

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Revised notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") issues a revised notice of proposed rulemaking to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act" or "the Act"). Section 3 of that Act directs the FTC to prescribe rules, within 365 days of enactment of the Act, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

DATES: Written comments must be submitted on or before June 30, 1995. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions of this comment period or any additional periods for written comment or rebuttal comment.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies of comments in electronic form. Submissions should be captioned: "Proposed Telemarketing Sales Rule," FTC File No. R411001.

FOR FURTHER INFORMATION CONTACT: Judith M. Nixon, (202) 326-3173, or David M. Torok, (202) 326-3140, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, the President signed into law the Telemarketing Act,¹ which directs the Commission to prescribe rules, within 365 days of

enactment of the Act, prohibiting deceptive and abusive telemarketing acts or practices. The Commission published a notice of proposed rulemaking ("NPR") in the **Federal Register** on February 14, 1995.²

In response to the NPR, the Commission received over 300 comments from industry, law enforcement and consumer representatives, as well as from individual consumers and businesses.³ In general, consumers commented that the initially proposed Rule did not go far enough to stop unwanted telemarketing calls. Law enforcement officials uniformly praised the Commission's proposal for its thorough and useful treatment of the various means employed by fraudulent telemarketers to get consumers' money through deception or abuse. Finally, most industry representatives generally maintained that the initially proposed Rule unnecessarily burdened legitimate businesses, adding needless costs through overbroad proposals that failed to aim specifically at deceptive and abusive telemarketing practices.

Between April 18 and 20, 1995, staff of the Commission conducted a public workshop conference in Chicago, Illinois. Twenty associations or individual businesses, each with an affected interest and ability to represent others with similar interests, were selected to engage in a roundtable discussion.⁴ Howard Bellman served as the conference facilitator. Participants discussed various aspects of the initially proposed Rule, addressed each other's comments and questions, and responded to questions from Commission staff members. The conference was open to the public, and more than 150 observers attended. Oral comments from members of the public were invited each day, and 37 individuals spoke during the course of the three-day conference. The entire proceeding was transcribed, and the transcript was placed on the public record.⁵

On May 3, 1995, Commission staff briefed all the Commissioners, in an open meeting, about the rulemaking process, the issues raised in the written comments and the public workshop,

² 60 FR 8313-33.

³ A list of the commenters, and the acronyms which will be used to identify each commenter in this notice, is appended to Section A of this notice.

⁴ The selected participants were: AARP, ATA, ATFA, APAC, ANA, DMA, DSA—Nev., DSA, EMA, ISA, ICTA, MPA, Monex, NAAG, NACAA, NAPA, NCL, NRF, PMAA, and USPS.

⁵ References to the conference transcript are cited as "Tr." followed by the appropriate page designation. References to comments are cited as "[acronym of commenter] at [page number]."

and stated possible approaches to address the issues commenters raised. The briefing was transcribed and the transcript was placed on the public record. The entire public record to date, including the comments, the conference transcript, and the Commission open briefing transcript is available on CD-ROM and has been placed on the Internet.⁶

Based on the Act's legislative history, the written comments received, and the information learned at the workshop conference, the Commission has decided to modify its regulatory approach in this revised proposed Rule. The Commission believes this modification is necessary to effectuate appropriately Congress' directive that the FTC in its rulemaking "develop criteria of behavior" and "issue a * * * rule [that is] flexible enough to encompass the changing nature of [deceptive] activity, while at the same time providing telemarketers with guidance as to the general nature of the prohibited conduct."⁷ The Commission's revised approach addresses many commenters' concerns that the initially proposed Rule cast too broad a net and imposed unnecessary burdens on the legitimate telemarketing industry without adequately focussing on deceptive and abusive telemarketing practices. Additionally, the revised proposed Rule addresses law enforcement concerns that the Rule needs to provide enough enforcement flexibility to reach deceptive and abusive telemarketing acts or practices currently unknown. The Commission believes additional public comment on a revised proposal will assist in producing a final Rule that most effectively prohibits deceptive and abusive telemarketing practices, while not unduly burdening legitimate businesses.

Section B of this notice discusses, on a section-by-section basis, the Commission's revised proposed Rule.

Appendix

List of Commenters and Acronyms

Acronym and Commenter

ADS ADS Teleservices
ADVANTA Advanta Corp.
ALIC Allstate Life Insurance Co.
AMCI Allstate Motor Club., Inc.
A-MARK A-Mark Precious Metals, Inc.
AAF American Advertising Federation

⁶ The FTC gopher server address is CONSUMER.FTC.GOV 2416. For World Wide Web access, the URL is GOPHER://CONSUMER.FTC.GOV:2416.

⁷ H. R. Rep. No. 20, 103rd Cong., 1st Sess. 8; S. Rep. No. 80, 103rd Cong., 1st Sess. 9 (hereinafter referred to as "House Report" and "Senate Report," respectively).

¹ 15 U.S.C. 6101-08.