), -(e), and § 310.3(a)(1)[28] reflect this continued assumption as does staff's burden estimate for the written disclosure alternative, shown under Part II. B. 1.

Finally, in estimating costs, as in prior PRA submissions for TSR, staff assumes the following wage rates: $10/hour for recordkeeping clerical tasks; $20/hour, where applicable, for

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[27] OMB does not view as "burden" the time, effort, and financial resources necessary to comply with a collection of information that would normally be incurred by persons in the normal course of their activities to the extent that the activities are usual and customary. 5 C.F.R. § 1320.3(b)(2).

[28] Given that § 310.3(a)(1) addresses a transaction's disclosure terms (e.g., total costs of purchase, all material restrictions, refund policy, etc.), all or several of which appear innate to *any* transaction, whether an initial one or an upsell, independent of the Rule, a pre-existing disclosure rate of 75% may even be an understated estimate. Similarly, § 310.4(d)(1)-(3) (identity of the seller, purpose of the call, nature of the goods or services) and § 310.4(e)(1)-(2) (identity of the charitable organization behalf of which the request is made, purpose of the call is to solicit a charitable contribution) would also appear innate to any transaction.

skilled labor to set up new recordkeeping systems for new entrants; and $15/hour for a telemarketer representative's wages.[29]

II. Retained and/or Adjusted Burden Estimates for Unchanged TSR Collection of Information Provisions

A. Recordkeeping[30]

Staff is revising its prior estimate of total annual recordkeeping burden for new telemarketing entrants and existing entities (50,000 hours), as explained below.

1. Existing entities

Of an estimated 7,400 industry members[31] who have already assembled and retained the required records in their recordkeeping systems, staff estimates, as it is has with prior PRA submissions to OMB for TSR, that each member requires only one hour per year to file and store

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[29] *See* DMA Statistical Fact Book 2001, at pp. 108-09 ($9 base rate plus commissions and fringes for part-time and full-time sales representatives totaling $13.20 - $15.60//hour); Don Oldenburg, Have We Reached the Party to Whom We Are Speaking?, Wash. Post, October 20, 2002, at F1 (telemarketer caller mean hourly wage is $9.67, and up to $12 with commissions). The $28.51 hourly labor rate that the Magazine Publishers of America alluded to in its attachment to its Supplementary Comments is a composite of managerial, supervisory, and clerical wages, commissions, and various indirect costs. Accordingly, staff views the MPA wage estimate as over-inclusive and overstated. The Miller study posits a similar rate of $25 per hour, albeit without details elaborating on what comprises that amount. Attachment 4, Line 6. In light of the above data, that estimate also appears to be greatly overstated.

[30] The impact on the changes to the express verifiable authorization provision on recordkeeping for existing entities is discussed in Part III. A. of item #12 ("Burden Estimates Regarding New Collection of Information Under the Amended Rule: Sales-oriented Entities"). Recordkeeping with regard to charitable entities is discussed under Part IV. A.

[31] Throughout the creation and review of the TSR, the Commission has estimated that there are 40,000 telemarketers and sellers in the United States that are potentially subject to the Rule. That estimate has been the basis of burden analysis throughout the rulemaking process, based on the best information then available. It had been the subject of several notice and comment rulemaking proceedings, with no industry member challenging it. After the Commission issued the Rule NPRM, however, staff began planning for the possible implementation of the national do-not-call registry. As part of that planning process, staff contacted representatives from each state that maintains an individual state do-not-call registry to determine the number of firms that access those state registries, with the intent to use this information to estimate the number of firms likely to access a national registry, should one be established. Based on data received from the states – which, while of limited utility, was the only data available at that time – the Commission initially estimated that 3,000 telemarketers or sellers may access the national registry. The Commission issued this estimate as part of the User Fee NPRM, 67 Fed. Reg. 37,362 (May 29, 2002), and sought comment on it, among other things. The Commission received limited input on that issue. Based on that input, however, along with further staff assumptions applied to it, staff has revised its estimate of the number of firms to 7,400. Staff will recommend to the Commission in the near future the issuance of a Fee NPRM that would seek public comment on this revised number and the various assumptions underlying it.

records required by the Rule. Thus, the cumulative sub-total would be 7,400 hours, which staff will round up to **8,000 hours**. This marks a downward adjustment of staff's preceding estimate – 40,000 hours – which was a rounding based on dated information suggesting the existence of 39,900 industry members.

2. New entrants

Since the original Rule's inception, the Commission has estimated that 100 firms each year would need to adjust their recordkeeping systems to comply with the Rule's requirements and that it would require each of them approximately 100 hours to develop a compliant recordkeeping system, for a cumulative yearly total of 10,000 burden hours. Initially, staff stated this assumption in the context of existing telemarketing firms, not merely new entrants, because the Rule was new and it was foreseeable that even some existing entities might have to adjust their recordkeeping systems to achieve Rule compliance. In later years, however, while staff continued to assume that one hundred telemarketers would need to make such adjustments, it projected that need solely in terms of anticipated new entrants. Staff presumed that ongoing telemarketing entities would have already conformed their recordkeeping systems to comply with the TSR requirements.

Staff retains the estimate of one hour for such firms to modify their systems for TSR purposes. However, staff believes that the prior estimated number of new telemarketing entrants, 100, is overstated given the understanding that outbound telemarketing's rate of growth is slowing and, in fact, suggestive of incipient decline.[32] Given this consideration as well as its belief that its revised industry population estimate is more realistic, staff believes that today no more than 75 firms newly enter this field per year. Accordingly, staff's revised estimate of the cumulative yearly total for new entrants to conform their recordkeeping systems for TSR purposes is **7,500 hours.**

B. Disclosure

1. Written disclosure option

The TSR provides that if an industry member chooses to solicit inbound calls from consumers by direct mail solicitations that make certain required disclosures (listed in § 310.3(a)(1) of the Rule), that member is exempted from complying with the remainder of the Rule's requirements. Such members would be considered "inbound telemarketing entities," as they would be soliciting inbound calls via their direct mail pieces. Staff estimates that of the approximately 6,200 inbound telemarketing entities potentially subject to the TSR[33], approximately 2,100 of them are firms that choose to use the direct mail - written disclosure method of marketing rather than

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[32] See Caroline E. Mayer, Cooling on the Cold Calling? Some Telemarketers Changing Strategy, Wash. Post, January 4, 2003, at E1 (quoting industry members to this effect).

