

# Proposed Rules

Federal Register

Vol. 65, No. 39

Monday, February 28, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 310

#### Telemarketing Sales Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Rule review, request for public comments, and announcement of public forums.

**SUMMARY:** The Federal Trade Commission (“the Commission” or “FTC”) is requesting public comment on the Commission’s Telemarketing Sales Rule (“TSR” or “the Rule”). The Telemarketing and Consumer Fraud and Abuse Prevention Act (“the Telemarketing Act” or “the Act”) directed the Commission to promulgate rules to protect consumers from deceptive telemarketing practices and other abusive telemarketing activities. In response to this directive, the Commission adopted the TSR, which requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

The Act requires that no later than five years after its effective date of December 31, 1995, the Commission initiate a rule review to evaluate the Rule’s operation and report the results of that review to Congress. Pursuant to this mandatory rule review requirement, the Commission now hereby seeks comment about the overall costs and benefits of the TSR, and its overall regulatory and economic impact since its adoption in 1995.

In addition to reviewing the Rule and its effect on deceptive and abusive telemarketing practices, the Commission intends to use this rule review to examine telemarketing generally over the past two decades, and to determine its impact on consumers. This broader review will result in a report addressing issues such as changes in technology,

composition of the industry, telemarketers’ efforts at self-regulation, the effectiveness of law enforcement and legislation, trends in telemarketing, and current consumer issues related to telemarketing. In order to initiate discussion of these and other issues, the Request for Comment invites written responses to the series of questions in Sections F and G, *infra*, which set forth with more specificity the type of information the Commission particularly desires related to the Rule and about telemarketing generally.

In addition, this document contains an invitation to participate in a series of public forums to be held in the future to afford the Commission staff and interested parties an opportunity to explore and discuss the issues underlying the list of questions and any other topics that emerge from the comments we receive in response to this notice.

**DATES:** Papers and written comments responding to the Request for Comment will be accepted until April 27, 2000. A public forum to discuss provisions of the TSR, other than the “do-not-call” provision, will be held on July 27–28, 2000, in Washington, DC, from 8:30 a.m. until 5:30 p.m.<sup>1</sup> Notification of interest in participating in this forum must be submitted in writing on or before June 16, 2000. The exact dates, location, and information about participation in future FTC forums held in connection with the TSR review will be announced later by **Federal Register** notice.

**ADDRESSES:** Six paper copies of each paper and/or written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Alternatively, the Commission will accept papers and comments submitted to the following email address: [tsr@ftc.gov](mailto:tsr@ftc.gov), provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All submissions should be identified as “Telemarketing Review—Comment. FTC File No. P994414.” Notification of interest in participating in the public forum should be submitted

<sup>1</sup> An initial public forum to discuss issues relating to the “do-not-call” provisions of the TSR was held on January 11, 2000. Information about that forum appeared in a separate **Federal Register** notice on November 24, 1999. 64 FR 66124 (November 24, 1999).

in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 238, Washington, DC 20580. The public forum will be held at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 432, Washington, DC 20580.

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at the following address: [www.ftc.gov](http://www.ftc.gov).

**FOR FURTHER INFORMATION CONTACT:** Catherine Harrington-McBride (202) 326–2452, email [cmcbride@ftc.gov](mailto:cmcbride@ftc.gov); Karen Leonard (202) 326–3597, email [kleonard@ftc.gov](mailto:kleonard@ftc.gov); or Carole Danielson (202) 326–3115, email [cdanielson@ftc.gov](mailto:cdanielson@ftc.gov), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### Section A. Background

###### 1. Telemarketing Consumer Fraud and Abuse Act

On August 16, 1994, President Clinton signed into law the Telemarketing Consumer Fraud and Abuse Prevention Act (“Telemarketing Act” or “the Act”).<sup>2</sup> The Telemarketing Act was the culmination of Congressional efforts during the early 1990’s to protect consumers against telemarketing fraud.<sup>3</sup> The purpose of the Act was to combat telemarketing fraud

<sup>2</sup> 15 U.S.C. 6101 *et seq.*

<sup>3</sup> Other statutes enacted by Congress to address telemarketing fraud during the early 1990’s include the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. 64.1200 *et seq.*, which restricts the use of automatic dialers, bans the sending of unsolicited commercial facsimiles, and directs the Federal Communications Commission to explore ways to protect residential telephone subscribers’ privacy rights; and the Senior Citizens Against Marketing Scams Act of 1994, 18 U.S.C. 2325 *et seq.*, which provides for enhanced prison sentences for certain telemarketing-related crimes.

