

**Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580**

COMMENTS OF

**COMMENTS OF THE DIRECT MARKETING
ASSOCIATION**

**TELEMARKETING SALES RULE – COMMENT
MONTHLY REGISTRY ACCESS, PROJECT No.
R411001**

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The Direct Marketing Association (DMA) appreciates the opportunity to provide the Federal Trade Commission (FTC) with our comments regarding the notice of proposed rulemaking on an amendment of the Telemarketing Sales Rule (TSR). The DMA is the leading trade association for businesses interested in interactive and database marketing with nearly 4,700 member companies from the United States and 53 other countries. Founded in 1917, its members include direct marketers from every business segment as well as the nonprofit and electronic marketing sectors. According to a DMA - commissioned economic impact study, direct and interactive marketing sales in the United States are projected to have surpassed \$1.7 trillion in 2003.

Summary

The DMA believes that implementation of the 30-day or monthly download should coincide with the automation of the National do-not call Registry (Registry). The FTC has stated that it is moving toward that automation. We believe that automation should be completed within a year. Therefore, the proposed rule should be effective one year after it is promulgated. This will also give companies time to prepare to meet the new requirements. Small teleservice companies will particularly benefit from the implementation phase as they do not have the financial and human resources to conform to the new 30-day or monthly requirement.

Additionally, The DMA believes that the TSR should allow marketers to download the Registry and scrub their lists “monthly”. That term comports directly with the statute. Many marketers work on a monthly business model, and a TSR following the statute explicitly would assist those marketers. However, The DMA agrees with the FTC

that a 30-day download also meets the requirement of the law. We recommend that the FTC provide marketers with the option to comply with the TSR by downloading and scrubbing every 30 days regardless of the month. This provides marketers with the option to have a consistent interval for downloading. Alternative compliance requirements provide marketers with differing business models to comply with the TSR with less disruption.

I. Introduction

Our comments will focus on the practical problems that our industry would face in implementing a 30-day or monthly download and scrub of the Registry. Specifically, The DMA will comment on the issue of FTC automation of the list and the interim problem of compliance of a 30-day scrub rule for the teleservice industry – especially small companies. With this in mind, we will discuss the need for the Commission to consider a delay in implementation of this amendment in order to give the Commission and the industry sufficient time to ensure an effective compliance system.

II. Implementation

Moving from a 90-day to monthly or 30-day download requirement will increase the costs of many telemarketers complying with the TSR. Those costs for downloading over 57 million numbers, as the FTC found from its extensive record in its initial rulemaking creating the Registry (68 FED REG 4665, January 29, 2003) will fall most heavily upon small businesses. Delaying the effective date until there could be some productivity advancement would assist marketers, especially the smaller companies. Currently, telemarketing companies making outbound calls do not have the ability to automatically download the Registry and scrub their call lists. There are many manual

steps required. Since the FTC has stated that it is moving toward automating the download process for the Registry, it seems a sensible decision to delay implementation until the automation process is completed. We would expect that process to be completed within a year. Therefore, The DMA believes that the FTC should establish an implementation date for the proposed rule one year after promulgation of the rule. This will allow a fluid and direct input of do-not call numbers into a company database. The consumer will be well served as well since companies, both large and small, will have accurate and immediate data that will significantly lower mistakes that may have previously occurred from manual downloads from the Registry. Moreover, cost savings to marketers will lower costs for the consumer.

III. “Thirty (30) days” versus “Monthly”

There has been significant discussion within the teleservice industry on the issue of a thirty-day or monthly schedule. However, The DMA believes that companies should also have the flexibility of downloading the Registry and scrubbing call lists on a monthly basis. That way companies with a “monthly” schedule would have the ability to continue that business model. Moreover, a monthly requirement tracks the statutory language exactly. However, The DMA agrees with the FTC that a 30-day requirement would meet the requirements of the law. Allowing companies an option to establish a 30-day schedule, regardless of the non-uniform number of days in each month, provides them needed flexibility in operating their businesses. These two alternatives give marketers a choice of compliance methodologies within the language of the statute. The choice should be up to the marketer, not dictated by rule since each option comports with the express directive of the Congress.

The option could be established by requiring monthly updates with a *proviso* in the TSR that a 30-day update would meet the monthly requirement. This flexibility makes sense and will lessen the disruption of business models in the telemarketing industry.

In addition, it would be useful to have a grace period during which to integrate the list into the companies' marketing databases. The states allow 30 days to accomplish this. (For example, see the Louisiana State Web page: <http://www.lpsc.org/donotcall/consumerFAQ.htm>). This time allows for telemarketers to adequately incorporate the list, make business decisions based on the information and allows for time to correct any errors in the transmission of the data.

IV. Conclusion

The DMA believes that the adjustment for the teleservice industry to comply with the shorter time frame for scrubbing from the Registry could be significantly eased if the Commission would delay implementation for a period of one year. We also request that the Commission consider creating both a "monthly" and 30-day option for companies to download the Registry and scrub their lists to provide needed flexibility and standardization for compliance within diverse business models.

