

consider all comments we receive on or before the closing date. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposals in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

### Background

On February 28, 2002, the FAA published NPRM, Notice No. 02-04, Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities (67 FR 9366). Comments to that document were to be received on or before May 29, 2002.

By letter dated April 29, 2002, 14 entities jointly requested that the FAA extend the comment period for NPRM, Notice No. 02-04, for 90 days. The entities wanted additional time to gather, develop, and analyze data to support their comments regarding a proposed change clarifying the applicability of the drug and alcohol testing regulations to contractors. In addition, subsequent to the April 29 joint request, a representative of one of the entities notified the FAA that the regulatory evaluation was missing from the electronic docket.

While the FAA agrees that additional time for comments may be needed because of the inadvertent administrative error in the electronic docket, the FAA believes that a 90-day extension would be excessive. Therefore, the FAA believes an additional 60 days would be adequate for these entities to provide comment to NPRM, Notice No. 02-04.

### Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the April 29 joint request made by the 14 entities for extension of the comment period to NPRM, Notice No. 02-04. Also, the FAA has recognized that there was an administrative error when information was inadvertently omitted from the electronic docket. Therefore, the FAA has found good cause for extending the comment period for 60 days. The FAA also has determined that extension of the comment period is consistent with the public interest.

Accordingly, the comment period for NPRM, Notice No. 02-04, is extended until July 29, 2002.

Issued in Washington, DC, on May 23, 2002.

**Jon L. Jordan,**

*Federal Air Surgeon.*

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**BILLING CODE 4910-13-P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 310

#### Telemarketing Sales Rule User Fees

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Trade Commission (the "Commission" or "FTC") is issuing a Notice of Proposed Rulemaking ("NPR") to amend the FTC's Telemarketing Sales Rule ("TSR"). This new rule would impose user fees on telemarketers, and their seller or telemarketer clients, for their access to the national do-not-call registry, if one is implemented. This NPR invites written comments on the issues raised by the proposed changes, and seeks answers to the specific questions set forth in section VIII of the NPR.

**DATES:** Written comments will be accepted until June 28, 2002. Time is of the essence to promulgate the proposed user fees, if a national registry is adopted. Thus, the Commission does not anticipate providing any extension to this comment period.

**ADDRESSES:** Six paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

Alternatively, the Commission will accept comments submitted to the following email address: [userfee@ftc.gov](mailto:userfee@ftc.gov). All comments and any electronic versions (*i.e.*, computer disks) should be identified as "Telemarketing Rulemaking—User Fee Comment. FTC

File No. R411001." The Commission will make this NPR and, to the extent possible, all comments received in electronic form in response to this NPR, available to the public through the Internet at the following address: [www.ftc.gov](http://www.ftc.gov).

Comments on proposed revisions bearing on the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, D.C. 20503, ATTN.: Desk Officer for the Federal Trade Commission, as well as to the FTC Secretary at the address above.

**FOR FURTHER INFORMATION CONTACT:** David M. Torok, (202) 326-3075 (email: [dtorok@ftc.gov](mailto:dtorok@ftc.gov)), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

### SUPPLEMENTARY INFORMATION:

#### I. Background

On January 30, 2002, the FTC published in the **Federal Register** a NPR to amend the FTC's TSR and to request public comment on the proposed changes. 67 FR 4492 (Jan. 30, 2002) ("the Rule NPR"). Among other provisions, the Rule NPR proposed to establish a national "do-not-call" registry, maintained by the FTC. The proposal, if adopted, would permit consumers who prefer not to receive telemarketing calls to contact one centralized registry to effectuate this preference. Telemarketers would be required to refrain from calling consumers who have placed their telephone numbers on this registry. The Rule NPR anticipates that telemarketers would need to access the do-not-call registry on at least a monthly basis in order to remove from their telemarketing lists those consumers who have placed themselves on the national registry.

The Commission has not made a final determination regarding whether to establish a do-not-call registry. However, it is necessary to consider the funding for the registry at this time so that if the Commission ultimately decides to establish the registry, it can be implemented without undue delay.