by providing law enforcement agencies with powerful new tools, and to give consumers new protections. The Act directed the Commission, within 365 days of enactment of the Act, to issue a rule prohibiting deceptive and abusive telemarketing acts or practices.<sup>4</sup>

Among other things, the Telemarketing Act specifies certain acts or practices the FTC's rule must address.<sup>5</sup> The Act also required the Commission to include provisions relating to three specific "abusive telemarketing acts or practices:" (1) A requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which a reasonable consumer would consider coercive or abusive of such consumer's right to privacy; (2) A restriction on the time of day and night telemarketers may make unsolicited calls to consumers; and (3) A requirement that telemarketers promptly and clearly disclose in all sales calls to consumers that the purpose of the call is to sell goods or services, and to make other disclosures the Commission deems appropriate, including the nature and price of the goods or services sold.<sup>6</sup> Section 6102(a) of the Act not only required the Commission to define and prohibit deceptive telemarketing acts or practices, but it also authorized the FTC to define and prohibit acts or practices that "assist or facilitate" deceptive telemarketing.<sup>7</sup> The Act further required the Commission to consider and include recordkeeping requirements in the rule.<sup>8</sup> Finally, the Act authorizes state attorneys general, other appropriate state officials, and private persons to bring civil actions in federal district court to enforce compliance with the FTC's rule.<sup>9</sup>

## 2. Telemarketing Sales Rule

Pursuant to the Telemarketing Act, the FTC adopted the TSR, 16 CFR Part 310, on August 16, 1995.<sup>10</sup> The Rule, which became effective on December 31, 1995, contains the following key requirements and prohibitions. Under the Rule, telemarketers must promptly tell each consumer they call several key pieces of information: (1) The fact that

the purpose of the call is to sell goods or services, (2) The nature of the goods or services being offered, and (3) In the case of prize promotions, that no purchase is necessary to win.<sup>11</sup> Telemarketers must also disclose cost and other material information before consumers pay. In addition, telemarketers must have consumers' express, verifiable authorization before debiting their checking accounts.<sup>12</sup> The Rule prohibits telemarketers from calling before 8 a.m. or after 9 p.m. (in the time zone where the consumer is located), and from calling consumers who have said they do not want to be called.<sup>13</sup> The Rule also prohibits misrepresentations about the cost, quantity, and other material aspects of the offered goods or services.<sup>14</sup> Finally, the Rule bans telemarketers who offer to arrange loans, provide credit repair services, or recover money consumers lost in a prior telemarketing scam from seeking payment before rendering the promised services,<sup>15</sup> and prohibits credit card laundering and other forms of knowing assistance to deceptive telemarketers.<sup>16</sup>

The Rule provides a number of exemptions, including calls where the transaction is completed after a face-to-face sales presentation, calls subject to extensive requirements under other FTC rules (e.g., the 900-Number Rule, or the Franchise Rule),<sup>17</sup> and calls initiated in response to advertisements in general media such as newspapers or television.<sup>18</sup> Lastly, catalog sales are exempt, as are most business-to-business calls, except those involving the sale of office or cleaning supplies.<sup>19</sup>

## 3. Telemarketing and Changes in the Marketplace.

In the years since the Rule was promulgated, the marketplace for telemarketing has changed in significant ways. Technologies which were new or non-existent at the time the Rule was adopted now have become standard equipment for many telemarketing firms. Similarly, refinements in market research allow sellers to pinpoint with greater precision which consumers are most likely to be potential customers.

The increased use of "frequent customer cards," which enable sellers to collect purchasing data electronically when consumers buy goods such as groceries and gasoline, allows more extensive and more accurate customer targeting. "Cookie" technology<sup>20</sup> enables marketers to learn the specific habits and preferences of online consumers, including information about consumers and their computers, the kinds of Web sites they visit, and the frequency with which they purchase online. These enhancements in data collection have obvious uses to make telemarketing more sophisticated.

Finally, another significant change in the marketplace is that telemarketing is facing competition from new marketing and sales methodologies, especially the Internet. More and more sellers are turning to the Internet as a means not only to market their products and services to consumers, but to finalize sales.<sup>21</sup> Additionally, some companies link their call centers to the Internet. Thus, consumers not only can receive email replies to questions, but can place a call to a customer service representative either through the Internet or on a separate phone line without leaving the company's Web site. Technology now is available that allows a consumer to view the same Web page as the customer service representative with whom they are talking, and have the representative "push" Web pages with other information to the consumer. The potential impact of increased use of interactive sales media on telemarketing is unknown, but the question merits examination in light of the projected growth of such interactive electronic media.