[33] See page 21 explaining how this amount was derived.

outbound telemarketing in order to qualify for the exemption and avoid having to comply with the rest of the Rule.[34]

Staff previously estimated that a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule, and it believes this estimate remains reasonable. Thus, for these 2,100 firms, the cumulative associated burden is 21,000 hours. Based on the assumption that no more than 25% of this time constitutes "burden" imposed solely by the Rule (i.e., an assumed 75% of affected telemarketers would make such disclosures, anyway, in the ordinary course of business), residual burden attributable to the Rule's written disclosure requirements is approximately **5,300** hours.

2. Oral disclosure

a. Section 310.4(d)

Section 310.4(d) disclosure (identity of seller, purpose of call, etc.) relates to outbound calls and to upsells. And, while it applies to upsells that flow from inbound calls, it does not apply to an inbound call that is the initial transaction. Given that a consumer originates the initial transaction in an inbound call, he or she will already possess the information otherwise required by § 310.4(d). To the extent that information changes in an upsell following that initial transaction, however, that information must be disclosed under the amended Rule. Upsells are accounted for under Part III of this analysis ("Burden Estimates Regarding New Collection of Information Under the Amended Rule: Sales-oriented entities").

When the Commission issued the original TSR, staff estimated that: (a) outbound telemarketing disclosures consumed 7 seconds if made in full; (b) only 40% of persons called allowed the call to proceed that far; and (c) the remaining 60% of calls resulted in termination 2 seconds into the requisite disclosures. See 60 Fed. Reg. 32,682 (June 23, 1995). In various PRA submissions for TSR since then, including for the notice of proposed rulemaking earlier this year, the Commission republished those estimates, with no public comments disputing them. See, e.g., 63 Fed. Reg. 40,713 (July 30, 1998); 66 Fed. Reg. 33,701 (June 25, 2001); 67 Fed. Reg. 4492 (January 30, 2002). Accordingly, staff is retaining those estimates for the following calculations in Table 3, albeit based on updated estimates for the number of applicable calls.

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[34] Staff originally assumed that 9,000 out of 40,000 firms would shift from outbound to inbound telemarketing with written disclosures. Stated alternatively, staff assumed that once the Rule was in effect, 31,000 firms would continue to engage in outbound telemarketing. Since it now appears that fewer firms (7,400) are engaged in outbound telemarketing than previously thought, staff has reduced proportionately its estimate of the number of entities that have shifted from outbound to inbound telemarketing with written disclosures. It now estimates that there are approximately 2,100 firms who use inbound telemarketing with written disclosures because of the rule's requirements (7,400 x 9,000/31,000 = 2,100, rounded to the nearest thousand).

Table 3: § 310.4(d) Disclosure for Initial Transactions

	(a)	(b)	(c)	∑=(a)·(b)·(c) ÷3600 seconds/hour
Activity	**# calls**	**§ 310.4(d) disclosure (seconds consumed)[1]**	**% of firms not already making such disclosure**	**Cumulative burden hours**
Outbound call: no early hang-up	1.8 billion[2]	7	25%	875,000
Outbound call with early hang-up	2.7 billion[3]	2	25%	375,000
TOTAL				1,250,000

[1] Required regardless whether a sale will be finalized. The estimated time per call reflect staff's projections.
[2] Total outbound calls (4.5 bill., Table 1, Line 10) x 40% (explained in text above).
[3] Total outbound calls (4.5 bill., Table 1, Line 10) x 60% (explained in text above).

The revisions to staff's burden estimates for the disclosures reflected in the table immediately above are solely a function of the revised estimates for the number of calls, which is now derived from newer information.

b. Section 310.3(a)(1)

Tables 4a - 4c below present adjustments to staff's prior burden analysis. Tables 4a and 4b address prize promotion disclosure. Table 4c formally recognizes disclosure that was already part of the TSR prior to the amendments, and should be factored into burden accounting under Part II of the burden discussion.

Previously, staff accounted for prize promotion transactions within the 10-second total disclosure estimate for *all* telemarketing calls under § 310.3(a)(1)(i)-(v). However, staff's burden adjustment calculations below aptly recognize that prize promotions account for only a small fraction of such calls. Accordingly, both the frequency of prize promotion telemarketing and staff's 10-second estimate per call were overstated. Thus, allowing an estimated 2 seconds for prize promotions reduces staff's estimated time per call under § 310.3(a)(1) for those calls not involving prize promotion. Accordingly, staff reduces its prior estimate of 10 seconds for all calls to 8 seconds per call. (NOTE: Table 5 under Part III covers burden hours attributable to the new disclosure requirement added to the existing prize promotion provisions.)

Table 4a: § 310.3(a)(1) Disclosure for Initial Transactions

	(a)	(b)	(c)	∑=(a)·(b)·(c) ÷3600 seconds/hour
Activity	**# calls[1]**	**# seconds per disclosure**	**% of firms not already making such disclosure**	**Cumulative burden hours**
Outbound call	900 million	8	25%	500,000
TOTAL				500,000

[1] The number of direct sales in an initial transaction via outbound telemarketing, derived from line (9) of Table 1, is used here as opposed to the total number of outbound calls because disclosure here is only required before a finalized sale.

Table 4b: § 310.3(a)(1)(iv)-(v) Disclosure for Prize Promotion (Unamended Portion)

	(a)	(b)	(c)	(d)	∑=(a)·(b)·(c)·(d) ÷3600 seconds/hour
Activity	**# calls[1]**	**Proportion of calls involving prize promotion[2]**	**# seconds per disclosure[2]**	**% of firms not already making such disclosure**	**Cumulative burden hours for prize promotion disclosure**
Outbound call	900 million	5%	2	25%	6,250
TOTAL					6,250

[1] The number of direct sales in an initial transaction via outbound telemarketing, derived from line (9) of Table 1, is used here as opposed to the total number of outbound calls because disclosure under this section is required only before a finalized sale.
[2] Staff estimate

The requirement to make § 310.3(a)(1) disclosures on an upsell following an outbound call had not previously been accounted for in staff's estimates. However, outbound calls were covered in the original Rule and, by implication, upsells that followed them would be, too. Accordingly, the table immediately below accounts for this consideration regarding upsells after outbound calls.