The current NPR proposes user fees to fund the development and operation of the proposed national registry, if one is implemented. In developing this proposal, the Commission is guided by the Independent Offices Appropriations Act of 1952, codified at 31 U.S.C. 9701 ("the User Fee Statute"), which states:

(a) It is the sense of Congress that each service or thing of value provided by an agency \* \* \* to a person \* \* \* is to be self-sustaining to the extent possible.

(b) The head of each agency \* \* \* may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—(1) fair; and

(2) based on—(A) the costs to the Government; (B) the value of the thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.

The Commission is also guided by the Office of Management and Budget ("OMB") Circular No. A-25, which "establishes Federal policy regarding fees assessed for Government services." *Id.* at ¶ 1. It states that user fees "will be sufficient to recover the full cost to the Federal Government \* \* \* of providing the service, \* \* \* will be based on market prices \* \* \* [and] will be collected in advance of, or simultaneously with, the rendering of services." *Id.* at ¶ 6(a)(2).

In accordance with the User Fee Statute and OMB Circular A-25, the Commission now proposes to charge user fees to all telemarketers that access or obtain data from the national do-not-call registry, if such a registry is, in fact, implemented. If a do-not-call registry is implemented, the Commission will be providing a "thing of value" to telemarketers; namely, a list of all United States consumers who have indicated a preference not to receive certain telemarketing calls. Access to such a list will permit telemarketers to focus their telemarketing sales on those consumers who have no objection to receiving such solicitations. Ultimately, it may be more profitable for telemarketers to call only those consumers who are receptive to being called. In addition, assuming the TSR is amended as proposed by the Rule NPR, telemarketers will be required to access the national registry to remain in compliance with the TSR and to engage in telemarketing lawfully. Thus, access to the registry will enable telemarketers to engage in their chosen business.<sup>1</sup> We believe telemarketers should be charged

appropriately for obtaining this information.

To maintain the fairness of the fee structure and to keep the fees to individual firms as reasonable as possible, it is critical that all firms that derive a benefit from the registry pay for that benefit. The Commission understands that telemarketers may undertake telemarketing campaigns on behalf of other sellers or telemarketers. Based on our discussions with officials who run State do-not-call registries, the Commission also anticipates that sellers and telemarketers may use the information included in the registry to "scrub" the telemarketing lists of other firms.<sup>2</sup> The Commission proposes requiring that any telemarketer who engages in telemarketing or "list scrubbing" on behalf of its clients will be required to pay the user fee set forth below on behalf of each such entity.

The Commission also has considered charging consumers directly for adding their telephone numbers to the registry. The Commission proposes that no such fees be imposed, however, for the following reasons. First, while registering their telephone number may be perceived as a benefit to consumers, at this time the Commission does not believe that it would be appropriate to charge consumers who seek to avail themselves of the protections of the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-08 ("the Telemarketing Act"). Specifically, the proposed national registry would prohibit telemarketers from undertaking "a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy." 15 U.S.C. 6102(a)(3)(A). The Commission does not wish to charge consumers to protect their privacy from unwanted and abusive telemarketing calls. Second, even if the Commission found that charging consumers was appropriate, the costs of collecting what, under the constraints of the User Fee Statute, necessarily would be a very small fee from each consumer who elected to list his or her number in the registry could be greater than the fee itself.<sup>3</sup> OMB

Circular A-25 states that agencies need not impose user fees when "the cost of collecting the fees would represent an unduly large part of the fee for the activity." *Id.* at ¶ 6.c.2. Thus, the Commission does not believe that the imposition of consumer user fees is appropriate at this time.

