



<sup>2</sup> The MTOR does not impose a recordkeeping requirements per se. 16 CFR § 435.1(d) provides that, in an action for noncompliance, the absence of records that establish that a respondent-seller uses systems and procedures to assure compliance will create a rebuttable presumption that the seller was not compliant, but the MTOR does not require a compliant seller to maintain any records. Merchants customarily keep records regarding their systems and procedures in the ordinary course of business, however; consequently, their retention of these documents does not constitute a "collection of information" under OMB's regulations that implement the PRA. See 5 CFR 1320.3(b)(2).

<sup>3</sup> 71 FR 60530 (Oct. 13, 2006); 71 FR 77751 (Dec. 27, 2006).

<sup>4</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>5</sup> See Table 1008, "Retail Trade – Establishments, Employees and Payroll: 2000 and 2005," U.S. Census Bureau, Statistical Abstract of the United States: 2009 (128th Edition), Washington, DC, 2008 (<http://www.census.gov/compendia/statab/tables/09s1008.pdf>).

<sup>6</sup> Conceptually, this might understate the number of new entrants in that it does not factor in the possibility that established businesses from an earlier year's comparison might have exited the

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<sup>8</sup> Conceivably, in the three years since the FTC's most recent clearance request to OMB for this Rule, many businesses have upgraded the information management systems needed to comply with the Rule and to track orders more effectively. These upgrades, however, were primarily prompted by the industry's need 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 provide updated order information of the kind required by the Rule in their ordinary course of business. Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

<sup>9</sup> Based on a \$13.786 billion average yearly increase in sales for "electronic shopping and mail-order houses" from 2000 to 2007 (according to the 2009 Statistical Abstract), staff estimates that total mail or telephone order sales to consumers in the three-year period for which OMB clearance is sought will average \$265.5 billion. Thus, the projected average labor cost for MTOR compliance by existing and new businesses for that period would amount to less than 0.018% of sales.