Table 4c: § 310.3(a)(1) Disclosure for Upsells After Outbound Calls

	(a)	(b)	(c)	(d)	(e)	∑=(a)·(b)·(c)·(d)·(e)÷3600 seconds/hour
Activity	**# calls**[1]	**% upsell conversion**[2]	**% sales conversion**[3]	**% of firms not already making such disclosure**	**# seconds per disclosure**	**Cumulative burden hours for disclosure**
Upsell after an outbound call	900 million	40%	20%	25%	8	40,000
TOTAL						40,000

[1] The number of direct sales in an initial transaction, is derived from line (9) of Table 1. Direct sales, rather than the total number of outbound calls is used because disclosure under this section is required only before a finalized sale Regarding upsells, staff assumes that such transactions occur only after an initial transaction results in a sale.
[2] Based on Miller Study, Attach. 3, Line 12 and MPA Suppl. Comm. attach. as to inbound calls. Lacking external upsell conversion data for outbound calls, staff will apply this estimate to outbound calls as well.
[3] As with an initial transaction in a call, § 310.3(a)(1) disclosures in an upsell is required only before a finalized sale.

C. Associated Labor Cost (for Unchanged Collection of Information Under TSR for Sales-oriented Entities)

1. Recordkeeping: $230,000 (7,500 hours @ $20/hour; 8,000 hours @ $10/hour)
2. Disclosure: $27,023,250 (1,801,550 oral and written disclosure hours @ $15/hour)

Total: $27,253,250

III. Burden Estimates Regarding New Collection of Information Under the Amended Rule: Sales-oriented entities

A. Recordkeeping

The Commission has not changed the Rule's recordkeeping requirements themselves. Some amendments to the conduct provisions of the Rule, however, implicate potential added recordkeeping requirements. For example, because of the changes to the express verifiable authorization provision, § 310.3(a)(3), the section 310.5(a)(5) mandate that sellers and telemarketers keep all verifiable authorizations required to be provided or received under the Rule suggests that additional records must be retained. Nonetheless, the Rule review record indicates that virtually all telemarketers already keep such records in the ordinary course of business. Thus, in this regard, there should be minimal or no incremental recordkeeping burden resulting from the Rule changes. Similarly, a small percentage of transactions involve the combination of preacquired account information and a "free-to-pay conversion" offer. Under the amended Rule, these transactions now must be recorded in their entirety. But, again, this recordkeeping burden is likely to be de minimis, as virtually all telemarketers record at least a portion of such calls already. Thus, the additional burden may entail no more than simply turning on the recording device somewhat earlier in the process, thereby retaining slightly more electronic data to store.

The explicit application of the Rule to upsell transactions means the recordkeeping requirements will now apply to them as well. Staff has no clear way to assess the incremental recordkeeping posed by upsells. For one thing, many or even most transactions do not lead to upsells. Moreover, even for those that do, the recordkeeping may be minimal depending on the nature of the transaction. Nonetheless, for simplicity, staff will assume that the relevant recordkeeping burden for upsell transactions subject to the TSR, and relating to *outbound* telemarketing, is approximately 25% of the 8,000 hour estimate for existing entities to file and store records via initial transactions (see Part II. A. of item #12), i.e., 2,000 hours.

Under the amended Rule, firms that do *inbound* telemarketing must now keep records to demonstrate Rule compliance, both for initial transactions and for upsells. Staff believes that its previously stated estimate of one hour per outbound telemarketer should apply equally to inbound telemarketers. While staff does not have information directly stating the number of inbound telemarketers, it notes that, according to the DMA 27% of all direct marketing in Year 2000 was by inbound telemarketing and 32% was by outbound telemarketing.[35] Using a 27:32 ratio, staff estimates that the number of inbound telemarketers is approximately 6,200 (7,400 x 27/32). Accordingly, staff estimates that inbound telemarketers will require 6,200 hours to file and store records for initial transactions. Applying the assumption in the paragraph immediately above, staff will assume incremental recordkeeping burden for upsells of 25% of that amount, i.e., 1,550 hours. Thus, total recordkeeping burden for inbound telemarketers is 8,000 hours, rounded to the nearest thousand.[36]

The incremental recordkeeping burden posed by the amended Rule for both outbound (2,000 hours) and inbound telemarketers (8,000 hours) is thus **10,000 hours.**

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[35] DMA Statistical Fact Book 2001, at p. 25. Year 2000 is the most recent year for which this information is presented.

[36] In estimating the burden imposed by the Rule's recordkeeping requirements, staff is being conservative by assuming that all 6,200 inbound telemarketers are subject to the requirements. The amended Rule extends coverage of its provisions to certain kinds of inbound sales offers previously exempted from the Rule under § 310.6. Additionally, the amended Rule expressly applies to upsells that follow inbound calls. Thus, inbound telemarketers who were not necessarily subject to the Rule's recordkeeping requirements may newly be subject to them by virtue of engaging in either initial or upsells transactions now subject to the Rule. Staff has no reasonable way to determine how much of these 6,200 inbound telemarketers are making sales offers or utilizing upsell marketing techniques that would subject them to these recordkeeping requirements. Accordingly, to help ensure that the recordkeeping burden imposed on inbound telemarketers is not understated, staff will assume that all inbound telemarketers are potentially subject to the amended Rule's recordkeeping requirements.

B. Disclosure

1. Section 310.3(a)(1)

The following reflects, in the respective order in which they appear within the amended Rule, the disclosure requirement added to the prize promotion provision and the new provisions on credit card loss protection and negative option and disclosures.

a. Prize Promotion Disclosures (§ 310.3(a)(1)(iv))

Table 5 immediately below reflects the incremental disclosure under this provision under the amended Rule (i.e., that any purchase or payment will not increase a person's chances of winning). Staff believes that prize promotions are very unlikely to occur in upsells and, accordingly, does not provide for them in their ensuing estimates.

Table 5: Prize Promotion: Added Disclosure (Initial Transaction)

	(a)	(b)	(c)	(d)	∑=(a)·(b)·(c)·(d) ÷3600 seconds/hour
Activity	**# calls[1]**	**Proportion of calls involving prize promotion disclosure**	**# seconds per disclosure**	**% of firms not already making such disclosure**	**Cumulative burden hours for disclosure**
Outbound call w/o upsell	900 million	5%	1	25%	3,125
TOTAL					3,125

[1] The number of direct sales in an initial transaction, derived from line (9) of Table 1, is used here as the base for all calls shown in this table. Direct sales, rather than the total number of outbound calls are used because disclosure under this section is required only before a finalized sale.

b. Credit Card Loss Protection Disclosure (§ 310.3(a)(1)(vi))

Section 310.3(a)(1)(vi) of the amended Rule is a new disclosure requirement specific to credit card loss protection ("CCLP") offers. Telemarketers of CCLP plans frequently misrepresent either affirmatively or by omission that the consumer is not currently protected against credit card fraud, or that the consumer has greater potential legal liability for unauthorized use of his or her credit cards than he or she actually does under the law. Therefore, the Commission has determined that it is a deceptive telemarketing act or practice to fail to disclose the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. § 1643, and has adopted § 310.3(a)(1)(vi) to require that this information be disclosed. Commission staff estimates that this additional disclosure (required only in the limited context of CCLP offers) will take approximately 4 seconds to convey. 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. Table 6 below reflects these understandings.

