

Agana, Guam, Guam International, RNAV (GPS) Z RWY 6R, Orig.
 Agana, Guam, Guam International, RNAV (GPS) RWY 24L, Orig.
 Agana, Guam, Guam International, RNAV (GPS) RWY 24R, Orig.
 Agana, Guam, Guam International, GPS RWY 6L, Orig. Cancelled.
 Agana, Guam, Guam International, GPS RWY 24R, Orig. Cancelled.
 Lihue, HI, Lihue, ILS RWY 35, Amdt 6.
 Lihue, HI, Lihue, RNAV (GPS) RWY 17, Orig.
 Lihue, HI, Lihue, RNAV (GPS) RWY 21, Orig.
 Lihue, HI, Lihue, RNAV (GPS) RWY 35, Orig.
 Mansfield, MA, Mansfield Muni, NDB RWY 32, Amdt 7.
 Mansfield, MA, Mansfield Muni, RNAV (GPS) RWY 32, Orig.
 Mansfield, MA, Mansfield Muni, GPS RWY 32, Orig. Cancelled.
 Cheboygan, MI, Cheboygan County, VOR RWY 9, Amdt 8.
 Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 9, Orig.
 Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 27, Orig.
 Fargo, ND, Hector Intl, RNAV (GPS) RWY 13, Orig. Cancelled.
 Fargo, ND, Hector Intl, RNAV (GPS) RWY 31, Orig. Cancelled.
 Bradford, PA, Bradford Regional, VOR RWY 14, Orig.
 Bradford, PA, Bradford Regional, VOR/DME RWY 14, Amdt 9.
 Bradford, PA, Bradford Regional, ILS RWY 32, Amdt 11.
 Bradford, PA, Bradford Regional, RNAV (GPS) Y RWY 14, Orig.
 Bradford, PA, Bradford Regional, RNAV (GPS), Z WY 14, Orig.
 Bradford, PA, Bradford Regional, RNAV (GPS) RWY 32, Orig.
 Lock Haven, PA, William T. Piper Memorial, RNAV (GPS)—A Orig.
 Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 17, Orig. Cancelled.
 Babelthuap Island, PS, Babelthuap/Koror, GPS RWY 9, Amdt 1B, Cancelled.
 Babelthuap Island, PS, Babelthuap/Koror, GPS RWY 27, Amdt 1B, Cancelled.
 Fort Atkinson, WI, Fort Atkinson Muni, VOR—A, Orig-B.
 Fort Atkinson, WI, Fort Atkinson Muni, RNAV (GPS) RWY 3, Orig.
 Fort Atkinson, WI, Fort Atkinson Muni, GPS RWY 3, Orig. Cancelled.
 Fort Atkinson, WI, Fort Atkinson Muni, RNAV (GPS) RWY 21, Orig.

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FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Stay of compliance date.

SUMMARY: In this document, the Federal Trade Commission (“FTC” or “Commission”) announces that in response to supplemental petitions from

the Direct Marketing Association (“DMA”) and the American Teleservices Association (“ATA”), the Commission has decided to extend the date by which it will require full compliance with the amended Telemarketing Sales Rule (“amended TSR” or “amended Rule”), until October 1, 2003.

DATES: The rule amending the TSR, published January 29, 2003 (68 FR 4580), became effective March 31, 2003. The Commission will require full compliance with §§ 310.4(b)(1)(iv) and § 310.4(b)(4) on October 1, 2003.

ADDRESSES: Requests for copies of the amended Rule and this document should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, (202) 326-2452, Karen Leonard, (202) 326-3597, Michael Goodman, (202) 326-3071, or Carole Danielson, (202) 326-3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On January 29, 2003, the Federal Trade Commission published the amended TSR, 16 CFR part 310, and its Statement of Basis and Purpose in the **Federal Register**.¹ The document stated that the Amended Rule would become effective March 31, 2003; that full compliance with § 310.4(a)(7), the caller identification transmission provision, would be required by January 29, 2004; and that the Commission would announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the “do-not-call” registry provision, would be required.

In response to petitions filed February 27, 2003, by DMA and February 27, 2003, by ATA, the Commission determined to extend the date by which it will require full compliance with § 310.4(b)(4)(iii) (the recording requirement of the call abandonment safe harbor provision) until October 1, 2003. The Commission also stayed until October 1, 2003, the date by which it will require full compliance with the safe harbor record retention requirement, § 310.4(b)(4)(iv), to the extent it would require record keeping to document the use of a recorded message in instances of call abandonment.

At that time, the Commission determined not to stay the requirement of full compliance with the prohibition on call abandonment (§ 310.4(b)(1)(iv))

or the other requirements of the call abandonment safe harbor provision (§§ 310.4(b)(4)(i), (ii) & (iv)) because the petitioners had not demonstrated that telemarketers would be unable to comply with these call abandonment provisions.

Subsequently, on March 25, 2003, DMA renewed its request to stay the compliance date of the call abandonment provisions.² DMA submitted numerous affidavits from manufacturers and users of predictive dialers containing information not previously submitted to the Commission, either in the rulemaking proceeding or in the initial petitions to stay various provisions of the amended TSR. These affidavits stated that, as a practical matter, compliance with the call abandonment safe harbor by March 31, 2003, would be very difficult or impossible for some telemarketers. Specifically, these affidavits stated that it is difficult if not impossible to set some predictive dialer equipment currently in use to a maximum abandonment rate of 3% of answered calls, as required by § 310.4(b)(4)(i). According to the DMA petition and supporting affidavits, this equipment incorporates hardware or software designed to calculate the abandonment rate on the basis of all calls placed, not all calls answered. This means that the equipment cannot, or cannot easily, be set to abandon no more than 3% of all calls answered by the called consumer, as required by § 310.4(b)(i). According to DMA, additional time is therefore necessary for some telemarketers to comply with § 310.4(b)(4)(i), given this limitation on their current predictive dialer equipment. The ATA supplemental petition echoes similar arguments.

Based on information newly submitted by DMA, together with information obtained from other sources, the Commission has determined that full compliance with the requirement in the call abandonment safe harbor that no more than 3% of all calls answered by a consumer be abandoned (§ 310.4(b)(4)(i)) by March 31, 2003, may constitute an undue burden on some telemarketers and sellers, who need to

² On March 26, 2003, the United States District Court for the Western District of Oklahoma denied petitioner DMA’s motion for a preliminary injunction based on the same arguments and facts presented here. *U.S. Security v. FTC*, Case No. CIV-03-122-W. Although the Commission believes that this was the correct decision under the legal standards for obtaining a preliminary injunction, the Commission notes that it has broad discretionary authority to grant a stay where it believes that the goals of the rule making will be served.

¹ 68 FR 4580 (Jan. 29, 2003).