



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

February 23, 2004

Via E-Mail

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex D)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Monthly Registry Access, Project No. R411001

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking requesting comment on its proposal to amend the Telemarketing Sales Rule (“TSR”) to require sellers and telemarketers to “use a version of the National Do Not Call Registry obtained from the Commission no more than thirty (30) days prior to the date any call is made.” 69 Fed. Reg. 7,330 (Feb. 13, 2004).

NADA represents over 20,000 franchised automobile and truck dealers who sell new and used vehicles and engage in service, repair and parts sales. Our members employ more than 1.2 million people nationwide. A significant number of our members are small businesses as defined by the Small Business Administration. Accordingly, NADA is particularly focused on regulatory changes that may increase the current regulatory burden that exists for small businesses.

Because the Consolidated Appropriations Act of 2004 directs the Commission to change the update or “scrubbing” requirement from once every three months to once every month, our comments focus exclusively on: (i) the likely impact the change will have on our members, and (ii) our request for a clarification that we believe will partially reduce this impact.

Likely Impact of Mandated Change

In Section G of the Supplementary Information, the Commission seeks comment on the impact this change will have on small entities. In the limited response period provided in this rulemaking, we are unable to provide the specific data sought by the Commission. Nevertheless, we offer the following general information based on our daily interaction with members who

have diligently been attempting to comply with the National Do Not Call rules contained in the TSR amendments and the Federal Communication Commission's ("FCC") rules implementing the Telephone Consumer Protection Act ("TCPA").

Our members often contact their customers by telephone to discuss the products and services they offer and to ensure their customers are satisfied with their purchases. Over the years, this has been critically important to their ability to maintain contact with customers in their local communities. These calls typically are not part of a formal calling campaign, but rather stem from individual salespersons and service department personnel who attempt to contact past customers or referrals they receive. Whereas many of these calls fit within the established business relationship exemption to the National Do Not Call rules, others do not. Because most customers retain their purchased or leased automobiles for a period that exceeds 18 months, these dealership employees must now check many of their outgoing calls against the portion of the National Do Not Call Registry for which their business has registered.

Because an automobile dealership's customer base centers around its local community, many dealerships do not engage in telemarketing calls over state lines. However, other dealerships, particularly those located in proximity to neighboring states, do initiate such calls and therefore will be impacted by the TSR amendments set forth in this rulemaking. We believe a significant number of automobile dealers fall into this latter category. Regarding the remainder, they similarly will be impacted to the extent the FCC adopts similar rules.

The need to scrub the telephone numbers of consumers against those contained in an initial download and subsequent quarterly downloads has imposed a significant compliance burden on our members. Unlike larger businesses that market to a nationwide consumer base, most dealerships do not have the in-house resources to easily download and store tens or hundreds of thousands of telephone numbers to which they can, on an ongoing basis, scrub their outbound, nonexempt telephone solicitations. Part of this burden includes having to conduct the quarterly download. Now that Congress has tripled the frequency of this requirement by mandating monthly downloads, dealers and other small businesses can expect a corresponding increase in the personnel costs necessary to download the data and perform the scrub. Because small businesses may lack available personnel to perform this additional function, they may find it necessary to outsource the function to a vendor (which many already have done since the National Do Not Call rules took effect). If this occurs, as it often does with small business managers who already must handle multiple responsibilities, the costs can be expected to rise further. This will increase overhead expenses and ultimately result in greater costs to consumers for the goods and services they desire.

Although businesses are increasingly outsourcing these functions, many automobile dealers will, out of necessity, delegate this increased responsibility to its own personnel. We share the Commission's belief that these and other businesses "may need an extended period to make the necessary modifications in their systems and procedures to be able to comply with this amended

provision.” 69 Fed. Reg. 7,331 (Feb. 13, 2004). The extended time period also is necessary to ensure small businesses are aware of the change. Accordingly, we urge the Commission to establish a final compliance date for this requirement that is no earlier than January 1, 2005.

Clarification to Reduce Impact of New Requirement

The FTC can greatly assist small businesses with this burden by explicitly stating that: (i) registered sellers who have paid the appropriate annual fee, if any, are not required to conduct either an initial or a monthly download if they use the single number lookup feature to screen their outgoing, nonexempt telemarketing calls, and (ii) using the single number lookup feature in this manner constitutes “employing a version of the ‘do-not-call’ registry obtained from the Commission,” 16 CFR § 310.4(b)(3)(iv), for purposes of availing oneself of the safe harbor protection against erroneous violations of the National Do Not Call rules. In addition, the Commission should specifically state that the need to “maintain records documenting this process,” *Id.*, does not require sellers that use the single number lookup feature to retain records documenting each use of this feature.

We believe the foregoing clarification is essential to ensure small businesses have the ability to comply with the National Do Not Call rules. Many of these businesses cannot feasibly download, store and scrub their outgoing telephone solicitations against the extensive list of phone numbers contained on the registry. They rely on the single number lookup feature to ensure they do not call non-exempt registered telephone numbers. The benefits of this useful compliance tool will be significantly reduced if these entities must conduct a physical download of the registered telephone numbers when the business registers as a seller and every 30 days thereafter. Until this issue is clarified, many small businesses will conduct and retain records of downloads for no purpose other than fulfilling this obligation and availing themselves of the safe harbor protection. This creates an unnecessary burden as this mechanical exercise does nothing to further these entities’ compliance with the prohibition against initiating telemarketing calls to registered phone numbers absent an exemption. 16 CFR § 310.4(b)(1)(iii)(B).

The issuance of this clarification also would be consistent with the following statement made by the Commission in the Supplementary Information portion of its Final Rule establishing the TSR fees:

... after providing the required identifying information and paying the appropriate fee, if any, companies will be allowed to check, via interactive Internet pages, a small number of telephone numbers (less than ten) at a time to permit small volume callers to comply with the national registry requirements of the TSR *without having to download a potentially large list of all registered telephone numbers within a particular area.*

(Emphasis added). 68 Fed. Reg. 45,142 (Jul. 31, 2003).

NADA Comment to FTC
February 23, 2004
Page Four

This statement, along with the clarification we have outlined, is consistent with the TSR safe harbor requirement that sellers “employ” a version of the National Do Not Call Registry that is no more than 30 days old. Businesses that use the single number lookup feature typically will do so within a short period of time before initiating the intended telemarketing call. In most cases, this likely will occur on or near the day of the call.

Conclusion.

For the foregoing reasons, we urge the Commission to: (i) set a final compliance date for this new requirement that is no earlier than January 1, 2005, and (ii) issue the clarification we have proposed. We appreciate the ongoing efforts of FTC staff to assist our members with their compliance responsibilities.

Thank you for the opportunity to comment on this matter.

Sincerely,

Paul D. Metrey
Director, Regulatory Affairs