Table 6: CCLP Initial and Upsell Transactions

	(a)	(b)	(c)	(d)	(e)	$\sum$=(a)·(b)·(c)·(d)·(e)÷3600 seconds/hour
Activity	**# calls[1]**	**% upsell conversion[2]**	**% sales conversion[3]**	**% of DM calls for the sale of CCLP[4]**	**# seconds per disclosure**	**Cumulative burden hours for disclosure**
Outbound call w/o upsell	900 million	N/A	N/A	.1%	4	1,000
Upsell after an outbound call	900 million	40%	20%	.1%	4	80
Upsell after an inbound call	5.1 billion	40%	20%	.1%	4	453
TOTAL						1,533

[1] The number of direct sales in an initial transaction, is derived from line (9) of Table 1 for outbound calls and from line (7) of Table 2 for inbound calls. It is used here as the base for all calls shown in this table. Direct sales, rather than the total number of outbound or inbound calls are used because disclosure under this section is required only before a finalized sale Regarding upsells, staff assumes that such transactions occur only after an initial transaction results in a sale.
[2] Based on Miller Study, Attach. 3, Line 12 and MPA Suppl. Comm. attach. as to inbound calls. Lacking external upsell conversion data for outbound calls, staff will apply this estimate to outbound calls as well.
[3] As with an initial transaction in a call, a CCLP disclosure in an upsell is required only before a finalized sale.
[4] This is an extrapolation since staff has not readily uncovered direct data for this estimate. CCLP-related complaints represented .6 % (.006) of all complaints (based on Yr. 2001) received by the FTC's Consumer Sentinel system. Assuming that all complaints received involve fraudulent activity, then CCLP accounts for .6% of all Sentinel-received complaints about fraudulent activities. Staff estimates that fraudulent activities account for approximately 6 percent of all telemarketing calls. (Congress in recent years has estimated that misrepresentations or material omissions in telemarketing sales result in up to $40 billion annually in consumer injury. Dividing that total into the $668.6 billion consumer and business-business telemarketing sales in 2001, *DMA Statistical Fact Book 2001* p. 300, suggests that about 6% of all calls are for unlawful activity.) CCLP would thus account for .036 % (.00036) of all calls (.6% x 6%). However, for simplicity, staff is conservatively rounding this to .1%.

c. Negative Option Disclosures (§ 310.3(a)(1)(vii))

The amended Rule adds a new provision, § 310.3(a)(1)(vii), which requires sellers and telemarketers to disclose certain material information any time a seller or telemarketer makes an offer including any "negative option feature" as that term is defined under new § 310.2(t) of the amended Rule. The disclosures, like all of those listed in § 310.3(a)(1), must be made before a customer pays for goods or services. Specifically, new § 310.3(a)(1)(vii) requires that the following disclosures must be made if an offer includes any negative option feature, as that term is defined under § 310.2(t): (1) the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s); (2) the date(s) the charge(s) will be submitted for payment; and (3) the specific steps the customer must take to avoid the charge(s). Commission staff estimates that these new disclosures, which, like the credit card loss protection and prize promotion requirements, are required in a limited number of sales transactions, will take approximately 4 seconds to convey.

Table 7: Negative Option (Initial and Upsell Transactions)

	(a)	(b)	(c)	(d)	(e)	(f)	∑=(a)·(b)·(c)·(d)·(e)·(f)÷3600 seconds/hour
Activity	**# calls[1]**	**% upsell conversion**	**% sales conversion[2]**	**Proportion of calls involving negative option disclosure**	**# seconds per disclosure**	**% of firms not already making such disclosure**	**Cumulative burden hours for negative option disclosure**
Outbound call w/o upsell	900 million	N/A	N/A	10%	4	25%	25,000
Upsell after an outbound call	900 million	40%	20%	10%	4	25%	2,000
Upsell after an inbound call	5.1 billion	40%	20%	10%	4	25%	11,333
TOTAL							38,333

[1] The number of direct sales in an initial transaction, derived from line (9) of Table 1 for outbound calls and from line (7) of Table 2 for inbound calls. It is used here as the base for all calls shown in this table. Direct sales, rather than the total number of outbound or inbound calls are used because disclosure under this section is required only before a customer pays for goods or services (i.e., preceding a sale). Regarding upsells, again, staff assumes that such transactions occur only after an initial transaction results in sale.
[2] As with an initial transaction in a call, negative option disclosures in an upsell are required only before a finalized sale.

2. Section 310.4(d) Disclosures in Upsells

As noted above, to the extent that information changes in an upsell (e.g., seller or telemarketer identity) following an initial transaction, that information must be disclosed under the amended Rule, regardless whether the upsell originates from an outbound or inbound call. Staff has no way to determine the degree to which information in an upsell will differ from the initial transaction. For simplicity, staff will assume that roughly 50% of the § 310.4(d) disclosure terms in an upsell will differ from that which was stated in a precipitating initial transaction (per Table 3 above, full disclosure under § 310.4(d) in an initial transaction would consume an estimated 7

seconds).[37] With rounding, staff will assume the average incremental disclosure required in an upsell will consume 3 seconds, as shown in Table 8 immediately below.

Table 8: § 310.4(d) Disclosure for Upsells

	(a)	(b)	(e)	(e)	∑=(a)·(b)·(c)·(d) ·(e)·(f)÷3600 seconds/hour
Activity	**# calls[1]**	**% upsell conversion**	**# seconds per disclosure[2]**	**% of firms not already making such disclosure**	**Cumulative burden hours for negative option disclosure**
Upsell after an outbound call	900 million	40%	3	25%	75,000
Upsell after an inbound call	5.1 billion	40%	3	25%	425,000
TOTAL					500,000

[1] The number of direct sales in an initial transaction, derived from line (9) of Table 1 for outbound calls and from line (7) of Table 2 for inbound calls, is used here as a base for these upsell disclosure calculations, since staff assumes that such transactions occur only after an initial transaction results in a sale.
[2] Explained in the text of the discussion immediately above.