## II. User Fee Calculation

To establish the appropriate fees to charge telemarketers and their clients for information obtained from the registry, the Commission, guided by OMB Circular A-25, will endeavor to recover the full cost of creating and implementing the registry. Based on initial market research, including potential vendor responses to the Request for Information ("RFI") that was issued by the FTC on February 28, 2002,<sup>4</sup> it is estimated that the cost to develop and implement a national registry will be approximately \$5 million in the first year. The President's Budget proposes that \$5 million of the agency's total funding be used for the proposed national registry, of which \$3 million will come from user fees. Thus, user fees of approximately \$3 million will be needed in Fiscal Year 2003 ("FY 03"), the first year of the potential operation of the registry.<sup>5</sup> Moreover, those fees must be raised during FY 03, which runs from October 1, 2002, through September 30, 2003, even though the registry may be in operation for a period of time shorter than twelve months.<sup>6</sup>

The first step in calculating an appropriate user fee is also potentially the most difficult—determining the number of telemarketers and sellers that would be required to pay the proposed fee. The Commission has examined

registration levels ranging from a few percent of the telephone lines in use within the State, to over 40 percent of all lines. Thus, a national registry may ultimately include over 60 million telephone numbers. Even if all those consumers do not register in the first year, raising the estimated \$3 million in necessary fees from that large a pool of possible registrants would require an extremely small fee (possibly as small as \$0.05 per consumer), the collection costs of which could not be justified.

<sup>4</sup> See [www.ftc.gov/procurement](http://www.ftc.gov/procurement). Responses to the RFI are not part of the public record and are legally exempt from public disclosure to the extent they constitute confidential and proprietary business information. See Section 6(f) of the FTC Act, 15 U.S.C. 46(f); Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

<sup>5</sup> If, during the appropriations process, the amount of user fees which the agency is required to collect were to change, the fee structure proposed in this NPR would have to be adjusted accordingly.

<sup>6</sup> Given the time needed to complete the procurement process to hire a contractor, and for that contractor to develop and implement any proposed national registry, it is unlikely the registry will be available at the start of FY 03. In fact, it may be some months into the fiscal year before user fees can first be collected.

<sup>1</sup> Courts have long recognized that agencies may charge regulated companies for the cost of administering their regulations, since the companies receive a specialized value from the agencies by complying with the regulations and gaining the ability to remain in business. See, e.g., *Mississippi Power & Light Co. v. United States Nuclear Regulatory Comm'n*, 601 F.2d 223, 229 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980); *National Cable Television Ass'n v. United States*, 554 F.2d 1094, 1101-02 (D.C. Cir. 1976); *Electronic Indus. Ass'n v. F.C.C.*, 554 F.2d 1109, 1114 (D.C. Cir. 1976).

<sup>2</sup> Section 310.4(b)(iv) of the Proposed Rule states that it is an abusive practice for a telemarketer, or for a seller to cause a telemarketer, to sell, purchase or use the national do-not-call registry for any purpose except compliance with the Rule's do-not-call provisions. The Commission believes that this provision does not preclude a telemarketer from using the national registry to scrub the calling lists of other telemarketers or sellers, since such usage is assisting others in maintaining compliance with the Rule.

<sup>3</sup> States that have established statewide "do-not-call" registries have experienced consumer

relevant industry literature, as well as the record in this and past rulemaking proceedings concerning the TSR. The Commission believes the more pertinent information for determining the number of firms that would be required to pay the proposed user fee may be the number of firms that access State do-not-call registries. Currently, sixteen States have do-not-call registries in place. Most of those States have fewer than 1,000 telemarketing firms requesting access to their registries. Some have fewer than 100 firms requesting access. The most telemarketing firms that currently access any individual State registry is 2,932. Thus, in order to propose a realistic fee structure that would ensure sufficient funds are collected to cover the costs of a national registry, the Commission estimates that 3,000 telemarketers or sellers may pay for access to the information in the national registry.<sup>7</sup> The Commission is seeking comment and evidence to determine whether this estimate is realistic and appropriate.

The next step in calculating the appropriate user fee is to determine the information for which the user would be charged. In accordance with OMB Circular A-25, the Commission is proposing a user fee structure that most closely approximates the cost of operating the national registry. The primary operational cost to the Commission for the proposed national registry, once the basic database infrastructure is in place, would be each toll-free call consumers make to register their telephone numbers with the system. Thus, system costs increase with each additional consumer registrant.