Another change that has occurred since the Rule was promulgated is the increase in cross-border telemarketing. The incidence of telemarketers operating outside the U.S., but selling to U.S. citizens, is rising. Some of this cross-border activity is fraudulent. The experience of the FTC and other law enforcement agencies over the past five

<sup>20</sup> In Internet terminology, a "cookie" is a piece of information about a computer, its user, or something the user "clicked" on, that is stored on the computer user's hard drive. See [www.netlingo.com](http://www.netlingo.com). That information can be accessed by a Web server when the user connects to a Web page. "Cookies" also can be "mined" by marketers looking to learn more about the online shopping behavior of consumers who have accessed their Web sites.

<sup>21</sup> In 1998, nearly 37,000 people were employed in Internet direct marketing advertising, more than double the figure for the previous year. Growth rates for employment in Internet marketing are expected to be in excess of 50% annually through 2003. See Direct Marketing Association, *Direct Marketing Association's Statistical Fact Book '99*, 299 (1999).

<sup>4</sup> 15 U.S.C. 6102(a) and (b).

<sup>5</sup> 15 U.S.C. 6102(a).

<sup>6</sup> 15 U.S.C. 6102(a)(3)(A)-(C).

<sup>7</sup> 15 U.S.C. 6102(a)(2). Examples of practices that would "assist or facilitate" fraudulent telemarketing under the Rule include: credit card laundering, providing contact lists to sellers or telemarketers, and providing promotional materials to sellers or telemarketers. See Telemarketing Sales Rule, Statement of Basis and Purpose, 60 FR 43853 (August 23, 1995).

<sup>8</sup> 15 U.S.C. 6102(a)(3).

<sup>9</sup> 15 U.S.C. 6103.

<sup>10</sup> 60 FR 43843 (August 23, 1995).

<sup>11</sup> 16 CFR § 310.4(d)(4).

<sup>12</sup> 16 CFR § 310.3(a)(3).

<sup>13</sup> 16 CFR §§ 310.4(c), and 310.4(b)(1)(ii).

<sup>14</sup> 16 CFR § 310.3(a)(2).

<sup>15</sup> 16 CFR §§ 310.4(a)(3) and (4).

<sup>16</sup> 16 CFR §§ 310.3(b) and (c).

<sup>17</sup> 16 CFR §§ 310.6(a)-(c).

<sup>18</sup> 16 CFR § 310.6(e).

<sup>19</sup> 16 CFR § 310.2(u) (catalog sales); 16 CFR § 310.6(g) (business-to-business). Also, the Telemarketing Act specifically exempts catalog sales from its definition of "telemarketing." 15 U.S.C. 6106(4).

years confirms that telemarketing fraud is becoming increasingly global in scope. Fraudulent telemarketers operating from other countries often do so to seek the advantages of less stringent telemarketing laws; they also benefit from the complex jurisdictional issues implicated in cross-border sales.

Because of these and other significant, rapid changes in the marketplace, the Commission has determined to combine its review of the TSR with a study of telemarketing generally: what the nature of telemarketing has been historically, what it is now, and how it is changing to meet the future. The goal of this study is to document the historical trends that have shaped the practice of telemarketing, and to better understand and document factors likely to shape its future, including technological innovations, shifting markets, consumer attitudes about choice, regulatory and law enforcement efforts at the state and federal levels, and telemarketers' self-regulatory efforts. To facilitate its rule review and the completion of the study, the Commission will invite the comments of all interested parties and will hold a series of public forums to discuss relevant issues.

### Section B. Request for Comment

Interested parties, including, but not limited to, academics, telemarketers, consumer advocates, and government representatives, are requested to submit academic papers or written comments on any issue of fact, law, or policy that may inform the Commission's examination of the TSR and/or the practice of telemarketing generally, its history as well as current practice and emerging trends. Sections F and G, *infra*, set forth questions about which the Commission particularly desires input. Because telemarketing often occurs across international boundaries, comments need not be limited to examinations of domestic laws or policies. Please provide copies of any studies, surveys, research, or other empirical data referenced in submissions.

*Form of Comments:* To encourage prompt and efficient review and dissemination of the comments to the public, all papers and comments should also be submitted, if possible, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenting party and the name and version of the word processing program used to create the document, as well as the identification "Telemarketing Review—Comment. FTC File No. P994414." (Programs based on DOS are preferred. Files from other operating systems must be submitted in ASCII text

format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

### Section C. Public Forums

The FTC staff will conduct public forums to discuss issues raised by the questions in this **Federal Register** notice. One series of forums will focus on issues relating to the implementation and effectiveness of the TSR. These forums are not intended to achieve consensus among participants or between participants and FTC staff with respect to any issue raised. Commission staff will consider the views and suggestions made during the forums, in conjunction with the papers and written comments, in formulating its final recommendation to the Commission concerning amendments to the current structure and content of the TSR and in preparing its report on telemarketing. A second series of forums will involve members of the telemarketing industry, consumer groups, and law enforcement agencies in a discussion of the evolution of telemarketing over the past two decades and its impact on consumers. The FTC invites members of the public, telemarketers, and other interested parties to participate in both sets of forums.