3. Abandoned Call Safe Harbor Disclosure (§ 310.4(b)(4))

Staff believes that the disclosure burden posed by the abandoned call safe harbor requirement[38] would be de minimis, for several reasons. First, the recorded disclosure is only required of telemarketers wishing to use predictive dialers, and not all telemarketers use predictive dialers. Moreover, telemarketers using predictive dialer technology are likely to be sophisticated enough to comply with this requirement without difficulty or any significant expense. Finally, for those telemarketers that use predictive dialers, the typical amount of telephone time consumed by

[37] The material terms of a particular offer (§ 310.3(a)(1) disclosures) are always required if there is a sale in a particular transaction because the information is likely to be different in every transaction, and because, even when some of the details of the offers are the same, all of the disclosures are considered necessary to ensuring a meaningful purchasing decision by the customer in the specific transaction. By contrast, the more basic initial disclosures of § 310.4(d) – the identity of the seller, the fact that the call is for the purpose of offering good or services, etc. – are items of information that are no more relevant if repeated. The message has been clearly conveyed to the consumer, and it would be inefficient to require such information to be disclosed multiple times, to the extent the information remains unchanged. Accordingly, the discounting for overlapping information applied here for § 310.4(d) upsell disclosures is not assumed for staff's estimates shown elsewhere for the § 310.3(a)(1) disclosure requirements. See, for example, Table 8.

[38] Under § 310.4(b)(1)(iv), a call is abandoned if it is not answered within 2 seconds. A seller or telemarketer will not be liable under the amended Rule for violating this provision, however, if, among other things, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed. See amended Rule § 310.4(b)(4)(iii).

"dead air" is at least 2 seconds.[39] Staff estimates that the required recorded disclosure would be equivalent to that amount of time. Thus, there is no further telephone time consumed by this disclosure.

4. Disclosures for Newly Non-Exempt Transactions Under Section 310.6(4)-(6)

a. § 310.6(4)-(6) Non-Exempt Upsells Following Inbound Calls

Under the amended Rule, any upsells associated with an initial transaction in an inbound call exempt from the Rule under § 310.6(4)-(6) is expressly excluded from the exemption. Table 9a immediately below addresses § 310.3(a)(1) disclosures for upsells that follow inbound calls.

Table 9a: § 310.3(a)(1) Disclosures for Upsells Following Inbound Calls

	(a)	(b)	(c)	(d)	(e)	∑=(a)·(b)·(c)·(d)·(e)÷3600 seconds/hour
Activity	**# calls[1]**	**% upsell conversion[2]**	**% sales conversion[3]**	**% of firms not already making such disclosure**	**# seconds per disclosure**	**Cumulative burden hours for disclosure**
Upsell after an inbound call	5.1 billion	40%	20%	25%	8	226.667
TOTAL						226,667

[1] The number of direct sales in an initial transaction, derived from line (7) of Table 2, is used here as the base for further calculations. Direct sales, rather than the total number of inbound calls, is used because disclosure under this section is only required before a finalized sale. For upsells, staff assumes that such transactions occur only after an initial transaction results in a sale.
[2] Based on Miller Study, Attach. 3, Line 12 and MPA Suppl. Comm. attach. as to inbound calls. Lacking external upsell conversion data for outbound calls, staff will apply this estimate to outbound calls as well.
[3] As with an initial transaction in a call, a § 310.3(a)(1) disclosure in an upsell is required only before a finalized sale.

b. § 310.6(b)(5)-(6) Non-Exempt Business Opportunity Offers in Initial Transactions

The amended Rule newly excludes business opportunity offers (other than those covered by the FTC's Franchise Rule, 16 C.F.R. Part 436) and CCLP offers from the Rule's inbound call exemptions under § 310.6(b)(5)-(6). The new disclosure for CCLP under § 310.3(a)(1)(vi) is discussed above with related disclosure calculations for it (initial transactions and upsells) shown in Table 6. Table 9b below presents disclosure estimates for non-exempt business opportunity offers under § 310.(5)-(6) that arise where the initial transaction occurs through an *inbound* call.

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[39] DMA's predictive dialer guidelines set a two second maximum for dead air. See http://www.the-dma.org/library/guidelines/dotherightthing.shtml#38. Sytel Limited also argued in favor of setting a maximum dead air standard of two seconds. Sytel-NPRM comment, April 12, 2002, at 5-6. This standard is consistent with the recent California Public Utilities Commission (CPUC) Interim Opinion governing predictive dialers. CPUC Interim Opinion at 11-12.

[Calculations relating to § 310.3(a)(1) disclosures for business opportunity offers arising where the initial transaction occurs through an *outbound* call are subsumed within Table 4a; § 310.3(a)(1) disclosures for upsells following an outbound call would also be subsumed by Table 4a because the DMA sales figure for dollar sales for outbound calls (shown in Table 1, Line 1) would have included upsells. Calculations regarding § 310.3(a)(1) disclosures for business opportunity offers in upsells following inbound calls are subsumed within Table 9a.]

Table 9b: Business Opportunity Offers For Inbound Initial Calls

	(a)	(b)	(c)	∑=(a)·(b)·(c) ÷ 3600 seconds/hour
Activity	**# calls[1]**	**% of DM calls for which business opportunity offers arise[2]**	**# seconds per disclosure**	**Cumulative burden hours for disclosure**
Inbound call	5.1 billion	.3%	8	34,000
TOTAL				34,000

[1] The number of direct sales in an initial transaction, is derived from line (7) of Table 2. Direct sales, rather than the total number of inbound calls is used because disclosure under this section is required only before a finalized sale Regarding upsells, staff assumes that such transactions occur only after an initial transaction results in a sale.

[2] This is an extrapolation since staff has not readily uncovered direct data for this estimate. Complaints regarding business opportunity (and work-at-home) offers subject to the TSR (amounts under $500) represented 4.3 % of all complaints (based on Yr. 2001) received by the FTC's Consumer Sentinel system. Assuming that all complaints received involve fraudulent activity, then these offers account for 4.3% of all Sentinel-received complaints about fraudulent activities. Staff estimates that fraudulent activities account for approximately 6 percent of all telemarketing calls. (Congress in recent years has estimated that misrepresentations or material omissions in telemarketing sales result in up to $40 billion annually in consumer injury. Dividing that total into the $668.6 billion consumer and business-business telemarketing sales in 2001, *DMA Statistical Fact Book 2001* p. 300, suggests that about 6% of all calls are for unlawful activity.) Business opportunity offers under the TSR would thus account for .3 % (.003) of all calls (4.3% x 6%).

