

FEDERAL TRADE COMMISSION

RIN: 3084-AA98

16 CFR Part 310

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the “Commission” or “FTC”) is amending its Telemarketing Sales Rule (“TSR”) by updating the fees charged to entities accessing the National Do Not Call Registry (“the Registry”) so that they conform to the fee structure specified in the recently enacted Do-Not-Call Registry Fee Extension Act of 2007.

EFFECTIVE DATE: This amendment will become effective on October 1, 2008.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission’s website: <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Kelly A. Horne, (202) 326-3031, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110-188, 122 Stat. 635) (“Act”), the Commission is

revising the Final Amended Fee Rule in the following manner: The revised rule decreases the annual fee for access to the Registry for each area code of data to \$54 per area code, or \$27 per area code of data during the second six months of an entity's annual subscription period. The maximum amount that would be charged to any single entity for accessing area codes of data is decreased to \$14,850. The revised rule retains the provisions regarding free access to the first five area codes of data by all entities, as well as free access by "exempt" organizations. As required by the Act, it expands the definition of "exempt" organizations to include any person permitted to access, but not required to access, the do-not-call registry, not only under the TSR, the Federal Communication Commission's do-not-call rules found at 47 CFR 64.1200, or any other Federal law, but also under *any other Federal regulation*.

Additionally, in accordance with the Act, beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Final Amended Fee Rule, whichever fee is applicable, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) ("CPI") for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. Any increase shall be rounded to the nearest dollar. There shall be no increase in the dollar amounts if the change in the CPI is less than 1 percent. The adjustments to the applicable fees, if any, shall be published in the FEDERAL REGISTER no later than September 1 of each year.

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork

Reduction Act.

The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation at this time, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501-3521, the Office of Management and Budget (“OMB”) approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084-0097. The amendments outlined in this Final Rule pertain only to the fee provision (sec. 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101-6108; 15 U.S.C. 6151-6155.

2. Revise §§ 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$54 for each area code of data accessed, up to a maximum of \$14,850; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under section § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$54 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period,

each person required to pay the fee under § 310.8(c) must first pay \$27 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

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By direction of the Commission.

Donald S. Clark
Secretary