The initial forum, part of the first series dedicated to evaluation of the TSR, was held on January 11, 2000. This forum focused on the efficacy of the do-not-call provision of the Rule and other similar initiatives, such as the do-not-call provision of the TCPA, telemarketer-implemented do-not-call plans, and state legislation creating centralized do-not-call lists. Information on that forum was published in a separate **Federal Register** notice on November 24, 1999.<sup>22</sup> A public forum to discuss other provisions of the TSR will be held on July 27–28, 2000, in Washington, DC. The exact dates, location, and information about participation in future FTC forums will be announced later by **Federal Register** notice.

### Section D. Request to Participate

The FTC invites members of the public, industry, and other interested parties to participate in the public forum scheduled for July 27–28, 2000. To be eligible to participate, you must file a request to participate on or before June 16, 2000. If the number of parties who request to participate in the forum is so large that including all requesters would inhibit effective discussion among participants, FTC staff will select

as participants a limited number of parties to represent the relevant interests. Selection will be based on the following criteria:

1. The party submitted a request to participate by June 16, 2000.
2. The party's participation would promote the representation of a balance of interests at the forum.
3. The party's participation would promote the consideration and discussion of the issues to be presented in the forum.
4. The party has expertise in issues to be raised in the forum.
5. The party adequately reflects the views of the affected interest(s) which it purports to represent.

If it is necessary to limit the number of participants, those who requested to participate but were not selected will be afforded an opportunity, if at all possible, to present statements during a limited time period at the end of the session. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after June 16, 2000, whether they have been selected to participate.

### Section E. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")<sup>23</sup> provides for an initial and final regulatory analysis of the potential impact on small businesses of rules proposed by federal agencies.<sup>24</sup> The Commission conducted such an analysis when the TSR was promulgated in 1995. In publishing the proposed regulations, the Commission certified, subject to public comment, that the proposed regulations would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the RFA requiring the initial regulatory analysis did not apply.<sup>25</sup> The Commission noted that any economic costs imposed on small business entities were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burdens on small business entities by making the Rule's requirements flexible and by limiting the scope of the regulations through a number of exemptions. In publishing the final Rule, the Commission noted in the Rule's Statement of Basis and Purpose that public comments and information that had been received during the

<sup>23</sup> 5 U.S.C. § 603 et seq.

<sup>24</sup> 5 U.S.C. § 605(b).

<sup>25</sup> 60 FR 8313, 8322 (February 14, 1995).

<sup>22</sup> 64 FR 66124 (November 24, 1999).

rulemaking did not alter that conclusion.<sup>26</sup>

No analysis is required in connection with this notice because no new rule or amendment is being proposed. Nonetheless, the Commission wishes to ensure that no substantial economic impact is being overlooked that would warrant an initial and final regulatory flexibility analysis. Therefore, this notice also requests public comment regarding the effect of the Rule on the profitability and competitiveness of, and employment in, small entities. The Commission will revisit this issue in connection with any Notice of Proposed Rulemaking that may result from this notice.

#### Section F. Questions and Issues for Comment Pursuant to Regulatory Review of the Rule

The Commission is seeking comment on various aspects of the TSR in conjunction with its review of the Rule. Without limiting the scope of issues on which it is seeking comment, the Commission is particularly interested in receiving comments on the questions that follow. These questions are intended only as examples of the issues relevant to the Commission's examination. Interested parties are invited to comment on any relevant issue, regardless of whether it is identified below.

Where comments advocate changes to the Rule, please be specific in describing suggested changes. With respect to suggested changes to the Rule, please describe any potential costs and/or benefits such changes might have on industry and consumers.

##### I. General Questions for Comment

1. Is there a continuing need for the TSR?

(a) Since the Rule was issued, have changes in technology, industry structure, or economic conditions affected the need for or effectiveness of the Rule?

(b) Does the Rule include provisions that are unnecessary? If so, which ones?

(c) What are the aggregate costs and benefits of the Rule?

(d) Have the costs or benefits of the Rule dissipated over time?

(e) Does the Rule contain provisions that have imposed costs not outweighed by benefits?

2. What effect, if any, has the Rule had on consumers?

(a) What economic or other costs has the Rule imposed on consumers?