At the same time, the Commission anticipates that not all telemarketers or sellers would want access to all of the telephone numbers listed in the national registry. Many telemarketers and sellers engage in regional rather than nationwide calling campaigns, and therefore would not need consumer registration data for the entire nation. To address this business need, the

Commission anticipates providing telemarketers with access to the national registry by area code. Thus, telemarketers would be able to access those portions of the registry covered by as little as one area code, to as many as all area codes nationwide. The Commission also anticipates enabling telemarketers to access the national database at any time, through a secure Internet website.<sup>8</sup>

In order to most closely approximate the Commission's costs to operate the national registry, and to address telemarketers' and sellers' needs for regional lists, the Commission proposes a fee structure based on the number of different area codes of data that the telemarketer or seller wishes to use annually. Under the proposed fee, telemarketers and their clients would be charged a rate of \$12 per year for each area code of data they use.

The Commission proposes that no charge be imposed for firms to obtain data from only one to five area codes. Such free data would be available to any business regardless of its size, although the Commission notes that small businesses that telemarket only within such a limited range of area codes are likely to benefit the most from this provision.<sup>9</sup> The Commission believes this approach would be less burdensome than a fee structure that would require payment no matter how few area codes are used. In addition, the Commission proposes to cap the maximum annual fee at \$3,000, which would be charged for using 250 area codes of data or more.<sup>10</sup> Thus, for example, there would be no charge for obtaining only five area codes of data; six area codes of data would cost \$72; twenty-five area codes would cost \$300; two hundred area codes would cost \$2,400; and access to the data from all area codes would be capped at \$3,000 annually.

These proposed fees obviously are based on certain assumptions and estimates. The Commission anticipates that whatever fees may be adopted would be reexamined periodically and would likely need to be adjusted, in

future rulemaking proceedings, to reflect the costs of providing the national do-not-call registry. Moreover, the Commission bases these fee assumptions on the need to raise \$3 million in FY 03, which is subject to change. The Commission anticipates the need to revise this fee proposal for future fiscal years.

In accordance with OMB Circular A-25, the Proposed Rule requires telemarketers to pay these fees prior to gaining access to the registry.<sup>11</sup> They would be able to access data as often as they like during the course of one year (defined as their "annual period") for those area codes that are selected with the payment of the related annual fee. For telemarketers who work on behalf of multiple clients, the telemarketer would pay to access a separate list of area codes of data for each client, and the annual period would run from the date of payment for access to each separate list of area codes.

If, during the course of the year, telemarketers need to access data from more area codes than those initially selected, either for themselves or on behalf of their clients, they would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period is divided into two semi-annual periods of six months each. Obtaining additional data from the registry during the first semi-annual, six month period will require a payment of \$12 for each new area code. During the second semi-annual, six month period, the charge of obtaining additional data is \$6 for each new area code. These payments for additional data would provide telemarketers access to those additional areas of data for the remainder of their initial annual term. As noted above, should a telemarketer obtain a new client, it would have to pay the appropriate user fee for the area codes of data needed by that new client, and a new annual period for that client would begin on the first month when that data is accessed by the telemarketer.

The following is an example of how this proposed payment system would work. A telemarketer requests access to the registry for the first time in August 2003. After completing an application form, the telemarketer pays \$600 for access to 50 area codes of data (50 area codes times \$12 per area code equals \$600). The telemarketer indicates which area codes it wishes to access, and is

<sup>7</sup> The Commission previously has estimated that there are 40,000 "telemarketers" in the United States. See the Rule NPR at 67 FR 4492, 4534 (notice of amended application to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*). However, of all the companies that engage in telemarketing, only those telemarketers that engage in "outbound telephone calls" would be required to access the national registry and pay the required user fee to scrub their calling lists. Moreover, the number of telemarketers and sellers who will be required to pay the fee is further limited by certain exemptions to the Rule, set forth at 16 CFR 310.6, as well as by the inherent limitations of the FTC's jurisdiction. Thus, the Commission does not believe its prior estimate is representative in the instant context.

<sup>8</sup> The proposed amendments to the TSR state that telemarketers must access the proposed national registry on at least a monthly basis to remain in compliance. See 16 C.F.R. 310.4(b)(2)(iii) (proposed), 67 FR 4543.

