FEDERAL TRADE COMMISSION

Information Collection Activities; Emergency Clearance Submission for Expedited OMB Review; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for emergency processing and a request for a temporary, 180-day grant of clearance pursuant to OMB's regulations implementing the Paperwork Reduction Act (''PRA''). The Commission seeks public comments on the PRA burden analysis below for the final amendments to the FTC's Telemarketing Sales Rule (''TSR'' or ''Rule'').

DATES: Comments must be submitted on or before October 8, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''TSR Final Amendments, PRA Comment, FTC File No. R411001'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, the comment must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at: (*https://secure.commentworks.com/ftc-TSRpra*). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at (*https://secure.commentworks.com/ftc-TSRpra*). You may also visit *http://www.regulations.gov* to read this notice, and may file an electronic comment through that website. The Commission will consider all comments that *www.regulations.gov* forwards to it.

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Franchise Rule should be addressed to Craig Tregillus, Staff Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H-238, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326-2970.

SUPPLEMENTARY INFORMATION:

The current OMB approval—or ''clearance''— for the information collection requirements in the TSR[2] expires on July 31, 2009. The OMB clearance, issued in 2006, does not encompass the new information collection requirements of the recent amendments to the TSR.[3] The Commission now seeks OMB review and approval and public comment regarding the PRA impact of those amendments.

The Commission is requesting expedited OMB review and emergency clearance because the use of normal clearance procedures under 5 CFR 1320.12 will likely disrupt the collection of information for the earlier of two PRA-related amendments to the TSR, for which compliance will be enforced beginning December 1, 2008. A grant of 180 days clearance will provide the FTC added time to: (a) publish for public comment a **Federal Register** notice stating FTC staff estimates of incremental PRA burden associated with the final Rule amendments; (b) pursue thereafter under 5 CFR 1320.12 normal clearance procedures for the revised Rule as a whole; (c) review of any public comments received for these respective notices; (d) prepare related supporting statements for OMB's review. The Commission requests OMB approval by October 31, 2008.

As previously proposed, the TSR amendments concerning prerecorded calls and calculation of call abandonment rates did not affect PRA burden.[4] Accordingly, with no changes to staff's prior estimates of PRA burden at that time, no OMB review and approval for the proposed amendments was sought.

The final amendments, however, contain requirements that arguably constitute a ''collection of information'' under the PRA.[5] Specifically, the final prerecorded call amendment expressly authorizes sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers if: (1) the seller has obtained written agreements from those consumers to receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses an opt-out mechanism at the outset of the call.[6] The amendment will apply not only to prerecorded calls that are answered by a consumer, but also to prerecorded messages left on consumers' answering machines or voicemail services.

Staff continues to believe, however, that the amendment for calculating the call abandonment rate, which remains unchanged from the proposed rulemaking, will not affect the Rule's PRA burden. The amendment relaxes the present requirement that the abandonment rate be calculated on a ''per day per campaign'' basis by

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] OMB Control Number 3084-0097.

[3] 73 FR 51164 (August 29, 2008).

[4] 71 FR 58716, 58730-58731 (Oct. 4, 2006).

[5] Under the PRA, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

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

permitting, but not requiring, its calculation over a 30-day period as requested by the industry. Sellers and telemarketers already have established automated recordkeeping systems to document their compliance with the current standard. The amendment likely will reduce their overall compliance burden because it relaxes the current requirement. The current ''per day'' requirement has forced telemarketers to turn off their predictive dialers on many occasions when unexpected spikes in call abandonment rates occur late in the day, and thereby has prevented realization of the cost savings that predictive dialers provide.

The prerecorded call amendment will take effect in two stages. A requirement that prerecorded calls provide an automated interactive keypress or voice-activated opt-out mechanism will take effect December 1, 2008, but the prohibition on placing calls that deliver prerecorded messages without the prior express written agreement of the recipient to receive such calls will not take effect until September 1, 2009.

The written agreement requirement of the prerecorded call amendment will substitute the means of compliance under the Commission's forbearance policy[7] and the recordkeeping requirements of the TSR—which now require a record of an established business relationship (''EBR'')[8]—with a record of a consumer's agreement to receive prerecorded calls.[9] This substitution should not materially change the TSR's recordkeeping burden. While there will be some initial burden in converting from EBR records to agreement records, the Commission has taken two additional steps designed to reduce that burden significantly. First, the Commission will accept agreements obtained pursuant to the Electronic Signatures In Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. 7001 et seq.) (''E-SIGN Act''), including the use by consumers of a keypress on a telephone keypad. Second, the Commission has provided a phase-in that defers the written agreement requirement until September 1, 2009, during which time sellers may continue to place low-cost prerecorded calls to their EBR customers that could include a request for agreement to receive prerecorded calls in the future with a simple keypress.

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Estimated incremental annual hours burden: 82,865 hours

When the FTC last sought renewed PRA clearance for the Rule, staff estimates were based on data from the FTC's Do-Not-Call Registry (''Registry''). The most recent full-year data then available was for the period from 3/1/05 - 2/28/06. In order to focus strictly on the incremental PRA burdens posed by the final Rule amendments, we use data for the same time period in this burden analysis.[10] To obtain figures for sellers only, however (because only they, not telemarketers, will have new compliance obligations attributable to the final amendments), we have analyzed the 2006 data in greater detail.