(b) How has the Rule benefitted consumers?

(c) What changes, if any, should be made to the Rule to increase the benefits to consumers? How would these changes affect the compliance costs the Rule imposes on industry?

(d) Is the incidence of telemarketing fraud greater today than five years ago? Less than five years ago? Has consumer awareness of telemarketing fraud increased since the adoption of the Rule? If so, what are the sources of information on this issue for consumers? What effect, if any, has increased consumer awareness had on law enforcement? On telemarketers?

3. What impact, if any, has the Rule had on entities that must comply with it?

(a) What economic or other costs has the Rule imposed on industry or individual firms?

(b) How has the Rule benefitted industry or individual firms?

(c) What changes, if any, should be made to the Rule to minimize any burden or cost imposed on industry or individual firms? How would these changes affect the benefits provided by the Rule to consumers or industry?

(d) Are there regulatory alternatives to the Rule that might reduce any adverse economic effect of the Rule, yet comply with the mandate of the Telemarketing Act to provide consumers with necessary protection from telemarketing deception and abuse?

4. How has this Rule affected sellers or telemarketers that are small businesses with respect to costs, profitability, and competitiveness? Have the costs or benefits of the Rule dissipated over time with respect to small business sellers or telemarketers?

5. Does the Rule overlap or conflict with other federal, state, or local government laws or regulations?

(a) What is the impact on the industry of state-by-state regulation of telemarketing?

(b) Are there any conflicting laws or regulations governing telemarketers, and if so, what are they? If conflicts exist, how do telemarketers address them?

(c) To what extent have private parties and state attorneys general brought actions under the TSR? Under other statutes/regulations?

(d) Are there any unnecessary regulatory burdens created by overlapping jurisdiction? What can be done to ease these burdens?

(e) Are there any gaps where no federal, state, or local government law or regulation has addressed a particular abuse?

6. Has the mingling of Internet and telemarketing technology had an impact on the effectiveness of the TSR? If so,

how? Should the TSR be amended to address this issue, and if so, how?

##### II. Definitions

7. Are the definitions set forth in Section 310.2 of the Rule effective to accomplish the goal of curbing deceptive and abusive telemarketing practices?

8. Are they clear, meaningful, comprehensive, and appropriate? If not, how have the definitions been inadequate? How can they be improved?

9. Are there additional definitions that should be added to the Rule? Explain.

##### III. Deceptive Telemarketing Acts or Practices

10. Section 310.3(a)(1) requires sellers and telemarketers to disclose certain information before the customer pays for goods or services offered.

(a) Has this section been effective in curbing deceptive telemarketing practices? If so, why? If not, what changes, if any, should be made to the required disclosures? Explain.

(b) Are there additional disclosures that should be required? Explain.

(c) What changes, if any, should be made to the disclosure requirements to increase consumer protections or to minimize industry costs? Explain.

(d) Has the disclosure requirement of Section 310.3(a)(1)(iii) regarding refund/cancellation policies been effective from the perspective of consumers and law enforcement authorities?

(e) Are disclosures being made in a timely fashion? Is there sufficient understanding of what is meant by "before the consumer pays"?

(f) What burdens, if any, have disclosure requirements placed on sellers and telemarketers? If they exist, do these burdens outweigh the benefits to consumers? Explain.

11. Section 310.3(a)(2) prohibits misrepresentations of material information.

(a) Has this section been effective in accomplishing the goal of curbing deceptive and abusive telemarketing practices? If so, why? If not, why not, and how should the section be changed?

(b) Are there additional specific misrepresentations that should be prohibited?

(c) What changes, if any, should be made to the prohibitions to increase consumer protections or to minimize industry costs? Explain.

12. Section 310.3(a)(3) requires sellers and telemarketers to obtain the consumer's express verifiable authorization before submitting a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account.

<sup>26</sup> See 60 FR 43863 (August 23, 1995).

(a) Has this section been effective in curbing unauthorized draft debits? If so, why? If not, why not, and how should the section be changed? Explain.

(b) Is there any potential conflict between the TSR and the Electronic Funds Transfer Act ("EFTA")? Are there any gaps in these two laws that affect the protections afforded by the TSR?

(c) What burdens, if any, have authorization requirements placed on sellers and telemarketers? If they exist, do these burdens outweigh the benefits to consumers? Explain.

(d) Have there been changes in consumer awareness about the practice of using unsigned drafts drawn on a consumer's checking account since the Rule was enacted? If so, are changes in the Rule warranted by any such changes in consumer awareness? Explain.

