



February 25, 2002

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

RE: Monthly Registry Access, Project No. R411001

Ladies and Gentlemen:

The American Resort Development Association (ARDA) appreciates this opportunity to comment on the Federal Trade Commission's proposed amendments to the Telemarketing Sales Rule (TSR) Do Not Call Safe Harbor provision, 16 CFR 310.4(b)(3)(iv) to require more frequent updating of calling lists against the National Registry.

In this rulemaking proceeding the FTC is seeking comment on two very specific issues relative to this change, (1) whether to require 30 day or monthly timeframe for the scrubbing of call lists, and (2) the effective date of this change.

The American Resort Development Association ("ARDA") is the Washington, D.C. based trade association representing the vacation ownership industry. Established in 1969, ARDA today has over 800 members, ranging from small, privately held firms to publicly traded companies and international corporations. ARDA's diverse membership includes companies with vacation timeshare resorts, private residence clubs, land development, lot sales, second homes and resort communities. However, the majority of ARDA's membership is related to the timeshare industry

We postulate that ARDA members are not alone in their desire that more than 30 days be allowed for purging registered numbers from their calling databases. Though our members are resigned to Congress' direction to the Commission to implement a "once a month" purging of telephone numbers as a matter of law, they are also aware of the statutory mandate to report back to Congress annually on the progress, viability and effectiveness of the National Registry in two years' time. ARDA requests that the Commission consider including in its report that a monthly or 30-day purging imposes a significant burden on sellers and telemarketers. With a 30-day purging schedule, sellers and telemarketers must constantly purge numbers that may be used by outlying company phone rooms and sales offices. The deleted numbers must be passed along to these remote sources so they can remove these numbers from their systems. The process can take some time, thus actually requiring sellers and telemarketers to download more frequently than every 30 days. In effect, the 30 days becomes 14 or fewer days and unreasonably opens sellers and telemarketers to unintended liability. A quarterly downloading schedule requirement allows adequate time to maintain a 30-day usage period purging schedule, if that is indeed the intent of Congress and the Commission.

Further, the change from having no National Registry to effectively a less than 30-day list will significantly increase costs to sellers and telemarketers. Some members estimate the cost at three times of the cost under a quarterly download scheme. These costs will be passed on to consumers, as unfortunately will the pressure that sellers and telemarketers will be under to close sales within the allotted timeframe. The change to a 30-day schedule also will likely result in continued loss of jobs. Accordingly, ARDA requests that the Commission include this information in its annual report to Congress.

A. 30 Days vs. "Once a Month"

Subject to our members concerns with a monthly rather than a quarterly download of registered numbers, ARDA supports the Commission's position to adopt a 30-day rather than a "monthly" downloading of the national registry. The Commission's scenario involving unscrupulous sellers and telemarketers taking advantage of the broad latitude of the "once a month" language is well conceived and not out of the realm of possibility. However, ARDA members are concerned how the final rule will define the 30-day timeframe.

Further, ARDA members are concerned that the Commission establishes clear parameters surrounding the process for consumer complaints that naturally may increase not as a direct result of any seller or telemarketer activity, but from the shortening in the downloading and purging schedule itself.

With regard to the 30-day requirement, the rule should be clear on four pertinent issues:

- Is the 30-day requirement a downloading or purging requirement?
- If a downloading requirement, does the rule prohibit the seller or telemarketer from calling the downloaded numbers on the same day the seller or telemarketer downloads the registry or beginning the next day?
- Should the commission set a date and time required for downloading for consistency?
- How will the Commission treat the onslaught of complaints that could result from the change in downloading schedule?

1. Downloading vs. Purging. The final rule could require that sellers and telemarketers download the National Registry and purge their calling lists every 30 days after an individual consumer places his or her phone number on the list. This would require daily downloading of the National Registry and daily purging of any new phone numbers. This process would be extremely burdensome and beyond Congress' intent in the Appropriations Act when it stated that sellers and telemarketers must "obtain from the [Commission] the list of telephone numbers on the 'do-not-call' registry once a month." While such an interpretation is theoretically possible, we presume that the Commission would not adopt such an interpretation.

2. Calling Downloaded Numbers. The seller or telemarketer may not be able to purge registered numbers within the 30-day period unless the seller or telemarketer downloads on a more frequent basis. ARDA believes the intent of Congress was to allow sellers and telemarketers at least 30 days in which to obtain new numbers from the National Registry in order to strike a balance between adequate consumer protection and the needs of business, and especially to lessen the burden on smaller businesses.

The change from a quarterly download schedule to a 30-day schedule likely will result in an onslaught of complaints at the outset. ARDA members fear that with the shortened timeframe in which to purge registered numbers there may be greater opportunity for inadvertent errors. Further, the shortening of the timeframe could provide the impetus for registered consumers to impulsively initiate complaints, thus clogging the Commission's investigative and enforcement agenda and the courts with potentially unfounded complaints and legal actions.

B. Effective Date for Download

Shortening the timeframe in which all sellers and telemarketers may access and download the National Registry could likely cause a strain on the relevant systems. Where nearly 5,000 (based on the FTC's figures for pre-October 1, 2003 registration) sellers and telemarketers had a three-month period in which to download the list, probably close to the same number or more must now download the National Registry in a 30-day period or less. While there will be a need for flexibility, the Commission may wish to consider setting download period for sellers and telemarketers based on some reasonable criteria. For example, the Commission could establish a regional schedule (similar to that imposed for consumers registering for the list at its inception) or schedule based on company size. This will also provide some consistency and lessen the opportunity for error.

It is possible, given the number and various download needs for sellers and telemarketers, that there will be minimal overlap of downloading. Further, the Commission may determine that there will not be a significant decrease in ability to access and download the National Registry thus rendering moot any necessity for assigned days or weeks in which particular sellers or telemarketers must download the registry. However, in either case, ARDA requests that the Commission provide its position on this issue. ARDA requests that the Commission extend the effective date out as long as is reasonably possible. Because of the shortening of the required purge schedule, the industry will feel the impact from both a procedural as well as an economic standpoint. Companies that engage in telemarketing to various degrees must be allowed sufficient time to adjust their procedures in order to handle the significant decrease in the time allotted to purge lists. Further, a gradual change will result in a less immediate economic impact on the industry.

C. Complaints.

ARDA requests that the commission consider this issue not only in promulgating the final rule, but also in deciding whether to bring enforcement actions closely following the effective date of the final rule. AS the Commission well notes, this would be consistent with the establishment of effective dates for other provisions under the amended Telemarketing Sales Rule.

As the Commission is well aware, there are several key regulatory initiatives pending for 2004. Many of these fall within the Commission's province: implementation of the CAN-SPAM Act, rulemaking under Fair and Accurate Credit Transactions Act of 2003 (FACTA), and possible changes to privacy notices under Gramm-Leach-Bliley Act. While the Commission will be actively engaged in drafting rules and seeking commentary, the industry will be evaluating its business needs in light of potential changes and hopefully engaged in the debate as well, providing valuable input. Thus, with a burdensome regulatory schedule looming ahead, ARDA members believe it wise to allow time for thorough consideration of all pending regulations. ARDA suggests an effective date one year from publication in the Federal Register as reasonable.

Thank you very much for the opportunity to express the views of the American Resort Development Association.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sandra Yartin DePoy', written over a circular scribble.

Sandra Yartin DePoy
Vice President
Federal & Regulatory Affairs