

exemptions already are exempt from the Rule and, therefore, there is no reason to expressly restate that exemption in the Rule.¹⁰²⁰ The Commission also declines to add additional exemptions on behalf of specific industry segments, with the exception of charitable organizations. As noted above in the discussion on exempting charities from compliance with the national “do-not-call” registry provision, the Commission believes that charitable solicitations present unique circumstances that make an exemption necessary and appropriate. The Commission declines, however, to introduce further limitations to the applicability of the “do-not-call” registry because it believes such action would be inconsistent with the privacy mandate of the Telemarketing Act and would likely result in consumer confusion and frustration.

G. Section 310.7 — Actions by States and Private Persons.

Section 310.7 in the original and proposed Rules sets forth the procedures by which the states and private persons may bring actions under the Rule, as is provided for in the Telemarketing Act.¹⁰²¹ In the NPRM, the Commission noted that it received no comments directly on this section, but that commenters were generally supportive of the Rule’s enforcement scheme allowing the Commission, the states, and private parties to bring actions under the TSR.¹⁰²² The Commission noted that the record at that time contained evidence of two sources of frustration regarding enforcement of the Rule: 1) the \$50,000 monetary threshold required for a private party to bring suit under the Rule; and 2) the difficulty in identifying Rule violators, particularly those who violate the abusive practices section of the Rule.¹⁰²³ The Commission noted then that the amount in controversy requirement was included in the Telemarketing Act, and it is therefore up to Congress to make any change to this amount.¹⁰²⁴ With regard to the difficulty in identifying violators, the Commission expressed its belief that two proposed

provisions—the prohibition on blocking Caller ID information, and the prohibition on denying or interfering with a consumer’s right to be placed on a “do-not-call” list—would be beneficial in addressing these concerns.¹⁰²⁵

The Commission received no comments on this section in response to the NPRM, and thus no modifications are included in the amended Rule.¹⁰²⁶

H. Section 310.8 — Fees.

This section of the Rule, now allocated for the new provision on fees, is reserved. When completed, the fee section will be included here.

I. Section 310.9 — Severability.

This provision of the Rule is retained in the amended Rule, but renumbered as § 310.9. Section 310.8, formerly the section number for the Severability provision, now contains the provision regarding fees for the national “do-not-call” registry.

J. Rulemaking Review Requirement.

The original Rule required that a Rule Review proceeding be commenced within five years of the effective date of the original Rule. The amended Rule does not contain an equivalent provision. The Commission has a policy of reviewing all of its Rules and guides on a periodic basis to ensure that they continue to meet their goals and provide the protections that were intended when they were promulgated. This periodic review also provides an opportunity to examine the economic costs and benefits of the particular Rule or guide under review. The Commission believes that this periodic review should be sufficient for the amended Rule, and that it is unnecessary to include a

specific provision regarding review within the text of the amended Rule.

K. Effective Date.

The amended Rule is effective on March 31, 2003, and full compliance with all provisions of the amended Rule—except § 310.4(a)(7), the caller identification transmission provision, and § 310.4(b)(1)(iii)(B), the national “do-not-call” registry provision—is required by that date. The Commission believes that making the amended Rule effective on March 31, 2003 will provide more than sufficient time for sellers and telemarketers to change their practices to conform to the amended Rule. The publication of the proposed Rule in January 2002 provided industry members with ample notice of the proposed changes in the Rule, and making the amended Rule effective on March 31, 2003 will give industry members sufficient additional time to familiarize themselves with the requirements of the amended Rule, and to ensure that their operations are in full compliance with all except two provisions of the amended Rule.

The Commission has determined that additional time may be required to allow sellers and telemarketers to come into full compliance with the caller identification transmission requirement. Therefore, full compliance with § 310.4(a)(7) is required by January 29, 2004. The Commission will announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the “do-not-call” registry provision, will be required. The Commission anticipates that full compliance with the “do-not-call” provision will be required approximately seven months from the date a contract is awarded to create the national registry.

IV. Paperwork Reduction Act

In light of both changes to the Rule following the NPRM and public comments received on Commission staff’s prior PRA burden analysis for the NPRM, staff will submit for OMB review and clearance a supporting statement detailing its revised burden analysis.

V. Regulatory Flexibility Act

A. Need for and Objectives of the Rule.

The amendments to the TSR announced here are the result of a review of the existing Rule as required by the Telemarketing Act.¹⁰²⁷ As discussed above in this SBP, and in the NPRM, the objective of the amendments is to fulfill the mandate of the Telemarketing Act to ensure that consumers are protected from

¹⁰²⁰ For example, debt collection and market research activities are not covered by the Rule because they are not “telemarketing”—i.e., they are not calls made “to induce the purchase of goods or services.” Of course, if the debt collection or market research call also included an upsell, the upsell portion of the call would be subject to the Rule as long as it met the criteria for “telemarketing” and was not otherwise exempt from the Rule.

¹⁰²¹ 15 U.S.C. 6103 (states) and 6104 (private persons).

¹⁰²² 67 FR at 4532-33.

¹⁰²³ 67 FR at 4533.

¹⁰²⁴ *Id.*

¹⁰²⁵ *Id.*

¹⁰²⁶ Some commenters did advocate for meaningful Rule enforcement, including random monitoring and publicity regarding enforcement. See AARP-NPRM at 10 (meaningful enforcement and publicity); EPIC-NPRM at 27 (suggesting random monitoring and also recommending registration and bonding requirements, which the Commission declines to adopt noting the states already have such requirements in many instances, and that further duplication of that effort would not enhance the Commission’s law enforcement efforts). The Commission believes that the enforcement record for the TSR to date, with over 139 cases brought and \$200 million in judgments, shows that the Commission and its state law enforcement partners have made enforcement of the Rule a top priority. Moreover, enforcement actions under the Rule often have been conducted as part of a “sweep” of cases, often accompanied by a media advisory and public education campaign, which serves as a means of raising public awareness of certain kinds of telemarketing fraud. In regard to the suggestion that call centers be randomly monitored for compliance with the Rule, the Commission notes that it has used, and will continue to use, a variety of law enforcement techniques to ensure compliance with the Rule.

¹⁰²⁷ 15 U.S.C. 6108.