

estimated time to prepare the two amended plans is less than 20 hours each. The only major amendment of an approved plan, occurring more than three years ago, required only 40 hours to prepare, which is considerably less time than individual companies spent preparing their initial plans. Commission staff believes it reasonable to assume that each company would consume no more than 40 hours to prepare an amended plan.

Commission staff also estimates that one smokeless tobacco manufacturer will file an initial plan, for an additional burden of approximately 150 hours.<sup>3</sup> When the regulations were first proposed in 1986, representatives of the Smokeless Tobacco Council, Inc. indicated that the six companies it represented would require approximately 700 to 800 hours in total (133 hours apiece) to complete the initial required plans. Staff assumed that other companies, whose plans were prepared by various other representatives, would require more time, on average, to complete their plans. Staff estimated that this latter group of companies would each require approximately 150 hours, and it believes this estimate remains reasonable.

In addition to the estimates above, the Commission anticipates that in the next three years, up to two small importers may submit initial plans, for an additional burden of approximately 80 hours. Over the past three years, two small importers submitted initial plans. Because these plans involved only a limited number of brands and no advertising, the estimated time to prepare the plans was very modest. Staff estimates that the companies spent no more than 40 hours each to prepare the plans.

Based on these assumptions, the total annual hours burden should not exceed 1,000 hours. [(14 companies × 40 hrs. each) + (one company × 150 hours) + (2 companies × 40 hrs.) = 780 total hours, rounded to one thousand hours.]

Commission determines that the regulations should be amended, it will commence a rulemaking proceeding. Should any resulting amendments materially affect burden under the PRA, the Commission will notify OMB and seek amended clearance.

<sup>3</sup> This company has been selling smokeless tobacco products for several years, but failed to submit a plan as required by the Act and the regulations. The company currently is in the process of obtaining approval of a complying rotational plan. Thus, most, if not all, of the 150 estimated burden hours likely will have been expended before August 31, 2001. However, erring on the conservative side, staff has included these hours in its burden estimate.

*Estimated annual labor cost burden: \$103,000*

The total annualized labor cost to these companies should not exceed \$103,000. This is based on the assumption that management or attorneys will account for 80% of the estimated 1,000 hours required to rewrite or amend the plans, at an hourly rate of \$125, and that clerical support will account for the remaining time (20%) at an hourly rate of \$15. (Management and attorneys' time (1,000 hrs. × 0.8 × \$15 = \$3,000).

*Estimated annual non-labor cost burden: \$0 or minimal.*

The Commission knows of no recordkeeping cost burden associated with the plans for the display of the warnings. The companies may keep copies of their plans to ensure that labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, e.g., file folders and paper, all of which the companies should have on hand in the ordinary course of their business.

While companies submitting initial plans may incur one-time capital expenditures for equipment used to print package labels in order to include the statutory health warnings or to prepare acetates for advertising, the warnings themselves disclose information completely supplied by the federal government. As such, the disclosure does not constitute a "collection of information" as it is defined in the regulations implementing the PRA, nor by extension, do the financial resources expended in relation to it constitute paperwork "burden." See 5 CFR 1320.3(c)(2). Moreover, any expenditures relating to the statutory health warning requirements would likely be minimal in any event. As noted above, virtually all affected firms have already submitted approved plans. For these companies, there are no capital expenditures. After the Commission approves a plan for the display of the warnings required by the Smokeless Tobacco Act, the companies are required to make additional submissions to the Commission only if there is a change in the way that they choose to display the warnings. Once the companies have prepared plates to print the required warnings on their labels, there are no additional set-up costs associated with the display of the warnings in labeling. Similarly, once the companies have prepared acetates of the required warnings for advertising and promotional materials, there are no additional set-up costs associated with printing the warnings in those materials.

Finally, capital expenditures for small importers are likely to be de minimis. Both firms that submitted plans over the past three years used stickers to place the warnings on their packages. The stickered warnings could be generated with office equipments and supplies such as computers and labels, all of which the companies should have on hand in the ordinary course of their business. Because neither firm engaged in any advertising, no costs associated with advertising were incurred.

**Christian S. White,**

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through August 31, 2004 the current PRA clearance for information collection requirements contained in its Telemarketing Sales Rule, 16 CFR part 435 ("TSR" or "Rule"). That clearance expires on August 31, 2001.

