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Legal & Regulatory Group

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SUBMITTED ELECTRONICALLY

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, N.W., Washington, D.C. 20580
Electronic address: https://secure.commentworks.com/ftc-TSRPRA

Re: "Telemarketing Sales Rule: FTC File No. P994414"

The National Automobile Dealers Association ("NADA") submits the following comments in response to the request for comments by the Federal Trade Commission ("FTC" or the "Commission") on its proposal to extend through May 31, 2012 the current Paperwork Reduction Act clearances for information collection requirements contained in its Telemarketing Sales Rule ("TSR" or "Rule").

NADA represents nearly 19,000 franchised automobile and truck dealers who sell new and used motor vehicles, and engage in service, repair, and parts sales. Together our members employ in excess of 1.1 million people nationwide. NADA is particularly focused on the regulatory burden imposed by the FTC and other federal agencies that promulgate or enforce regulatory requirements affecting our members. We submit these comments because we are concerned that that Commission has understated the recordkeeping and associated burdens required by the TSR.

For example, FTC staff estimates that the "live telemarketing call provisions of the TSR" impose an average annual recordkeeping burden of one hour per year. 74 Fed. Reg. 11,954 (Mar. 20, 2009). We feel that this estimate vastly underestimates the actual current requirements. Currently, auto dealers (and other sellers and telemarketers) must draft and maintain written policies to ensure compliance with National and Company-Specific Do-Not-Call requirements.[1] They also must train employees who are engaged in any aspect of

[1] While a written policy may not be *per se* required under the TSR, it is a *de facto* requirement as a written policy can provide a safe harbor. 16 CFR § 310.4 (b)(3)(i).

telemarketing pursuant to those policies.[2] Records of the training materials, attendees, and trainers must be created and maintained. In addition, records that document individual Do-Not-Call ("DNC") requests from consumers must be created and maintained, the Company-Specific DNC database must be updated, and steps must be taken to ensure compliance with that list. In addition, many dealers use the single look-up feature to access the national DNC list. Each such instance requires at least several minutes to look up the number, print out a record reflecting whether that number is on the national DNC list, and file and store that printed record. Even for those dealers who download information from the national DNC database, the burden far exceeds one hour per year. It may take no more than a few minutes to complete each such download, but as the TSR now requires access to the DNC database "at least every 31 days,"[3] the cumulative burden of downloading the data and updating the required systems 12 times a year alone far exceeds one hour a year.

In addition, we disagree that the new recordkeeping requirements associated with the Prerecorded Call Amendment "should not be material." *Id.* The suggestion seems to be that there will be little change from the current requirement to maintain records of an established business relationship. This is not the case for auto dealers, who typically do maintain customer and other records that evidence an established business relationship in the ordinary course of their business. For them, the Prerecorded Call Amendment represents an entirely new recordkeeping requirement. The fact that dealers may create and maintain the written agreements pursuant to E-SIGN may minimize this burden, but many auto dealer customers (and some dealers themselves) do not have or utilize electronic mail so that benefit may be limited. In any event, the amount of time required to create and obtain these written agreements, to create a database reflecting these agreements, and to ensure that prerecorded calls are only made to numbers in that database far exceeds the one hour annual estimate in the notice.

We also believe that the assertion that "the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*," and that "most affected entities would maintain the required records in the ordinary course of business." is similarly mistaken. 74 Fed. Reg. 11,957. Although certain records retained by dealers may be retained in the absence of a TSR records retention requirement, the majority are retained solely for the purpose of compliance with the TSR. Further, many of our members retain records in paper form and, due to the quantity of transactions involved, often must store them at off-site storage facilities. Thus, although the percentage will differ amongst dealers, a portion of the expenses related to collecting, transporting, and storing these records results directly from the requirements specified in the notice. In addition, the TSR record-keeping and other requirements are but one of a myriad of current regulatory challenges that auto dealers must understand and comply with. Most auto dealers are relatively small businesses, and do not have access to in-house legal counsel. As a result, most dealers seek outside legal counsel on the scope of their compliance responsibilities, to draft and update written policies, and to arrange for compliance training for appropriate dealership personnel. The need to retain counsel to stay abreast of and understand these developments is necessitated by the TSR and other regulatory requirements, and clearly

[2] 16 CFR § 310.4 (b)(3)(ii).
[3] The TSR requires accessing the National Registry at least once every 31 days, effective January 1, 2005. See 69 Fed. Reg. 16368 (Mar. 29, 2004).

would not be undertaken in the ordinary course of business. The costs associated with these efforts increase whenever amendments are promulgated, are more than *de minimis*, and are incurred at rates well in excess of the $32 per hour managerial/professional labor rates specified in the notice.

Conclusion

We recognize that the Commission must create burden estimates for a wide variety of entities with many operational differences. Nevertheless, the process should be an informed one that accounts for the burdens we have described. We appreciate the opportunity to comment on this matter.

Sincerely,

Bradley T. Miller

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