

# Rules and Regulations

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## 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") as required by the Do-Not-Call Registry Fee Extension Act of 2007.

**DATES:** This amendment will become effective October 1, 2009.

**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 amending the TSR by updating the fees entities are charged for accessing the Registry: The revised rule increases the annual fee for access to the Registry for each area code of data to \$55 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 increased to \$15,058.

This increase is in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, 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. The Act also states that any increase shall be rounded to the nearest dollar and that 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, are to be published in the **Federal Register** no later than September 1 of each year.

The Act specified that, for fiscal year 2009, the annual fee for access to the Registry for each area code of data would be \$54 per area code, or \$27 per area code of data during the second six months of an entity's annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be \$14,850. The average value of the CPI for July 1, 2007 to June 30, 2008 was 211.702; the average value for July 1, 2008 to June 30, 2009 was 214.658, an increase of 1.4 percent. Applying the 1.4 percent increase to the fiscal year 2009 amounts leads to an increase in the fee for access to a single area code for a full year to \$54.76 (rounded to \$55) and an increase in the maximum amount charged to \$15,057.90 (rounded to \$15,058). The fee for accessing an additional area code for a half year remains \$27 because the increase is \$0.38, and, therefore, the new amount continues to round to \$27.

**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, 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.

#### List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

■ 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 \$55 for each area code of data accessed, up to a maximum of \$15,058; *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 § 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 \$55 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.

\* \* \* \* \*

By direction of the Commission.

Donald S. Clark,  
Secretary.

[FR Doc. E9-20252 Filed 8-24-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 211, 231, and 241

[Release Nos. 33-9062A; 34-60519A; FR-80A]

### Commission Guidance Regarding the Financial Accounting Standards Board's Accounting Standards Codification

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretation.

**SUMMARY:** The Securities and Exchange Commission (the "Commission") is publishing interpretive guidance regarding the release by the Financial Accounting Standards Board ("FASB") of its FASB Accounting Standards Codification™ ("FASB Codification").

**DATES:** *Effective Date:* August 25, 2009.

### FOR FURTHER INFORMATION CONTACT:

Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Jenifer Minke-Girard, Senior Associate Chief Accountant, or Jeffrey S. Cohan, Senior Special Counsel, Office of the Chief Accountant, at (202) 551-5300, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6628.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 108 of the Sarbanes-Oxley Act of 2002<sup>1</sup> amended Section 19(b) of the Securities Act of 1933<sup>2</sup> to provide that the Commission may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets specified criteria. On April 25, 2003, the Commission issued a policy statement concluding that the FASB and its parent organization, the Financial Accounting Foundation, satisfied the criteria for an accounting standard setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" for purposes of the federal securities laws.<sup>3</sup>

On June 30, 2009, the FASB issued FASB Statement of Financial Accounting Standards No. 168, *The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162* (Statement No. 168), to establish the FASB Codification as the source of authoritative non-Commission accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with U.S. generally accepted accounting principles ("U.S. GAAP"). Statement No. 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The FASB Codification reorganizes existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters, and all guidance contained in the FASB

Codification carries an equal level of authority.<sup>4</sup>

The FASB Codification directly impacts certain of the Commission's rules, regulations, releases and staff bulletins (collectively referred to in this release as "Commission's rules and staff guidance"), which refer to specific FASB standards or other private sector standard-setter literature under U.S. GAAP, because such references are now superseded by the FASB Codification. The Commission is therefore issuing interpretive guidance to avoid confusion on the part of issuers, auditors, investors, and other users of financial statements and Commission rules and staff guidance.

#### II. Discussion

Many parts of the Commission's rules and staff guidance include direct references to specific standards under U.S. GAAP. For example, Regulation S-X, which, together with the Commission's Financial Reporting Releases, sets forth the form and content of and requirements for financial statements required to be filed with the Commission,<sup>5</sup> includes specific references to specific standards under U.S. GAAP.<sup>6</sup> In addition, some parts of the Commission's rules and staff guidance outside of the financial statement context include specific references to specific standards under U.S. GAAP, such as in Item 402 of Regulation S-K regarding disclosure of executive compensation.<sup>7</sup>

Given the possible confusion between the Commission's rules and staff guidance, on the one hand, and the FASB Codification, on the other hand, the Commission believes it is necessary to publish the guidance in this release. Concurrent with the effective date of the FASB Codification, references in the Commission's rules and staff guidance to specific standards under U.S. GAAP should be understood to mean the corresponding reference in the FASB Codification. We note that the FASB Codification includes a cross-reference finding tool that can assist users in identifying where previous accounting literature resides in the FASB Codification. The Commission and its staff also intend to embark on a longer term rulemaking and updating initiative to revise comprehensively specific

<sup>4</sup> The FASB Codification is available at <http://asc.fasb.org/home>.

<sup>5</sup> 17 CFR 210.1-01.

<sup>6</sup> See, e.g., Rule 1-02(u) of Regulation S-X [17 CFR 210.1-02(u)], which defines the term "related parties" by reference to FASB Statement of Financial Accounting Standards No. 57, *Related Party Disclosures*.

<sup>7</sup> 17 CFR 229.402.

<sup>1</sup> Public Law 107-204, 116 Stat. 745 (2002).

<sup>2</sup> 15 U.S.C. 77s(b).

<sup>3</sup> See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release Nos. 33-8221; 34-47743; IC-26028; FR-70 (April 25, 2003) [68 FR 23333 (May 1, 2003)].