

*Estimated total annual hours burden:* 3,094,000 hours (rounded up to the nearest thousand).

In its 2000 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 45,919 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,985 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.<sup>2</sup> 65 FR 77031 (December 8, 2000). Thus, the total estimated hours burden was 2,753,000 hours, rounded up to the nearest thousand  $[(45,919 \times 50 \text{ hours}) + (1,985 \times 230 \text{ hours})]$ .

No provisions in the Rule have been amended or changed since staff's prior submission to OMB. Thus, the Rule's disclosure and notification requirements remain the same. Since then, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has increased. Based on the U.S. Department of Commerce 2002 Statistical Abstract,<sup>3</sup> approximately 53,600 establishments are now subject to the Rule. The staff attributes much of this growth to brick-and-mortar retailers expanding into electronic shopping, and the continued entry of "dot.com" merchants into the retail industry.

Conversely, based on the 2002 Statistical Abstract data, staff is reducing its estimate of new businesses per year from 1,985 to 1,800. Thus, the current total of affected entities is approximately 55,400 (established and new businesses).

Accordingly, staff estimates total industry hours to comply with the MTOR is 3,094,000 hours  $[(53,600 \times 50 \text{ hours}) + (1,800 \times 230 \text{ hours})]$ .

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and

full refunds. Providing consumers with notice about the status of their orders fosters consumers loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA<sup>4</sup> although the above estimates account for it as such.

The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since staff's preceding PRA submission to OMB for the Rule, many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to track orders more effectively. These upgrades, however, were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff continues to conservatively assume that the time devoted to compliance with the Rule by existing and new companies remains unchanged from its preceding estimate.

*Estimated labor costs:* \$51,825,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 2002 Statistical Abstract, average payroll for "electronic shipping and mail order houses," "direct selling establishments," and "other direct selling establishments" rose from \$14.41 per hour in 1999 to \$15.19 per hour in 2000, an increase of \$0.78 per hour. Assuming average payroll continued to increase \$0.78 per hour per year, average payroll in 2002 would have reached \$16.75 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for electronic shipping and mail order houses and direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established

businesses in 2002 for MTOR compliance is approximately \$51,825,000  $(3,094,000 \text{ hours} \times \$16.75/\text{hr.})$ . Relative to direct industry sales, this total is negligible.<sup>5</sup>

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

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

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## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, is added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the

<sup>2</sup> Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

<sup>3</sup> Statistical Abstract of the United States, 122nd edition, 2002, U.S. Department of Commerce, Economics and Statistics Administration, Table 1000, "Retail Trade—Establishments, Employees and Payroll: 1999 and 2000." This is the most recent edition currently available.

<sup>4</sup> Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirements. 5 CFR 1320.3(b)(2).

<sup>5</sup> Projecting sales for "electronic shopping and mail-order houses," "direct selling establishments," and "other direct selling establishments" (according to the 2002 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that total direct sales to consumers in 2002 to have been \$124.88 billion. Thus, the labor cost for compliance by existing and new businesses in 2002 would have amounted to .042% of sales.