**DATES:** Comments must be submitted on or before June 4, 2001.

**ADDRESSES:** Send written comments to Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Telemarketing Sales Rule: Paperwork comment."

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information requirements should be addressed to Karen Leonard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H-238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326-3597.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), 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). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the TSR (OMB Control Number 3084-0097).

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.

The TSR implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108 ("Act"). The Act seeks to prevent deceptive or abusive telemarketing practices. It mandates certain disclosures by telemarketers, and directs the Commission to consider recordkeeping requirements in its promulgation of a telemarketing rule to address such practices. As required by the Act, the TSR mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The disclosures provide consumers with information necessary to make informed purchasing decisions. The records are available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

#### **Burden Statement**

*Estimated Annual Hours Burden:*  
2,301,000 Hours

The estimated recordkeeping burden is 50,000 hours for all industry members affected by the Rule. The estimated burden related to the disclosures that the Rule requires is 2,251,000 hours (rounded to nearest thousand) for all affected industry members, for a total of 2,301,000 burden hours.

*Recordkeeping:* At the time the Commission issued the Rule, it estimated that during the initial and subsequent years after the Rule took effect, 100 new telemarketing entities per year would find it necessary to revise their practices to conform with it, each requiring approximately 100 hours to develop a compliant recordkeeping system, for a cumulative yearly total of 10,000 burden hours. The Commission received no comments relating to this estimate either when it issued the Rule nor during the ensuing rule review and PRA clearance processes, and staff believes the estimate remains representative. There is no reason to believe that the number of affected new entrants each year has increased.

Of the estimated 39,900 industry members who have already assembled and retained the required records in their recordkeeping systems, staff estimates that each member requires only one hour per year to file and store records required by the Rule. For purposes of estimation, staff has rounded by the cumulative sub-total of 39,900 hours to 40,000 hours. Thus, total estimated annual recordkeeping burden for new and existing entities is 50,000 hours.

*Disclosure:* Staff believes that a substantial majority of telemarketers now make in the ordinary course of business the disclosures the Rule requires because to do so constitutes good business practice.<sup>1</sup> To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden." 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As before when last seeking OMB clearance and related public comment, 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 FR 40713, July 30, 1998. Staff received no comments at that time 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. Staff estimates the portion attributable to the Rule to be 2,251,000, rounded to the nearest thousand. The components of this total are detailed in the immediately following paragraphs that address hours burden.

In connection with the Rule's issuance and in the ensuing rule review and PRA clearance processes, staff estimated that the 39,900 (rounded to 40,000) industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. The TSR provides that if an industry member chooses to solicit inbound calls from consumers by advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures (providing for an inbound telephone call as a possible response) that member is exempted from complying with the Rule's oral disclosures. Staff estimates that at least 9,000 firms will choose to adopt marketing methods that exempt them from complying with the Rule's oral disclosure requirements. This assumption is based on industry data indicating that slightly over 20% of industry members engage in direct mail solicitations involving telemarketing<sup>2</sup> (and staff's corollary assumption that these solicitations will include written disclosures the Rule alternatively requires).

When the Commission issued the TSR, staff estimated that it takes 7 seconds for telemarketers to disclose the required outbound call information orally. Staff also estimated that at least 60 percent of calls result in "hang-ups" before the seller or telemarketer can make all the required disclosures and the "hang-up" calls consume only 2 seconds. Accordingly, staff estimates that the total time associated with these initial disclosure requirements is approximately 250 hours per firm (90,000 non-hang up calls (.40 × 225,000) × 7 seconds per call) + (135,000 hang-up calls (.60 × 225,000) × 2 seconds per call). Thus, the total time expenditure for the 31,000 firms choosing marketing methods that require these oral disclosures is 7.75 million hours. When it initially published this estimate, the Commission received no comments on it nor had the Commission received related comments in the ensuing Rule review and PRA clearance processes. Staff believes the estimate remains reasonable. Based on the assumption

<sup>1</sup> Although telemarketing fraud causes significant harm to consumers—Congress has estimated that misrepresentations or material omissions in telemarketing sales presentations result in \$3 billion to \$40 billion annually in consumer injury—the harm caused by telemarketing fraud remains a small fraction of the \$400 billion in total annual sales through telemarketing.

