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# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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by providing law enforcement agencies with powerful new tools, and to give consumers new protections. The Act directed the Commission, within 365 days of enactment of the Act, to issue a rule prohibiting deceptive and abusive telemarketing acts or practices.<sup>4</sup>

Among other things, the Telemarketing Act specifies certain acts or practices the FTC's rule must address.<sup>5</sup> The Act also required the Commission to include provisions relating to three specific "abusive telemarketing acts or practices:" (1) A requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which a reasonable consumer would consider coercive or abusive of such consumer's right to privacy; (2) A restriction on the time of day and night telemarketers may make unsolicited calls to consumers; and (3) A requirement that telemarketers promptly and clearly disclose in all sales calls to consumers that the purpose of the call is to sell goods or services, and to make other disclosures the Commission deems appropriate, including the nature and price of the goods or services sold.<sup>6</sup> Section 6102(a) of the Act not only required the Commission to define and prohibit deceptive telemarketing acts or practices, but it also authorized the FTC to define and prohibit acts or practices that "assist or facilitate" deceptive telemarketing.<sup>7</sup> The Act further required the Commission to consider and include recordkeeping requirements in the rule.<sup>8</sup> Finally, the Act authorizes state attorneys general, other appropriate state officials, and private persons to bring civil actions in federal district court to enforce compliance with the FTC's rule.<sup>9</sup>

## 2. Telemarketing Sales Rule

Pursuant to the Telemarketing Act, the FTC adopted the TSR, 16 CFR Part 310, on August 16, 1995.<sup>10</sup> The Rule, which became effective on December 31, 1995, contains the following key requirements and prohibitions. Under the Rule, telemarketers must promptly tell each consumer they call several key pieces of information: (1) The fact that

the purpose of the call is to sell goods or services, (2) The nature of the goods or services being offered, and (3) In the case of prize promotions, that no purchase is necessary to win.<sup>11</sup> Telemarketers must also disclose cost and other material information before consumers pay. In addition, telemarketers must have consumers' express, verifiable authorization before debiting their checking accounts.<sup>12</sup> The Rule prohibits telemarketers from calling before 8 a.m. or after 9 p.m. (in the time zone where the consumer is located), and from calling consumers who have said they do not want to be called.<sup>13</sup> The Rule also prohibits misrepresentations about the cost, quantity, and other material aspects of the offered goods or services.<sup>14</sup> Finally, the Rule bans telemarketers who offer to arrange loans, provide credit repair services, or recover money consumers lost in a prior telemarketing scam from seeking payment before rendering the promised services,<sup>15</sup> and prohibits credit card laundering and other forms of knowing assistance to deceptive telemarketers.<sup>16</sup>

The Rule provides a number of exemptions, including calls where the transaction is completed after a face-to-face sales presentation, calls subject to extensive requirements under other FTC rules (e.g., the 900-Number Rule, or the Franchise Rule),<sup>17</sup> and calls initiated in response to advertisements in general media such as newspapers or television.<sup>18</sup> Lastly, catalog sales are exempt, as are most business-to-business calls, except those involving the sale of office or cleaning supplies.<sup>19</sup>

## 3. Telemarketing and Changes in the Marketplace.

In the years since the Rule was promulgated, the marketplace for telemarketing has changed in significant ways. Technologies which were new or non-existent at the time the Rule was adopted now have become standard equipment for many telemarketing firms. Similarly, refinements in market research allow sellers to pinpoint with greater precision which consumers are most likely to be potential customers.

The increased use of "frequent customer cards," which enable sellers to collect purchasing data electronically when consumers buy goods such as groceries and gasoline, allows more extensive and more accurate customer targeting. "Cookie" technology<sup>20</sup> enables marketers to learn the specific habits and preferences of online consumers, including information about consumers and their computers, the kinds of Web sites they visit, and the frequency with which they purchase online. These enhancements in data collection have obvious uses to make telemarketing more sophisticated.

<sup>20</sup> In Internet terminology, a "cookie" is a piece of information about a computer, its user, or something the user "clicked" on, that is stored on the computer user's hard drive. See [www.netlingo.com](http://www.netlingo.com). That information can be accessed by a Web server when the user connects to a Web page. "Cookies" also can be "mined" by marketers looking to learn more about the online shopping behavior of consumers who have accessed their Web sites.

<sup>21</sup> In 1998, nearly 37,000 people were employed in Internet direct marketing advertising, more than double the figure for the previous year. Growth rates for employment in Internet marketing are expected to be in excess of 50% annually through 2003. See Direct Marketing Association, *Direct Marketing Association's Statistical Fact Book '99*, 299 (1999).

<sup>4</sup> 15 U.S.C. 6102(a) and (b).

<sup>5</sup> 15 U.S.C. 6102(a).

<sup>6</sup> 15 U.S.C. 6102(a)(3)(A)-(C).

<sup>7</sup> 15 U.S.C. 6102(a)(2). Examples of practices that would "assist or facilitate" fraudulent telemarketing under the Rule include: credit card laundering, providing contact lists to sellers or telemarketers, and providing promotional materials to sellers or telemarketers. See Telemarketing Sales Rule, Statement of Basis and Purpose, 60 FR 43853 (August 23, 1995).