C. Associated Labor Cost (for New Collection of Information for Sales-Oriented Entities)

1. Recordkeeping: $100,000 (Outbound-related: 2,000 hours, Inbound-related: 8,000 hours, each @$10/hour)
2. Disclosure: $12,054,870 (Outbound-related: 106,205 hours, Inbound-related: 697,453 hours, each @$15/hour)

Total: $12,154,870

IV. Charities

A. Recordkeeping

1. Existing entities

Section 310.5(a)(5), considered above under Part II. A., now also applies to telemarketers soliciting charitable contributions, pursuant to the change in the definition of "telemarketing" made in the USA PATRIOT Act. Based on analysis of data from a sampling of states requiring registration of professional fundraisers, including telemarketers, staff estimates that there are approximately 2,500 telemarketing firms engaged solely in the solicitation of charitable

contributions. For them, staff estimates that this provision will account for no more than one hour of recordkeeping burden per entity for a cumulative total of approximately **2,500 hours**. Those entities conducting telemarketing campaigns in both sales and solicitations of charitable contributions are already subject to the Rule regarding their sales activities, and, to the extent that they are compliant with the Rule, already perform recordkeeping pursuant to it. Consequently, staff anticipates that incremental recordkeeping burden for those entities would be de minimis.

2. New entrants

Based on an apportionment between the estimated number of entities engaged in telefunding for charities – 2,500 – and the estimated number of sales-oriented telemarketing firms – 7,400 – staff assumes that the number of new entrants in telefunding for charities would be approximately 1/3 of the number estimated for sales-oriented telemarketing. Accordingly, staff estimates that there are approximately 25 new industry entrants each year that engage in soliciting charitable contributions. Applying the above-stated assumption of 100 hours per new entrant to set up conforming recordkeeping systems to comply with the TSR, staff estimates that affected entities would require **2500 hours**, cumulatively.

B. Disclosure

As noted above, § 1011 of the USA PATRIOT Act amended the Telemarketing Act to extend the Act's coverage to solicitations for charitable contributions. Specifically, Section 1011(b)(2) of the PATRIOT Act adds a new section to the Telemarketing Act mandating that the Commission include new requirements in the "abusive telemarketing acts or practices" provisions of the TSR. The amended Rule, therefore, includes § 310.4(e), which requires for-profit telemarketers soliciting on behalf of charitable organizations to make two oral disclosures at the outset of the telephone solicitation.

Absent dispositive information at the present time, staff will apply certain data and assumptions from the above analyses for sales-oriented telemarketing to its burden analysis regarding telefunding for charities. Thus, for example, to estimate the total number of calls relating to charities, staff begins with the total dollar value of individuals' contributions to charity (Year 2001), obtained from third-party source information. In order to estimate what percentage of that total might have been obtained through telemarketing, staff then looked to the percentage of all direct marketing sales that were derived from telemarketing, assuming that charitable contributions are likely to be solicited in similar ways (i.e., telephone, general media, direct marketing, etc.) and to much the same degree. See Table 11 below, lines 1 and 2. Lacking information to the contrary, staff will assume the same average $ value per donation as applied above for sales ($85). Similarly, staff will assume a 20% donation conversion ratio (akin to the 20% sales conversion ratio shown in Table 1, line 6 above). However, in contrast to Table 1, for which staff factored out a specified percentage of sales for industries not subject to TSR coverage and FTC jurisdiction (see Table 1, line 2), staff will assume that *all* telefunding for charities is subject to the TSR. Moreover, staff assumes that all telefunding calls are for direct orders, i.e., lead and traffic generation are inapplicable, and so all calls are subject to the TSR.

Table 10: Estimated # of Telefunding Calls for Charities

Item	Value (2001)	Source
(1) Total value of all charitable contributions by individuals	$160.7 billion	American Association of Fundraising Counsel (www.aafrc.org)
(2) Estimated proportion of total charitable contributions received via telefunding	27.1%[1]	Staff estimate using sales-oriented data from the DMA Statistical Fact Book 2001 p. 300
(3) Total value of direct orders through outbound telemarketing subject to the TSR	$43.6 billion	(1) x (2), rounded
(4) Presumed average value of a donation	$85	Miller Study, Attach. 1, Line 2
(5) Total number of all charitable contributions by individuals	512.9 million	(3) ÷ (4), rounded
(6) Donation conversion ratio	20%	Table 1, Line 6
(7) Total number of telefunding calls	2.6 billion	(5) ÷ (6)

[1] The % is extrapolated mostly from information presented in the DMA Statistical Fact Book 2001. It is calculated as follows: Total DM consumer sales from telemarketing ($276.6 billion) as a proportion of overall consumer DM sales ($1,019.2 billion) = 27.1%.

The only disclosure provision that applies to solicitations for charitable contributions is found under § 310.4(e), and it relates only to *outbound* calls to induce such contributions.[40] Neither the sales-triggered disclosure under § 310.3(a)(1) nor the negative option scenarios apply. Regarding upsells, the record in the Commission's TSR rulemaking proceeding does not show any evidence that upselling is prevalent in the solicitation of charitable contributions. Thus, the Commission has deleted any reference to charitable solicitations from the upselling provisions.[41] Accordingly, the sole disclosure calculation that follows is that pertaining to § 310.4(e). Lacking independent information to the contrary, staff will apply below similar assumptions as that made above regarding early call cessation in sales-oriented calls. Given that § 310.4(e) requires two disclosures while § 310.4(d), discussed above, requires four, staff estimates that the time per call for full disclosure under § 310.4(e) will be roughly half (4 seconds) what it is for full disclosure under § 310.4(d) (7 seconds).

[40] This section states that it is an abusive telemarketing act or practice and a violation of the TSR for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call: (1) the identity of the charitable organization on behalf of which the request is being made; and (2) that the purpose of the call is to solicit a charitable contribution.

[41] The Commission, however, will continue to monitor this issue, and, if necessary, may address it in future Rule reviews.

