

number on each line. For the change list in flat file format, each line of the file will contain a telephone number, the date of the change, and an "A" (for Added) or "D" (for Deleted). The change list data will be fixed-width fields.

The alternative to web browser downloads will be programmatic web services using XML tagged data. This will assist larger companies in automating downloads of the national registry. The XML tags will include the following: a login and encrypted password; the name and email address of the company contact person; certification that access to the registry is solely to comply with the provisions of this Rule; the account number(s) for which the download is being performed; the area code of the telephone numbers to be downloaded; and whether a full list or change list is to be downloaded.

Entities that select a change list will be provided all telephone numbers that have been added to, or deleted from, the registry since the date of their previous access. Change lists, for both flat files and XML tagged data, will be available to provide changes on a daily basis (representing the additions and deletions from the day before).

The telemarketer website on the national registry will have a help desk available during regular business hours via a secure electronic form.

VI. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* ("PRA"), the Commission sought public comments on the information collection activities contained in the Final Fee Rule. *See* 67 FR 37362 (May 29, 2002); 68 FR 16238 (April 3, 2003). The Commission received no comments on its PRA analysis nor has it modified its proposal in any manner that necessitates revising its original burden estimates for the Final Fee Rule.⁸⁰ The Commission additionally sought clearance from OMB for those information collection requirements, and obtained it on July 24, 2003, under OMB Control No. 3084-0097.

⁸⁰ While the Commission is increasing its estimate of the number of entities that must pay for access to the national registry, that increase is created by the FCC Rules, which require entities exempt from the FTC's jurisdiction to gain access. Accordingly, the paperwork burden faced by those entities will be reported by the FCC, rather than the FTC. In addition, entities that access the national registry solely because of the FCC Rules are not required to comply with the recordkeeping provisions of the Amended TSR. As a result, the increase in the Commission's estimate of the number of entities required to access the national registry does not affect that aspect of the Commission's prior PRA burden estimates.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires the agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with its proposed rule, and a Final Regulatory Flexibility Analysis ("FRFA") with its final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in the User Fee NPRM, the Revised Fee NPRM, and this Statement, the Commission does not expect that its Fee Rule will have the threshold impact on small entities. Nonetheless, the Commission published an IRFA with the User Fee NPRM, and is also publishing a FRFA with its Final Fee Rule below, in the interest of further explaining its determination, even though the Commission continues to believe that it is not required to publish such analyses.

1. Reasons for Consideration of Agency Action

The Final Fee Rule has been considered and adopted pursuant to the requirements of the Implementation Act and the Appropriations Act, which authorize the Commission to collect fees sufficient to implement and enforce the "do-not-call" provisions of the Amended TSR.

2. Objectives of and Legal Basis for the Final Rule

As explained above, the objective of the Final Fee Rule is to collect fees from entities engaged in telemarketing, pursuant to the legal authority set forth in the Implementation Act and Appropriations Act.

3. Description and Estimate of Number of Small Entities Affected by the Final Rule

As explained in the Revised Fee NPRM, comments submitted by the Small Business Administration cited to information from the North American Industry Classification System ("NAICS"), suggesting that there are 2,305 firms identified as "telemarketing bureaus," and that 1,279 of those firms may qualify for small business status, *i.e.*, annual receipts of \$5 million or less.⁸¹ Because sellers, and not "telemarketing bureaus," constituted the relevant small entities affected by the Revised Fee NPRM, the Commission sought further public comment and information on the number of small business sellers engaged in outbound telemarketing and subject to the FTC's jurisdiction, since the NAICS

classification system does not provide this level of detail.⁸² The Commission received no further information in response to this request for comment. As a result, the agency is unable at this time to provide a reliable estimate of the number of affected sellers. In any event, as explained elsewhere in this Statement, the Commission believes that, to the extent the Final Fee Rule has an economic impact on small business, the Commission has adopted an approach that minimizes that impact to ensure that it is not substantial, while fulfilling the legal mandate of the Implementation Act and Appropriations Act to ensure that the telemarketing industry supports the cost of the National Do Not Call Registry.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

These requirements were discussed in the Revised Fee NPRM section regarding agency information collection activities subject to OMB approval under the PRA.⁸³ The information collection activities at issue consist principally of the requirement that firms, regardless of size, that access the national registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees.

Compliance requirements of the Final Fee Rule, other than information collection requirements within the meaning of the PRA, are discussed elsewhere in this document and in the User Fee NPRM and Revised Fee NPRM. In sum, as noted earlier, small entities and all other entities subject to the Final Fee Rule are required to pay and obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the national registry.

5. Duplication With Other Federal Rules

None.

6. Description of Any Significant Alternatives to the Final Rule

As discussed in the User Fee NPRM, the Commission considered a number of alternatives to the proposed fees.⁸⁴ In both the User Fee NPRM and Revised Fee NPRM, the Commission solicited comment on any significant alternatives that would further minimize the impact on small entities consistent with the objectives stated in those Notices, the Appropriations Act and the Implementation Act. As discussed

⁸² *Id.*

⁸³ *See* Revised Fee NPRM, 68 FR at 16245.

⁸⁴ *See* User Fee NPRM, 67 FR at 37367.

⁸¹ *See* 68 FR at 16246 n.65.