<sup>8</sup> 15 U.S.C. 6102(a)(3).

<sup>9</sup> 15 U.S.C. 6103.

<sup>10</sup> 60 FR 43843 (August 23, 1995).

<sup>11</sup> 16 CFR § 310.4(d)(4).

<sup>12</sup> 16 CFR § 310.3(a)(3).

<sup>13</sup> 16 CFR §§ 310.4(c), and 310.4(b)(1)(ii).

<sup>14</sup> 16 CFR § 310.3(a)(2).

<sup>15</sup> 16 CFR §§ 310.4(a)(3) and (4).

<sup>16</sup> 16 CFR §§ 310.3(b) and (c).

<sup>17</sup> 16 CFR §§ 310.6(a)-(c).

<sup>18</sup> 16 CFR § 310.6(e).

<sup>19</sup> 16 CFR § 310.2(u) (catalog sales); 16 CFR § 310.6(g) (business-to-business). Also, the Telemarketing Act specifically exempts catalog sales from its definition of "telemarketing." 15 U.S.C. 6106(4).



rulemaking did not alter that conclusion.<sup>26</sup>

No analysis is required in connection with this notice because no new rule or amendment is being proposed. Nonetheless, the Commission wishes to ensure that no substantial economic impact is being overlooked that would warrant an initial and final regulatory flexibility analysis. Therefore, this notice also requests public comment regarding the effect of the Rule on the profitability and competitiveness of, and employment in, small entities. The Commission will revisit this issue in connection with any Notice of Proposed Rulemaking that may result from this

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<sup>26</sup> See 60 FR 43863 (August 23, 1995).



(b) Are the required disclosures being made “promptly” and in “a clear and conspicuous manner?”

(c) Are there additional oral disclosures that should be required?

*V. Recordkeeping*

22. Have the recordkeeping provisions for telemarketers been burdensome to sellers and telemarketers? On the ability of law enforcement authorities to take action against telemarketers and sellers that violate substantive provisions of the Rule? What changes, if any should be made to the recordkeeping provisions? Explain.

23. What have been the costs and benefits to industry of the recordkeeping provisions?

calls to consumers? Have they benefitted industry?

19. Has the industry undertaken efforts to educate members and/or the public about telemarketing fraud? Describe any such efforts and discuss how effective they have been.

#### IV. Government Regulation

20. Excluding the TSR, what steps, if any, have federal, state, and local governments taken to regulate telemarketing? What perceived problems have these steps sought to address? How effective have these regulatory efforts been? Explain.

21. Have state-sponsored do-not-call lists benefitted consumers? How many consumers have requested to be placed on such lists? Have these lists been effective in stopping unwanted calls to consumers? What have been the costs and benefits to regulators? What have been the costs or benefits to industry?

22. What efforts have federal, state, and local governments taken to educate industry and/or the public about telemarketing fraud? Describe any such efforts and discuss how effective have they have been. What problems have been encountered?

#### V. Consumer Issues

23. What are consumer perceptions of telemarketing today? How have they changed over the past twenty years?

24. How much money do consumers lose as a result of telemarketing fraud each year? Has the amount of telemarketing fraud increased or decreased in the last five years? In the past two decades? How much has it changed?

25. Are consumers more aware of telemarketing fraud than in the past? Are consumers less susceptible to telemarketing fraud now than in times past? What are the most effective ways to educate the public about fraudulent telemarketing practices?

26. Are there particular groups of consumers that are especially susceptible to telemarketing and has this changed over the past two decades?

27. How can consumers be given greater control over contacts by telemarketers? How are they exercising control now and how has that evolved?

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 00-4430 Filed 2-25-00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 4, 5, and 7

[Notice No. 892; Re: Notice No. 884]

RIN 1512-AB97

#### Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R-199P); Public Hearing

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of public hearings on a proposed rule.

**SUMMARY:** ATF is announcing the dates and locations of five public hearings that it will hold concerning health claims and other health-related statements in the labeling and advertising of alcohol beverages. In an earlier notice published in the **Federal Register**, we detailed a proposal to, among other things, prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects. In consideration of the comments received, ATF has determined that the public interest would be best served by the holding of public hearings on this matter. One purpose of the hearings is to gather additional information to determine whether the negative consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for hearings dates.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section for hearings addresses.

Letter notifications and written comments are to be submitted to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; *ATTN: Notice No. 892*. Submit e-mail comments to: [nprm@atfhq.atf.treas.gov](mailto:nprm@atfhq.atf.treas.gov). E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on

not more than three pages 8½"x11" in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Participation section of this notice for alternative means of providing letter notifications and written comments.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Kern or Jim Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8210).

#### SUPPLEMENTARY INFORMATION:

##### Background

In February 1999, ATF approved two directional statements on wine labels. One directed consumers to their family doctors for information regarding the "health effects of wine consumption." The second referred consumers to the Federal Government's "Dietary Guidelines for Americans" for such information. Based on the evidence before us, including a consumer survey conducted by the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention (CSAP), we concluded that we had an insufficient record to disapprove the labels. The CSAP survey concluded that the drinking patterns of most of those who participated in the study would not be influenced by these messages.

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