

FEDERAL TRADE COMMISSION**16 CFR Part 310****Telemarketing Sales Rule Fees**

AGENCY: Federal Trade Commission.

ACTION: Revised notice of proposed rulemaking and request for public comment.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing a Revised Notice of Proposed Rulemaking ("Revised Fee NPRM") to amend the FTC's Telemarketing Sales Rule ("TSR") by adding a new section that would impose fees on entities accessing the national do-not-call registry. This Revised Fee NPRM invites written comments on the issues raised by the proposed changes, and seeks answers to the specific questions set forth in Section X.

The Commission is also announcing that full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision of the Amended TSR, will be required on October 1, 2003.

DATES: Written comments will be accepted until May 1, 2003. Time is of the essence to promulgate the proposed fees. Thus, the Commission does not anticipate providing any extension to this comment period.

ADDRESSES: The Commission encourages comments to be submitted electronically to the following e-mail address: feerule@ftc.gov. Alternatively, commenters may submit an original plus two paper copies of their comments to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all paper comments should also be submitted, if possible, in electronic form, on 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 should 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.

All comments and any electronic versions (*i.e.*, computer disks) should be identified as "Telemarketing Rulemaking—Revised Fee NPRM Comment. FTC File No. R411001." The Commission will make this NPRM and, to the extent possible, all comments received in electronic form in response to this NPRM, available to the public

through the Internet at the following address: <http://www.ftc.gov>.

Comments on proposed revisions bearing on the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, as well as to the FTC Secretary at the address above.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326-3075, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:**Background**

On January 30, 2002, the FTC published a Notice of Proposed Rulemaking to amend the FTC's TSR and to request public comment on the proposed changes. 67 FR 4492 (Jan. 30, 2002) ("the Rule NPRM"). Among other provisions, the Rule NPRM proposed to establish a national do-not-call registry, to be maintained by the FTC, that would permit consumers who prefer not to receive telemarketing calls to contact one centralized registry to effectuate this preference. On May 29, 2002, the FTC published another Notice of Proposed Rulemaking to further amend the TSR by imposing user fees on sellers and telemarketers for their access to the proposed national do-not-call registry. 67 FR 37362 (May 29, 2002) ("the User Fee NPRM"). In issuing the User Fee NPRM, the Commission was guided by the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, and the Office of Management and Budget Circular No. A-25. The Commission received 34 comments submitted in response to the User Fee NPRM.¹

The Commission issued final amendments to the TSR on December 18, 2002. 68 FR 4580 (Jan. 29, 2003). Among the changes made to the TSR, the Commission adopted the proposal to establish a national do-not-call registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive telemarketing calls. When full

compliance with the do-not-call provisions of the Amended TSR is required, on October 1, 2003, telemarketers will be required to refrain from calling consumers who have placed their numbers on this registry. 16 CFR 310.4(b)(1)(iii)(B). To ensure compliance with this requirement, telemarketers will be required to access the national registry at least once every three months in order to remove from their telemarketing lists those consumers who have placed their telephone numbers on the national registry. 16 CFR 310.4(b)(3)(iv). When it issued the Amended TSR, the Commission reserved its decision on the issues raised in the User Fee NPRM, stating that it would issue a revised Notice of Proposed Rulemaking to seek further comment on the issues raised in that proceeding. See 68 FR 4580, 4640 n. 716.

On February 20, 2003, the President signed into law the Consolidated Appropriations Resolution of 2003, Public Law 108-7 (2003) ("the Appropriations Act"), which appropriated funds for the operation of the FTC during fiscal year 2003. In the same Act, Congress also authorized the agency to collect fees sufficient to implement and enforce the do-not-call provisions of the TSR. Congress further estimated the costs for fiscal year 2003 at \$18,100,000. *Id.* at Division B, Title II. See also The Do-Not-Call Implementation Act, Public Law 108-10 (2003) ("the Implementation Act") at section 2. Pursuant to the Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act, 15 U.S.C. 6101-08 ("the Telemarketing Act"), the FTC is issuing this Revised Fee NPRM.²

² Many commenters to the User Fee NPRM claimed that the FTC lacked the authority to impose a user fee based on the Independent Offices Appropriations Act of 1952. See, e.g., ABA-User Fee at 1-3; Ameriquest-User Fee at 1-5; Discover-User Fee at 1-4; DMA-User Fee at 1-7 ("If the FTC wants to collect fees for its regulation of non-deceptive and non-abusive telemarketing, it must obtain approval from Congress to do so"). DMA's comments were supported by ERA, PMA, and MPA. Other commenters suggested that consumers should be charged the fee necessary to implement the national registry. See, e.g., ARDA-User Fee at 1-4; ATA-User Fee at 3-6; Idaho Realtors-User Fee at 1-2; Infocision-User Fee at 4; ITC-User Fee at 3-5; MBNA-User Fee at 3; NEMA-User Fee at 2-3; SBC-User Fee at 2-5. But see NASUCA-User Fee at 2; NCL-User Fee at 1; TRA-User Fee at 3. Still other commenters suggested that the User Fee NPRM was premature, and that they had insufficient information available to properly comment on the proposal. See, e.g., CBA-User Fee at 1; Household-User Fee at 3; MasterCard-User Fee at 1-3. With the passage of the Appropriations Act, the Implementation Act, and the Amended TSR, these comments are moot.

¹ A list of commenters to the User Fee NPRM and the Rule NPRM, and the acronyms used to identify those entities, was included in Attachment B to the Statement of Basis and Purpose for the Amendments to the TSR, 68 FR 4677-78 (Jan. 29, 2003) ("TSR SBP"). Comments submitted in response to the User Fee NPRM will be cited in this Notice as "[Name of Commenter]-User Fee at [page number]." Comments submitted in response to the Rule NPRM will be cited as "[Name of commenter]-Rule NPRM at [page number]."