<sup>9</sup> In this regard, the Commission believes its proposal is consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies consider regulatory alternatives to minimize such impact.

<sup>10</sup> Currently, there are approximately 270 area codes that would be included in the proposed national registry.

<sup>11</sup> Section 310.9(c) of the Proposed Rule would require each telemarketer to provide any identifying information deemed necessary by the operator of the registry to collect the user fee.

then provided that information from the registry. The same telemarketer may continue to access updates to the data from those 50 originally selected area codes at any time until the end of its annual period, which in this example would be the end of July, 2004. If, during December 2003 (i.e., within the first six months of its annual period), the telemarketer needs to access 10 additional area codes, the telemarketer would need to pay an additional \$120 to access that data (10 area codes times \$12 per area code equals \$120). The telemarketer may then continue to access the data from those additional 10 area codes (as well as the original 50 area codes) until the end of July 2004. If, during March 2004 (i.e., within the second six months of its annual period) the telemarketer needs to access another 10 previously unselected area codes, the telemarketer would need to pay an additional \$60 to access that data (10 area codes times \$6 per area code equals \$60). At that point, the telemarketer would be able to access the data from 70 area codes (the original 50, plus 10 acquired in December, plus 10 acquired in March) until the end of July, 2004. In August, 2004, the telemarketer would need to pay another annual fee for access to any portion of the registry.

If, however, the telemarketer acquires a new client during November 2003, and the new client needs access to 20 area codes of data, the telemarketer would need to pay \$240 on behalf of that client (20 area codes times \$12 per area code equals \$240). That new client's annual period would run from November 1, 2003, through October 31, 2004. During that annual period, the telemarketer could access information from the 20 area codes selected on behalf of that client at any time.

The Commission considered charging these user fees on a monthly, rather than annual basis. However, given the necessity of raising \$3 million during FY 03 (even though the registry will be available for only a portion of that fiscal year), the Commission has tentatively determined that an annual fee, to be paid in advance, is necessary to raise the required funds during that fiscal year. The Commission seeks comment whether an annual or a monthly fee would be a more preferable, efficient and appropriate method of fee collection in the future.

### III. Telemarketer Access to the Proposed National Registry

The proposed amendments to the TSR would prohibit the use of information in the national registry for any purpose other than compliance with the do-not-call provisions of the Proposed Rule.

See 16 CFR 310.4(b)(iv) (proposed). As a result, the Commission proposes, in Section 310.9(d), to limit access to the registry to telemarketers working on their own behalf or working on behalf of other sellers or telemarketers. In order to maintain the security of the registry and to track its usage, the Proposed Rule also would require telemarketers to certify, under penalty of law, that they are accessing the registry solely to comply with the provisions of the TSR. If they are accessing the registry on behalf of other sellers or telemarketers, they also would be required to identify each of the other sellers or telemarketers on whose behalf they are accessing the registry. In addition, they would be required to certify that the other sellers or telemarketers will be using the information gathered from the list solely to comply with the provisions of the TSR. Submitting a false certification to the government would not only be a Rule violation, but also would be actionable criminally as a false statement or claim to the Federal government. *See, e.g.*, 18 U.S.C. 287, 1001; 31 U.S.C. 3729.

The Commission recognizes that additional guidance may be necessary to more accurately define the relationships for which the applying telemarketer will have to report and pay. For example, in the compliance guide to the original TSR, the Commission stated that distinct corporate divisions of a single corporation are considered separate sellers for purposes of the Rule. Factors used to determine if corporate divisions will be treated as separate sellers include whether there is substantial diversity between the operational structure of the divisions, and whether the goods or services sold by the divisions are substantially different from each other. The Commission proposes that these same distinctions would apply to the payment of the proposed annual user fee. This NPR includes specific questions on this issue in Section VIII, and seeks answers to those questions in the comments.

### IV. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning these proposed changes to the Commission's Telemarketing Sales Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to whether to adopt as final the proposed changes to the Rule. Written comments must be submitted to the Office of the Secretary, Room 159, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, on or before

June 28, 2002. Time is of the essence to promulgate proposed user fees, if a national registry is adopted. Thus, the Commission does not anticipate providing any extension to this comment period.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Rules of Practice, on normal business days between the hours of 9 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this NPR and, to the extent possible, all papers or comments received in electronic form in response to this NPR available to the public through the Internet at the following address: [www.ftc.gov](http://www.ftc.gov).