Table 11: § 310.4(e) disclosure for solicitation of charitable contributions

	(a)	(b)	(c)	∑=(a)·(b)·(c) ÷3600 seconds/hour
Activity	**# calls**	**§ 310.4(e) disclosure (seconds consumed)**[1]	**% of firms not already making such disclosure**	**Cumulative burden hours**
Outbound call: no early hang-up	1,040,000,000[2]	4	25%	288,889
Outbound. call with early hang-up	1,560,000,000[3]	2	25%	216,667
TOTAL				505,556

[1] Required regardless whether a sale will or may be consummated. The estimated time per call reflect staff's projections, and are explained in the text above.
[2] Total number of telefunding calls (2.6 billion per Table 10, Line 7) x 40% (explained in text above)
[3] Total number of telefunding calls (2.6 billion per Table 10, Line 7) x 60% (explained in text above)

C. Associated Labor Cost (Telefunding for Charities)

1. Recordkeeping: $75,000 (2,500 hours for existing entities @ $10/hour; 2,500 hours for new entrants @ $20/hour)
2. Disclosure: $7,583,340 (505,556 hours @ $15/hour)

Total: $7,658,340

V. Summary: Total Burden Hours, Associated Labor and Non-Labor Costs (Goods & Services, Charities)

The FTC's currently approved estimates for TSR burden hours and associated costs, reflecting the original Rule, older data and prior assumptions, is 2,301,000 hours and $34,365,000. The labor cost estimate comprised $600,000 for recordkeeping ($200,000 cumulatively for new entrants to set up compliant recordkeeping systems and $400,000 cumulatively for existing industry members to maintain compliance with the TSR's recordkeeping provisions) with the remaining $33,765,000 relating to disclosure.[42] Non-labor costs were estimated to be $10,022,000.

The incremental burden additions presented by the *amended* Rule for inbound and outbound telemarketers are: 813,658 hours, $12,154,870 in associated labor costs, and $3,468,169 in non-labor costs. For telefunders for charity, these amounts are 520,556 hours, $7,808,340, and $2,000,252, respectively.

Staff's revised burden totals, reflecting the TSR as a whole, both for the standing provisions of the original TSR and as amended, is **3,141,264** hours, **$47,066,460** in labor costs, and

[42] Assumptions: 10,000 hours/year @$20/hour to set up recordkeeping systems; 40,000 hours/year @ $10/hour to maintain compliance (i.e., filing and storing relevant records). Disclosure: 2,251,000 hours @ $15/hour.

$11,986,419 in capital and other non-labor costs. [Non-labor costs are discussed in greater detail under item #13 below, consistent with OMB's instructions for preparing the supporting statement.] A further delineation of both the incremental changes and the overall burden totals posed by the amended Rule follows.

A. Retained and/or Adjusted Estimates for Unchanged TSR Collection of Information (Pt. II)

1. Recordkeeping: 15,500 hours
2. Disclosure: 1,801,550 hours (5,300 written disclosure; 1,796,250 oral disclosure)
   (Tables 3 - 4b)
3. Labor costs: $27,253,250
4. Non-labor costs: $6,837,000

Based on a newly estimated 7,400 industry members (see note 31 and accompanying text), 75 new entrants (sales-oriented, not for charities) and 2,100 firms opting for written disclosure (see p. 17), the revised totals would be as they appear immediately above. Accordingly, the burden hours and $ totals tied to the unchanged portions of the TSR's recordkeeping and disclosure provisions are reduced by 483,950 hours and $7,111,675 in labor costs.

B. Burden Estimates for New Collection of Information Under the Amended Rule: Sales-oriented Entities (Pt. III)

1. Recordkeeping: 10,000 hours (Outbound-related: 2,000 hours; Inbound-related: 8,000 hours)
2. Disclosure: 803,658 hours (Tables 5 - 9b) (Outbound-related: 106,205 hours; Inbound-related: 697,453 hours)
3. Labor costs: $12,154,870 (Outbound-related: $1,613,075; Inbound-related: $10,541,795)
4. Non-labor costs: $3,203,169 (Outbound-related: $382,338; Inbound-related: $2,820,831
   # entities: 7,400 outbound telemarketers; 6,200 inbound telemarketers
5. Average burden per entity:

Outbound telemarketer's average incremental hours burden, labor cost, and non-labor costs (phone and office supplies[43]): 15 hours; $218; $52
Inbound telemarketer's average incremental hours burden, labor cost, and non-labor costs (phone and office supplies): 114; $1,700; $455

C. Burden Estimates for Charities (Pt. IV)

1. Recordkeeping: 5,000 hours
2. Disclosure: 505,556 hours (Table 11)

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[43] Phone costs reflect disclosure hours @ $3.60/hour per #13 below divided by the applicable number of entities. Office supply costs are based on an assumed $50 per entity (also per #13 below) multiplied by the applicable number of entities.

3. Labor costs: $7,658,340
4. Non-labor costs: $1,946,250
   # entities: 2,525
5. Average burden per entity:[44]

Average burden hours: 208 hours
Average labor cost: $5,003 for new entrants; $3,013 for existing entities
Average non-labor costs (phone and office supplies): = $771 (for all entities)

D. Incremental Burden Totals Tied to the Amended Rule (sum of Parts B and C above)

1. Recordkeeping: 15,000 hours
2. Disclosure: 1,309,214 hours
3. Labor costs: $19,813,210
4. Non-labor costs: $5,149,419

E. Cumulative Burden Totals: Adjusted Totals for Retained Collection of Information Provisions Under the Original Rule and New Collection of Information (sum of Parts A and D above)

a. Recordkeeping: 30,500 hours
b. Disclosure: 3,110,764 hours
   Total hours: 3,141,264
c. **Labor costs: $47,066,460**
d. **Non-labor costs: $11,986,419**

(13) Capital and Other Non-labor Cost

The FTC's currently approved estimate for costs under this category is $10,022,000. The assumptions that gave rise to those totals were: (1) 40,000 industry members spending an annual amount of $50 each on office supplies as a result of the TSR recordkeeping requirements ($2,000,000 cumulatively); and (2) $8,022,000 in phone-related disclosure costs (2,228,250 hours for cumulative oral disclosure @ $3.60/hour – based on a an assumed commercial calling rate of 6 cents/minute). Based on staff's modified bases for deriving the number of calls (see item #12 above), the resulting oral disclosure hour totals (1,796,250 oral disclosure hours: see Part V. A. above), and staff's reduced estimate of the number of existing telemarketers (excluding firms solely soliciting charitable donations), the estimated non-labor costs attributable to the unamended portions of the Rule's original information collection provisions is $6,837,000, rounded ($370,000 for office

[44] The per-entity burden estimate per telefunder is tempered by the fact that, unlike at least some sellers of goods and services that are telemarketing solely on their own behalf, every telefunder subject to the TSR is a professional fundraiser who has multiple clients for whom it telemarkets. Consequently, whatever the per-entity burden might be under the TSR, that burden presumably will be distributed among telefunders' various clients, thereby minimizing the net cost to the telefunder.

supplies and $6,466,500 for phone-related disclosure costs (1,796,250 oral disclosure hours, see Part V. A. above).

