

The Commission once again invites comment that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
2. Evaluate the accuracy of the Commission's estimates of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and validity of the information to be collected; and
4. Minimize the burden of the collections 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.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the final rule concerning fees will have the threshold impact on small entities. As discussed in section III.C, above, this NPRM specifically proposes charging no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the national registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed fees.

The Commission reached a similar conclusion in the User Fee NPRM.⁶³ Nonetheless, the Commission determined that it was appropriate to publish an IRFA in the User Fee NPRM, in order to inquire into the impact on small entities of both the amendments to the TSR proposed in the User Fee NPRM, as well as the proposed amendments to the TSR set forth in the Rule NPRM. The Commission welcomed comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the proposed amendments to the TSR set forth in the

Rule NPRM, and the requirements of the User Fee Statute.

In response to this request for comment, SBA commended the FTC on its regulatory flexibility analysis and supported permitting small firms to access a limited number of area codes per year without a charge, but noted that overlapping federal and state do-not-call registries may create undue burdens for small businesses.⁶⁴ SBA included a number of suggestions to minimize the impact of multiple do-not-call registries on small businesses.⁶⁵ As indicated in the TSR SBP, the Commission is working with the states to develop a single, national do-not-call registry—a "one-stop shop" for consumers to register their preference not to receive telemarketing calls, and for sellers and telemarketers to gain access to that registration information.⁶⁶ To further those goals, the Commission will allow all states, and the DMA if it so desires, to download into the national registry—at no cost to the states or the DMA—the telephone numbers of consumers who have registered with them their preference not to receive telemarketing calls. Telemarketers and sellers will be allowed to access that data through the national registry as the information is received. Such harmonization will decrease significantly any burdens imposed by the multiple do-not-call registries that currently exist.

The Commission continues to welcome comment on any significant alternatives to those proposed in the instant NPRM that would further minimize the impact on small entities, consistent with the objectives stated herein and with the Amended TSR, the

⁶⁴ See SBA-User Fee at 1. See also Section III.C, above, for a discussion of other comments the Commission received on its approach to minimizing the impact of this rulemaking on small businesses.

⁶⁵ *Id.* at 5–6. SBA also responded to our request for information concerning the number of small businesses that might be subject to the proposed User Fee Rule by provided information from the North American Industry Classification System ("NAICS"). According to the NAICS, there are 2,305 firms identified as "Telemarketing Bureaus" (NAICS Code 561422), 1,279 of which qualify as a small business (one with annual receipts of \$5 million or less). SBA also noted "that 1,127 telecommunications firms have receipts under \$1 million, which makes them particularly small and vulnerable to burdensome costs of Federal regulations." *Id.* at 3. The FTC appreciates this information. However, as discussed in Section II.B, above, "telemarketing bureaus" no longer would be required to pay a fee to access the national registry. Instead, sellers would be required to pay the fee. Therefore, to determine the number of small businesses affected by the instant NPRM, the Commission is seeking information on the number of small business sellers that engage in outbound telemarketing and that are subject to the FTC's jurisdiction. Unfortunately, the NAICS does not provide this level of detailed industry classification.

⁶⁶ See TSR SBP at 4641.

Appropriations Act, and Implementation Act.

X. Questions for Comment on the Proposed Rule

The Commission seeks comment on the various aspects of the proposed revisions to the TSR set forth in this NPRM. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

1. This Revised Fee NPRM estimates that there are 7,500 firms that will access the national do-not-call registry. Is that estimate realistic and appropriate? What evidence, if any, do you have concerning the number of sellers that either directly engage in, or hire telemarketers to engage in, "outbound telephone calls" to consumers?

2. In estimating the number of firms that will access the national do-not-call registry, the Commission made a number of assumptions, including the following:

a. The average revenue per client for telemarketers making outbound telemarketing calls to consumers is about \$328,000;

b. It is reasonable to estimate the level of expenditures on outbound calls to consumers by taking the product of published figures on the percentage of total telemarketing expenditures that involve outbound calls—including both calls to consumers and to businesses—and published figures on the percentage of expenditures that are for calls to consumers—including both inbound and outbound calling. This figure, approximately 24 percent, can then be used to estimate the level of outbound calling to consumers both by (1) firms that use third-party telemarketers to do their calling and (2) those firms that do their own calling;

c. Sellers that use third-party telemarketers on average employ three different telemarketers to make outbound calls to consumers over the course of a year;

d. Sellers using their own resources to make telemarketing calls spend, on average, five times as much on telemarketing as do firms that use third-party telemarketers;

e. Approximately 40 percent of sellers that use third-party telemarketers and 25 percent of sellers that engage in their own telemarketing will not be required to access the national do-not-call registry, either because they are engaged in charitable solicitations, are making

⁶³ See User Fee NPRM at 37366–67.