### V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

### VI. Paperwork Reduction Act

The instant proposed amendments involve certain limited new collection of information requirements. The Commission will submit shortly to the Office of Management and Budget a copy of this NPR and an addendum to its most recent prior clearance request under the Paperwork Reduction Act, 44 U.S.C. 3501-3517 ("PRA") that will account for the incremental PRA effects posed by these newly proposed TSR amendments.

The Commission proposes to require telemarketers to submit minimal identifying information that the operator of the proposed national registry may deem necessary to collect the user fee. The Commission anticipates that this would include basic information, such as the name, address and telephone number of the telemarketer, a contact person for the organization, and information about the matter of payment. The telemarketer also would need to submit a list of the area codes of data for which it requests information. In addition, the telemarketer would have to certify that it is accessing the registry solely to comply with the provisions of the TSR. If the telemarketer is accessing the registry on behalf of other seller or telemarketer clients, it would have to submit basic identifying information

about those clients, a list of the area codes of data for which it requests information on their behalf, and a certification that the clients are accessing the registry solely to comply with the TSR.

The Commission anticipates that each telemarketer would have to submit all of this information only once each year, at the beginning of each annual period when the telemarketer would have to pay for access to the registry, unless the telemarketer needs to acquire information from more area codes than it originally sought and paid for. In that instance, the telemarketer may have to submit the same information again to pay for the additional data.

The Commission estimates that it should take no longer than two minutes for each telemarketer to submit the basic information described above.<sup>12</sup> In addition, as set forth in this NPR, the Commission has estimated that approximately 3,000 telemarketers and sellers may pay for access to the information in the proposed national registry. Each of those telemarketers, either on their own behalf or on behalf of their clients, would need to submit this information annually, resulting in approximately 100 burden hours (3,000 telemarketers times 2 minutes per telemarketer equals 6,000 minutes, or 100 hours). In addition, the Commission estimates that possibly one-half of those telemarketers may need, during the course of their annual period, to submit their identifying information more than once in order to obtain additional area codes of data. This would result in an additional 50 burden hours (1,500 telemarketers times 2 minutes per telemarketer equals 3,000 minutes, or 50 hours). Thus, the Commission estimates that the proposed user fee provision will impose a total paperwork burden of approximately 150 hours per year.

The Commission invites comment that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

2. Evaluate the accuracy of the Commission's estimates of the burdens of the proposed collections of

information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and validity of the information to be collected; and

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the final rule concerning user fees will have the threshold impact on small entities. The NPR specifically charges no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many, if not all, small telemarketers will be able to access the national registry without having to pay any annual fee. Thus, there is likely to be little or no burden on small telemarketers resulting from the adoption of the proposed user fees.

The Commission reached a similar conclusion in the Rule NPR. *See* 67 FR 4536. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact on small entities of both the amendments to the TSR proposed in this document, as well as the proposed amendments to the TSR set forth in the Rule NPR. Therefore, the Commission has prepared the following analysis.

### A. Reasons for the Proposed Rule

As stated in the Rule NPR, the Commission proposed amendments to the TSR as a result of the findings of the rule review, conducted pursuant to the mandate of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 ("Telemarketing Act"). Certain proposed changes, relating to the solicitation of charitable contributions through telemarketing, are made pursuant to the mandate of the USA PATRIOT Act of 2001, Pub. L. 107–56 (Oct. 25, 2001) ("USA PATRIOT Act"). The proposed amendments are authorized under the rulemaking authority granted to the Commission by the Telemarketing Act, as amended by the USA PATRIOT Act, to protect consumers from deceptive and abusive practices. The Commission believes that

the proposed amendments to the TSR are necessary to ensure that the TSR continues to protect consumers.