(e) Since the TSR was enacted in 1995, have industry or regulatory authorities developed new alternative methods of ensuring that consumers understand and approve of any debits being made to their checking accounts? If so, what are these procedures? If such new procedures exist, do they necessitate changes in the Rule? Explain.

13. Section 310.3(a)(4) prohibits any false or misleading statement to induce a person to pay for goods or services regardless of the type of payment system used.

(a) Has this section been effective in curbing deceptive telemarketing practices? If so, why? If not, why not, and how should the section be changed? Explain.

(b) Have payment systems evolved significantly enough since the Rule was promulgated to warrant changes in the Rule? If so, how should it be changed? Explain.

14. Section 310.3(b) specifies that it is a deceptive telemarketing act or practice for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaging in deceptive or abusive acts or practices in violation of the Rule.

(a) Has this section been effective in curbing deceptive telemarketing practices? If so, why? If not, how has the section been inadequate?

(b) What changes, if any, should be made to this section? Explain.

(c) How has Section 310.3(b), prohibiting assisting or facilitating conduct that violates the Rule, worked from a law enforcement standpoint? Against whom have cases been brought?

(d) Has the potential liability faced by industry as a result of this section of the Rule caused firms to make changes in

the way they do business? If so, how? Have these changes, if they have occurred, increased the cost of doing business? Are there ways in which this Rule provision could be changed to reduce the burden placed on business without negatively impacting consumers?

(e) How has the "conscious avoidance" standard worked from a law enforcement standpoint? Is this standard too difficult for law enforcement authorities to meet in proving their cases? If so, how should the standard be changed? How has the standard worked from an industry standpoint? Have industry practices changed in response to this potential liability?

15. Section 310.3(c) prohibits merchants from laundering credit card charges.

(a) Have the provisions in Section 310.3(c) been effective in curbing the incidence of credit card laundering in fraudulent telemarketing transactions? If so, why? If not, how has the section been inadequate?

(b) What changes, if any, should be made to this section? Explain.

(c) Have the provisions of this section significantly increased the cost of doing business? If so, how? What changes could be to the Rule to reduce the cost of these provisions without negatively impacting consumers.

#### *IV. Abusive Acts or Practice*

16. Section 310.4(a) specifies that four listed activities (i.e., threats, intimidation or profane or obscene language, and requesting or receiving payment for credit repair, advance fee loan, or recovery room services before the consumer has received the services) are abusive telemarketing acts or practices, in violation of the Rule.

(a) Have these Rule provisions been effective weapons in combating credit repair, advance fee loan, and recovery room scams? If so, why? If not, why not, and how should they be changed? Explain.

(b) Should this section be extended to cover other specific types of practices? If so, which ones?

(c) Have these provisions increased the cost of doing business in areas other than credit repair, the granting of advance fee loans, or the operation of recovery rooms? Explain. What changes in the Rule provisions would eliminate or reduce these effects?

(d) Has the prohibition on threats, intimidation, and use of profane and obscene language been effective in curbing abusive telemarketing practices? If so, why? If not, why not, and how should the provision be changed?

17. Section 310.4(b)(1)(i) prohibits telemarketers or sellers from causing the telephone to ring, or engaging a person in telephone conversation, repeatedly with intent to annoy, abuse, or harass.

(a) Has this provision been effective? If so, why? If not, why not, and how should it be changed?

(b) Does the use of technology create new means for abuse under this provision?

18. Section 310.4(b)(1)(ii) prohibits calls to a person who has stated that he or she does not wish to receive calls made by or on behalf of the seller.

(a) Has this provision been effective in limiting the number of unwanted telemarketing calls that consumers receive? If so, why? If not, why not, and how should it be changed?

(b) Have law enforcement authorities used this provision to take action against telemarketers that place unwanted telemarketing calls? If not, why not, and how should the provision be changed to make it more useful as an enforcement tool? Explain.

(c) What effect, if any, has the use of computerized telemarketing messages, or other technology, had on consumers' ability to invoke their rights under the TSR's "do-not-call" provisions?

19. Section 310.4(b)(2) limits the liability of the seller or telemarketer for violating the "do-not-call" provision in the Rule as long as the seller or telemarketer has instituted certain procedures designed to prevent calls to consumers who have asked not to be called.

(a) What have been the advantages and disadvantages of this provision to industry? to law enforcement?

(b) What changes, if any should be made to this provision? Explain.

(c) Has this limitation of liability been too lenient? If so, what changes should be made to strengthen the provision? How would those proposed changes affect industry costs?

20. Section 310.4(c) prohibits telemarketers from calling consumers at any time except between 8 a.m. and 9 p.m. Has this provision been effective in preventing telemarketing calls outside the permitted time frame? If not, why not, and how should it be changed.