In seeking the 2006 clearance, staff estimated that 15,000 telemarketing entities (sellers and the telemarketers that serve them) were subject to the Rule.[11] New Registry data for the period 3/1/05 - 2/28/06 that we believe is more accurate shows that the total number of telemarketing entities subject to the TSR is 19,208.[12] Of that total, there were 4,393 sellers and also 2,635 telemarketers with independent access to the Registry that downloaded telephone numbers from more than one state (to avoid TSR violations by automated ''scrubbing'' of the numbers on the Registry from their calling lists).[13] The number of *sellers* subject to the TSR, therefore, is 16,573 (19,208 telemarketing entities - 2,635 telemarketers =16,573 sellers).

Recordkeeping: Under the amendment, no prerecorded call may be placed by or on behalf of a seller unless the seller has obtained a written agreement from the person called to receive such calls. Thus, the recordkeeping obligations of the prerecorded call amendment fall on sellers rather than telemarketers.[14]

In view of the phase-in and the amendment's clarification allowing written agreements to be created and maintained electronically pursuant to the E-SIGN Act, any initial burden caused by the transition from EBR records to written agreement records should not be material. Once the necessary systems and procedures are in place, any ongoing incremental burden to create and retain electronic records of agreements by new customers to receive prerecorded calls should be minimal.[15]

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

Disclosure: Staff estimates that the 16,573 sellers will require, on average, 4 hours each—66,292 hours cumulatively—to implement the incremental disclosure requirements posed by the final rule amendments.

[7] 69 FR 67287, 67288-62790 (Nov. 17, 2004). The enforcement forbearance policy has permitted such calls if they provide either: (1) a telephone keypad mechanism a consumer can use to opt-out of future calls from the seller, or (2) a toll-free telephone number a consumer can call to opt-out. In October 2006, when the Commission proposed to require a prior written agreement for prerecorded calls, it also proposed to terminate the forbearance policy as of January 4, 2007, but was persuaded by several industry petitions to preserve the status quo until the conclusion of the amendment proceeding.

[8] 16 CFR 310.2(n) (defining an EBR); 16 CFR 310.5(a)(3) (EBR recordkeeping requirement).

[9] 16 CFR 310.5(a)(5) (written agreement recordkeeping requirement).

[10] We will update our population estimates in early 2009 when preparing our next PRA clearance request for the amended TSR as a whole.

[11] *See* 71 FR 28698 (May 17, 2006) and the associated May 2006 supporting statement submitted to OMB for the details underlying this estimate.

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

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

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

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

This estimate is comprised of the following tasks: (1) one-time creation, recording, and implementation of a brief telephone script requesting a consumer's agreement via a telephone keypad response;[16] (2) modify or create electronic forms or agreements for use in emails to consumers or on a website;[17] (3) one-time revision of any existing paper forms (*e.g.*, credit card or loyalty club forms, or printed consumer contracts) to include a request for the consumer's agreement to receive prerecorded calls;[18] and (4) legal consultation, if needed, regarding compliance.

Any remaining time needed to make the required opt-out disclosure for all prerecorded calls would pose no greater time increment, and arguably less, than a similar, pre-existing Federal Communications Commission disclosure provision that has been in effect since 1993.[19] In any event, because this disclosure applies only to prerecorded calls, which are fully automated, no additional manpower hours would be expended in its delivery.

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

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

Recordkeeping: As indicated above, staff estimates that existing sellers making use of prerecorded calls will require 16,753 hours, cumulatively, to comply with the amendment's recordkeeping requirements during the final year of the current PRA clearance. Staff assumes that the aforementioned tasks will be performed by managerial and/or professional technical personnel, at an hourly rate of $38.93.[20] Accordingly, incremental labor cost in the final year of the current clearance would be $652,194.

Disclosure: Staff estimates that approximately 75% of the disclosure-related tasks previously noted would be performed by managerial and/or professional technical personnel, again, at an hourly rate of $38.93, with 25% allocable to legal staff, at an hourly rate of $54.35.[21]

Thus, of the 66,292 total estimated disclosure burden hours, 49,719 hours would be attributable to managerial and/or professional technical personnel, with the remaining 16,573 hours attributable to legal staff. This yields $1,935,561 and $900,743, respectively, in labor cost—in total, $2,836,304.

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

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

Similarly, staff has no reason to believe that the amendment's requirement of an automated interactive opt-out mechanism will impose other than *de minimis* costs, for the reasons discussed above. The industry comments on the amendment uniformly support the view that automated interactive keypress technologies are now affordable, cost-effective, and widely available.[22] Moreover, most, if not all of the industry telemarketers who commented, including many small business telemarketers, said they are currently using interactive keypress mechanisms. Thus, it does not appear that this requirement will impose any material capital or other non-labor costs on telemarketers.

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Acting General Counsel

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

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

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

[19] 47 CFR 64.1200(b)(2) (requiring disclosure of a telephone number ''[d]uring or after the message'' that consumers who receive a prerecorded message call can use to assert a company-specific do-not-call request).

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

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

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Meeting Announcement.

SUMMARY: This notice announces the meeting date for the 24th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

Meeting Date: September 23, 2008, from 8:30 a.m. to 3 p.m. (Eastern).

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), The Great Hall/Lobby.

SUPPLEMENTARY INFORMATION: The meeting will include a demonstration of the Nationwide Health Information Network (NHIN); an update on the AHIC