The current proposed rule is intended to fulfill the obligations imposed by the User Fee Statute and the proposed amendments to the TSR. This NPR is issued so that the Commission may raise user fees to fund the development, implementation and operation of a national do-not-call registry, if such a proposed registry is implemented.

### B. Statement of Objectives and Legal Basis

The objectives for the original proposed amendments to the TSR were set forth in the Rule NPR, 67 FR 4492–4546. The legal basis for the Rule NPR is the Telemarketing Act, 15 U.S.C. 6101–08, as amended by the USA PATRIOT Act of 2001, Pub. L. 107–56 (Oct. 25, 2001).

The objectives of the current proposed rule are discussed above. The legal basis for the current proposed rule is the User Fee Statute and the proposed amendments to the TSR, 67 FR 4492 (Jan. 30, 2002), promulgated pursuant to the Telemarketing Act.

### C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that "telemarketing bureaus" with \$6 million or less in annual receipts qualify as small businesses. *See* 13 CFR 121.201. Similar standards, i.e., \$6 million or less in annual receipts, apply for many retail businesses which may be "sellers" and subject to either the proposed amendments to the TSR set forth in the Rule NPR, or the proposed user fee provisions outlined in this NPR. In addition, there may be other types of businesses, other than retail establishments, that would be "sellers" subject to the proposed rule. Determining a precise estimate of the number of small entities that would be subject to the proposed amendments to the TSR, or describing those entities, is not readily feasible. The Commission, therefore, invites comment on this issue, including information about the number and type of small business entities that may be subject to the TSR and its proposed amendments.

### D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Rule NPR proposes to alter some collection of information requirements included in the TSR. The effect of those requirements on all businesses was discussed in detail in the Paperwork Reduction Act section of the Rule NPR, 67 FR 4534–36. The only proposed

<sup>12</sup> This estimate is likely to be conservative for PRA purposes. OMB regulations exclude from its definition of "information" certain inquiries that it considers "routine" and not burdensome to the respondent. This includes disclosures that require persons to provide facts necessary simply to identify themselves, e.g., the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

change to the recordkeeping requirement (§ 310.5) would extend the provision's coverage to include charitable solicitations in a non-sales context, as required by the USA PATRIOT Act. See 67 FR at 4528. All other proposed amendments described in the Rule NPR relate to the Rule's disclosure or other compliance requirements, which are necessary to prevent telemarketing fraud and abuse. The classes of small entities, if any, affected by the proposed amendments set forth in the Rule NPR would include telemarketers or sellers engaged in acts or practices covered by the Rule, as discussed earlier. The types of professional skills, if any, required to comply with the Rule's recordkeeping, disclosure, or other requirements would include attorney or other skilled labor to ensure compliance.

In addition, the proposed user fee rule will, as a practical matter, require telemarketers to submit certain payment information to obtain access to the registry. The impact of that reporting requirement is discussed in Section VI, above. The Commission does not believe that any professional skills will be necessary to complete the payment information that would be required to be submitted if the user fee proposed rule is adopted. As previously noted, the Commission invites comment on the estimated paperwork burden of these amendments, including the impact it may have on any small businesses.

#### *E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules*

The FTC has identified no other federal statutes, rules, or policies that would conflict with the amendments to the TSR proposed in the Rule NPR, or the user fees proposed in this NPR. As for the amendments to the TSR proposed in the Rule NPR, the only other federal statute in this area is the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. 227 *et seq.*, and the Federal Communications Commission regulations promulgated to enforce the TCPA, 47 CFR 64.1200(e)(2). Neither the TCPA nor the FCC regulations duplicate, conflict with, or overlap the proposed amendments to the TSR; the company-by-company do-not-call provision contained in the FCC regulations and the similar provision in the TSR are consistent with one another and compliance with both imposes no additional regulatory burden on companies that conduct telemarketing. The proposed national do-not-call registry would potentially overlap the current TCPA company-by-company do-not-call scheme, but would result in a

minimal additional compliance burden to those companies that conduct telemarketing, including small business entities. The Commission invites comment on the extent of this additional burden, if any, including the impact it may have on small businesses.