<sup>2</sup> Direct Marketing Association Statistical Fact Book 2000 (22d ed. 2000) (based on data for 1997-1998, the two most recent years included within this source information).

that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule (as opposed to the normal business practices of most affected entities apart from the Rule's requirements), the burden subtotal attributable to these basic disclosures is 1,937,500 hours.

The TSR also requires further disclosures before the customer pays for goods or services. Specifically, telemarketers must disclose the total cost of the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). If a prize promotion is involved in connection with the sale of goods or services, the telemarketer must also disclose information about the non-purchase entry method for the prize promotion. Staff estimates that these disclosures consume approximately 10 seconds. However, the Rule requires these disclosures only when a call results in a sale. Staff estimates that sales occur in approximately 6 percent to telemarketing calls. Accordingly, the estimated amount of time for these disclosures is 37.5 hours per firm (13,500 calls resulting in a sale (.06 × 225,000 × 10 seconds) or 1.163 million hours for the 31,000 firms choosing marketing methods that require oral disclosures. When it initially published this estimate, the Commission received no comments on this estimate nor had it received related comments in the ensuing Rule review and PRA clearance processes. Again, staff believes the estimate remains reasonable. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule, the burden subtotal attributable to these additional disclosures is 290,750 hours.

As noted above, staff estimates that approximately 9,000 telemarketing firms will choose the written disclosure option. Firms electing this option are likely to be those using written advertising materials. Thus, the burden of adding the required disclosures should be minimal. 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, for an estimated total burden of 90,000 hours for all 9,000 firms using written disclosure. As was the case regarding the other estimates stated above, when the Commission initially published this estimate, it received no comments on it nor had the Commission received any such comments in the ensuing Rule review and PRA

clearance processes. Staff believes this estimate also remains reasonable. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule, residual burden attributable to these written disclosures is 22,500 hours.

*Estimated Annual Labor Cost Burden:*  
\$34,361,000

The estimated labor cost for recordkeeping is \$600,000. Assuming a cumulative burden of 10,000 hours/year to set up compliant recordkeeping systems, and applying to that a skilled labor rate of \$20/hour, start-up costs would approximate \$200,000 yearly for all new telemarketing entities. Staff also estimates that existing industry members require 40,000 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical cost rate of \$10/hour, cumulative recordkeeping maintenance would cost approximately \$400,000 annually. The estimated labor cost for disclosure is \$33,765,000, based on an estimate of 2,251,000 disclosure burden hours and a wage rate of \$15/hour. Thus total labor cost, rounded to the nearest thousand, is \$34,361,000.

*Estimated Annual Non-Labor Cost Burden:* \$10,022,000

*Total capital and start-up cost:* 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 have that already 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 item's useful life. The Rule's disclosure requirements require no capital expenditures.

*Other non-labor cost:* Affecters 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 40,000 industry members affected by 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 \$2,000,000.

To comply with the Rule's disclosure requirements, telemarketing firms likely

incur additional cost for telephone service, assuming that the firms spend more time on the telephone with customers due to the required disclosures. As further detailed above, staff believes that the burden relating to the required oral disclosures amounts to 8,913.000 hours (7.75 million initial disclosure hours + 1.163 million hours regarding sales). Assuming all calls to customers are long distance, at a commercial calling rate of 6 cents per minute (\$3.60 per hour), affected entities as a whole may incur up to \$32,086,800 in telecommunications cost as a result of the Rule's disclosure requirements. However, as also noted above, staff estimates that only 25 percent of such disclosures constitute "burden." Accordingly, the oral disclosure cost burden, adjusted for this apportionment, is \$8,022,000, rounded to the nearest thousand.

Staff believes that the estimated 9,000 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 expenditures.

Thus, total estimated non-labor cost burden associated with the Rule is \$10,022,000 (\$2,000,000 for recordkeeping + \$8,022,000 for oral disclosures).

**Christian S. White,**

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## GENERAL ACCOUNTING OFFICE

[Document No. JFMIP-SR-01-01]

### Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

**AGENCY:** Joint Financial Management Improvement Program (JFMIP)

**ACTION:** Notice of document availability.

**SUMMARY:** The JFMIP is seeking public comment on an exposure draft entitled "Benefit System Requirements," dated May 2001. The draft is the first Federal Financial Management System Requirements (FFMSR) document to address standard requirements for Federal agency benefit systems. The document is intended to assist agencies when developing, improving or