21. Section 310.4(d) requires telemarketers to make certain oral disclosures—i.e., identity of the seller, that the purpose of the call is to sell goods or services, the nature of the goods and services, and, in the case of a prize promotion, that no purchase or payment is necessary.

(a) Has this section been effective in curbing abusive telemarketing practices? If not, why not, and how should it be changed?

(b) Are the required disclosures being made "promptly" and in "a clear and conspicuous manner?"

(c) Are there additional oral disclosures that should be required?

#### V. Recordkeeping

22. Have the recordkeeping provisions for telemarketers been burdensome to sellers and telemarketers? On the ability of law enforcement authorities to take action against telemarketers and sellers that violate substantive provisions of the Rule? What changes, if any should be made to the recordkeeping provisions? Explain.

23. What have been the costs and benefits to industry of the recordkeeping provisions?

#### VI. Exemptions

24. Section 310.6 lists acts or practices that are exempt from the Rule, including pay-per-call-services and the sale of franchises already subject to Commission Rules.

(a) Have the exemptions been effective at minimizing the burden to industry while affording consumers sufficient protections under the Rule? If so, why? If not, why not, and how should this section be changed?

(b) How should sales to home-based businesses be treated under the Rule? Should sales to home-based businesses be considered business-to-business sales? If so, how are telemarketers able to differentiate between a residential telephone number and a home-based business telephone number? If not, why not?

(c) Is the exemption for "face-to-face" transactions still appropriate? If not, why not, and how should this exemption be changed?

(d) Is the exemption for "general media" advertising still appropriate? If not, why not? If the exemption continues to be appropriate, how should the Rule treat solicitations such as classified advertisement, "spam" faxes, and email "spam"?

(e) Are there additional business-to-business products or services that should not be exempted from the TSR (e.g., Internet-related services, professional directories, advertising specialties)? Explain.

(f) Are there additional exemptions that would be appropriate? Explain.

#### Section G. Questions and Comments Regarding the Past and Future of the Telemarketing Industry

The Commission also is seeking comment on the telemarketing industry generally to develop an understanding of the history of telemarketing over the past twenty years and, in particular,

over the past five years, as well as factors currently shaping and likely to continue to shape the industry. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. The questions set forth below are intended only as examples of the issues relevant to the Commission's examination. The public is invited to comment on any relevant issue, regardless of whether it is identified below.

#### I. Industry Background

1. What is the dollar volume of goods and services that are sold through telemarketing today?

2. How has that volume changed over the last twenty years? Over the past five years?

3. How many U.S. firms sell their products domestically, either in whole or in part, through telemarketing? How has that number changed over the past twenty years? Over the past five years?

4. How many of these firms engage in telemarketing on their own behalf? How many employ others to engage in telemarketing for them? How have these numbers changed over time?

5. How many U.S. entities sell their products, either in whole or in part, internationally through telemarketing?

6. How many foreign entities sell their products, either in whole or in part, internationally through telemarketing?

7. How has the market for selling goods or services internationally by telemarketing changed, if at all, over the past twenty years? Over the past five years?

8. How many outbound calls are made each year? How many inbound calls are received each year? How have these numbers changed over the past twenty years? Over the past five years?

9. In addition to sellers and telemarketers, as defined by the TSR, what other third-parties currently serve the industry? How have these parties changed over the past twenty years? Over the past five years?

10. How do the costs of selling through telemarketing compare to those of other methods of marketing, e.g., selling online or in a "brick-and-mortar" face-to-face setting?

#### II. Technology

11. What technological innovations have been implemented by telemarketers over the past twenty years, and what impact have these innovations had on:

(a) The growth of the telemarketing industry?

(b) The number of consumers a telemarketer can contact in a given time period?

(c) The manner in which call lists are developed by list brokers and others?

(d) The costs of selling through telemarketing?

(e) The response/general attitude of consumers toward the industry?

What technological changes have occurred over the past five years?

12. What impact have these technological innovations had on consumers? How have consumers benefitted? How have they been harmed? Explain.

13. How have the following technological developments impacted telemarketing? How have they impacted consumers?

(a) The use of computer databases of consumer information?

(b) Predictive dialers?

(c) The integration of telephone and computer technology?

14. What technology is available to consumers to screen or deflect unwanted calls from telemarketers (e.g., answering machines, caller i.d., anonymous call rejection, privacy managers). Are interception technologies available and affordable? What impact are such innovations having on telemarketing/ers? How will these technologies that intercept calls shape the future of telemarketing? What consumer habits or concerns (such as the concern about security if an unanswered call may make it appear that the house is empty) may reduce the willingness of consumers to rely on this technology?