These totals and a discussion of the *incremental costs posed by the Rule's amendments* are detailed further below.

(a) Total capital and start-up costs: Staff estimates that the capital and start-up costs associated with the TSR's information collection requirements are de minimis. The Rule's recordkeeping requirements mandate that companies maintain records but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should already have that in place regardless 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 device's useful life. The Rule's disclosure requirements require no capital expenditures.

(b) Other non-labor costs: Affected entities need some storage media such as file folders, computer diskettes, 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, staff estimated that the approximately 7,400 outbound telemarketers subject to the Rule 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 of $370,000. This total departs from prior estimates for this concern because of the revised population estimate affected. Oral disclosure hour estimates under Part II. B of the above discussion, applied to a retained estimated commercial calling rate of 6 cents per minute ($3.60 per hour),[45] totals $6,466,500 in phone-related costs. Office supplies for an estimated 7,400 outbound telemarketers @ $50 each = $370,000. Accordingly, the adjusted cumulative non-labor costs associated with the Rule's unamended information collection provisions is $6,837,000, rounded.

Incremental non-labor costs associated with outbound telemarketers is $382,338 (106,205 additional disclosure hours @ $3.60/hour).

Added to the above is the phone-related costs of the newly covered telefunders for charity (an estimated 505,556 hours @ $3.60 per hour = $1,820,000) and office supply-related costs (2,525 telefunders @ $50 each = $126,250). Cumulatively, non-labor costs for these entities is approximately $1,946,250.

Additional calculations apply to inbound telemarketers. An estimated 697,453 disclosure hours @ $3.60/hour = $2,510,831. Office supplies for an estimated 6,200 firms @ $50 each = $310,000. Thus, incremental non-labor costs for these entities total $2,820,831.

Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs. Under new

[45] Staff will continue to conservatively assume a commercial calling rate of 6 cents/minute although it believes that lesser commercial rates may readily be available through negotiation, particularly in the current highly competitive environment.

§ 310.4(a)(6)(i)(C), the seller or telemarketer must make and maintain a recording of the entire transaction any time a telemarketing transaction involves both preacquired account information and a "free-to-pay conversion" feature. This constitutes a narrow set of circumstances. In instances where it is necessary to obtain the consumer's express verifiable authorization pursuant to § 310.3(a)(3), the amended Rule provides alternatives to making a recording of the consumer's oral authorization. Thus, the number of industry members who would seek to obtain recording equipment to satisfy this provision is limited. Moreover, with the growth of digital recording technology, the capital investment in recording equipment and record storage is rapidly declining.

Similarly, based on the rulemaking record and additional forums it held for public feedback, the Commission has concluded that required transmission of Caller ID information is technically feasible and not costly for telemarketers. The Commission was persuaded in part by the example provided by DialAmerica. In its written comments and at the June 2002 Forum, DialAmerica explained how it transmits Caller ID information to the consumers it calls.[46] DialAmerica's carrier assigns a telephone number to each of DialAmerica's call centers. When a sales representative from a particular call center calls a consumer, that call center's assigned telephone number is transmitted to the consumer's Caller ID service. SBC, a large provider of common carriage services, provided support for the availability of DialAmerica's model.[47] DialAmerica stated at the June 2002 Forum that it does not pay its carrier any extra amount to transmit this assigned telephone number to consumers.

Finally, staff believes that the estimated 2,100 inbound telemarketing entities choosing to comply with the Rule through 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 required disclosures to that written information likely requires no supplemental non-labor expenditures.

(14) <u>Estimated Cost to the Federal Government</u>

Regarding its administration of the do-not-call initiative, the FTC has requested $16 million for fiscal year 2003. This estimate includes funds for development and operation of the do-not-call registry, processing of related consumer complaints, outreach to consumers and businesses, enforcement, and infrastructure expenses. FTC staff expects annual costs in subsequent fiscal years to vary dependent upon the level of volume of consumer calls and the required FTC enforcement activity. Concurrent with the funding request, the FTC is seeking authorization from Congress to

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[46] DialAmerica-Supp., Att. A at 1-2. <u>See also</u> June 2002 Tr. II at 81-83. According to one of DialAmerica's written comments: "Caller ID information can be delivered over T-1's today. We have been doing it for over two years. If the Commission does not mandate the delivery of Caller ID information, those who would want the Commission to believe that it cannot be done will have been successful." DialAmerica-Supp. at 10. <u>See also</u> DialAmerica-NPRM at 25 ("The conclusion stated in the NPRM . . . that trunk or T-1 lines will only display a term like 'unavailable' is not correct.") and NAAG-NPRM at 45 ("We have been advised that <u>all</u> trunk lines . . . should be capable of supporting Caller ID.")

[47] <u>See</u> SBC-Supp. at 8-10; June 2002 Tr. II at 80-83. <u>See also</u> Cox-NPRM at 37; Direct Marketing Associaton-NPRM at 49; Green Mountain-NPRM at 28; Associations-Supp. at 7.

collect fees to offset necessary costs. The Commission will announce at a future time the required date for full compliance with § 310.4(b)(1)(iii)(B), the do-not-call registry provision. Staff anticipates, however, that the required date for full compliance will occur approximately seven months after the date the FTC awards a contract for the national registry.

Staff estimates of the do-not-call initiative are based on information gathered from an exhaustive review of the relevant State experiences, review of comments from a formal rulemaking proceeding, a request for bids on the development and operation of an automated system, and FTC experience in performing comparable program activities. Final contract and complaint registry costs will depend on the mix of services included in the contract award, the actual cost of the contract award, and the resulting level of FTC required program services. Staff estimates that the FTC will devote 16 FTE to first-year enforcement, consumer and business outreach, technology support, and contract administration activities. The 16 FTE, each with an approximate cost of $130,000 per FTE, will cost a total $2,100,000. Travel costs or other expenses associated with enforcing and administering the do-not-call registry will be approximately $1,600,000.

(15) Adjustments

The relevant program changes, staff calculation adjustments, and their incremental effects on PRA burden are detailed in items #12-13.

(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. Should OMB clearance be received, the Commission will publish a Federal Register notice announcing the clearance terms and restating the existing OMB control number for the TSR.

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

Not applicable.