15. How has the growth of the Internet as a marketing medium affected traditional telemarketing? What trends are likely over the next five to ten years?

#### III. Self-Regulatory Efforts

16. What steps, if any, have industry associations taken to self-regulate? What perceived problems have these steps sought to address? How effective have industry efforts at self-regulation been? Explain.

17. Are industry-sponsored ethical codes effective? How many companies engaged in telemarketing belong to industry associations sponsoring self-regulatory efforts, as compared to the total number of companies engaged in telemarketing? Is compliance with these codes measurable? If so, what do these measurements show?

18. Have industry-sponsored do-not-call lists benefitted consumers? How many consumers have requested to be placed on such lists? Have these lists been effective in stopping unwanted

calls to consumers? Have they benefitted industry?

19. Has the industry undertaken efforts to educate members and/or the public about telemarketing fraud? Describe any such efforts and discuss how effective they have been.

#### IV. Government Regulation

20. Excluding the TSR, what steps, if any, have federal, state, and local governments taken to regulate telemarketing? What perceived problems have these steps sought to address? How effective have these regulatory efforts been? Explain.

21. Have state-sponsored do-not-call lists benefitted consumers? How many consumers have requested to be placed on such lists? Have these lists been effective in stopping unwanted calls to consumers? What have been the costs and benefits to regulators? What have been the costs or benefits to industry?

22. What efforts have federal, state, and local governments taken to educate industry and/or the public about telemarketing fraud? Describe any such efforts and discuss how effective have they have been. What problems have been encountered?

#### V. Consumer Issues

23. What are consumer perceptions of telemarketing today? How have they changed over the past twenty years?

24. How much money do consumers lose as a result of telemarketing fraud each year? Has the amount of telemarketing fraud increased or decreased in the last five years? In the past two decades? How much has it changed?

25. Are consumers more aware of telemarketing fraud than in the past? Are consumers less susceptible to telemarketing fraud now than in times past? What are the most effective ways to educate the public about fraudulent telemarketing practices?

26. Are there particular groups of consumers that are especially susceptible to telemarketing and has this changed over the past two decades?

27. How can consumers be given greater control over contacts by telemarketers? How are they exercising control now and how has that evolved?

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00-4430 Filed 2-25-00; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 4, 5, and 7

[Notice No. 892; Re: Notice No. 884]

RIN 1512-AB97

#### Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R-199P); Public Hearing

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of public hearings on a proposed rule.

**SUMMARY:** ATF is announcing the dates and locations of five public hearings that it will hold concerning health claims and other health-related statements in the labeling and advertising of alcohol beverages. In an earlier notice published in the **Federal Register**, we detailed a proposal to, among other things, prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects. In consideration of the comments received, ATF has determined that the public interest would be best served by the holding of public hearings on this matter. One purpose of the hearings is to gather additional information to determine whether the negative consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for hearings dates.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section for hearings addresses.

Letter notifications and written comments are to be submitted to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; *ATTN: Notice No. 892*. Submit e-mail comments to: [nprm@atfhq.atf.treas.gov](mailto:nprm@atfhq.atf.treas.gov). E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on

not more than three pages 8½"x11" in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Participation section of this notice for alternative means of providing letter notifications and written comments.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Kern or Jim Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8210).

#### SUPPLEMENTARY INFORMATION:

##### Background

In February 1999, ATF approved two directional statements on wine labels. One directed consumers to their family doctors for information regarding the "health effects of wine consumption." The second referred consumers to the Federal Government's "Dietary Guidelines for Americans" for such information. Based on the evidence before us, including a consumer survey conducted by the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention (CSAP), we concluded that we had an insufficient record to disapprove the labels. The CSAP survey concluded that the drinking patterns of most of those who participated in the study would not be influenced by these messages.

The approval of these labels generated considerable interest from Federal health officials, members of Congress, and public advocacy groups, who expressed concern about consumer perception of the label statements. Surgeon General David Satcher, in particular, stated that people might draw an incorrect message from these labels. Moreover, we have become aware of a number of press accounts interpreting the directional statements as actual health claims about the benefits of alcohol consumption and the government's approval of the labels as an endorsement of drinking.

On October 25, 1999, we invited comments on our current policy on health claims and health-related statements by publishing the policy as a proposed regulation in the **Federal Register** (Notice No. 884; 64 FR 57413). The regulation would specifically prohibit the use of any health claim in the labeling or advertising of alcohol beverages unless it is balanced, properly qualified, sufficiently detailed and specific, and outlines the categories of persons for whom any positive effects would be outweighed by the numerous negative health effects.

We also sought comments on whether even such balanced and qualified