As for the proposed user fees, no other federal agency is currently collecting such fees, which are intended to fund a new do-not-call registry that, if adopted, would be maintained by the FTC. The FTC is aware of other State statutes and regulations that implement State do-not-call registries, and is considering the interplay between the State and proposed federal registries as part of the Rule NPR.

#### *F. Discussion of Significant Alternatives*

The Commission has sought, in drafting all of the proposed amendments to the TSR, to minimize as much as possible the compliance burden for all affected entities, including small businesses. For example, the amendments to the disclosure and recordkeeping provisions of the TSR are generally consistent with the business practices that most sellers and telemarketers, regardless of any size, would choose to follow, even absent legal requirements. That being said, each of the proposed amendments set forth in the Rule NPR is intended to better protect consumers from deceptive and abusive telemarketing practices, whether engaged in by entities large or small in size. As to these provisions, the Commission does not anticipate any disproportionate impact on small entities from compliance with the proposed Rule.

The Commission has taken care in drafting the proposed amendments to the Rule to set performance standards, which establish the objective results that must be achieved by regulated entities, but do not establish a particular technology that must be employed in achieving those objectives. For example, the Commission does not specify in what manner a company will maintain a company-by-company do-not-call list. Similarly, the proposed recordkeeping provision of the Rule is designed to afford those subject to the Rule discretion in determining how best to retain the required records.

As for the user fee rule proposal, the Commission recognizes that alternatives to the proposed fee are possible. For example, in addition to a user fee based on the number of area codes that a telemarketer accesses from the database, access to the registry's database could be provided, for example, on the basis of a flat fee regardless of the number of area codes accessed, or a fee that does not

permit free access for one to five area codes. The Commission believes, however, that those alternatives would likely impose greater costs on small businesses, to the extent they are more likely to access fewer area codes than larger entities. Accordingly, the Commission believes its current proposal is likely to be the least burdensome for small businesses, while achieving the goal of covering the necessary costs of operating the registry.

Despite these conclusions, the Commission welcomes comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the proposed amendments to the TSR set forth in the Rule NPR, and the requirements of the User Fee Statute.

#### **VIII. Questions for Comment on the Proposed Rule**

The Commission seeks comment on the various aspects of the proposed revisions to the Telemarketing Sales Rule set forth in this NPR. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

1. The NPR estimates that there are 3,000 "telemarketers" or "sellers," as those terms are defined in §§ 310.2(x) and (z) of the Proposed Rule, that will be required to pay the proposed user fee for access to the national registry, if one is implemented. Is that estimate realistic and appropriate? What evidence, if any, do you have concerning the number of telemarketers that engage in "outbound telephone calls" that are subject to the Commission's jurisdiction? What evidence, if any, do you have concerning the number of sellers that hire other telemarketers to engage in "outbound telephone calls" on their behalf? What evidence, if any, do you have concerning the number of telemarketers who engage in "list scrubbing" on behalf of other sellers or telemarketers?

2. If there is no readily available evidence concerning the number of telemarketers and sellers, as requested in question 1, is it appropriate to estimate the number of entities who must pay the proposed user fee based upon the number of entities that access State registries? Why or why not? Is there a better estimate?

3. The Commission anticipates that some telemarketers will not want to gain access to the entire national registry. Is that expectation realistic? The

Commission also anticipates providing access to the registry by area code of the registrant. Is that the best method of sorting the information in the registry? Given the Commission's expectation that it will gather only the consumer's telephone number for the national registry, are there any other sorting capabilities that telemarketers would find useful to comply with the proposed amended TSR?

4. Is a user fee based on the number of area codes of data accessed by the telemarketer appropriate? Why or why not? In preparing this proposal, the Commission considered adopting a simple, flat fee for every telemarketer that accesses the registry, regardless of whether it wished to obtain data for all or only part of the country. Based upon the estimates included in this NPR (3,000 entities paying for access and the need to raise \$3 million in FY 03), that flat fee would have to be \$1,000 for each entity. Is such a flat fee more reasonable and appropriate than the fee based on the area codes of data accessed?

5. The proposed annual user fee of \$12 per area code of data accessed is based upon the assumption that, on average, the Commission must raise \$1,000 from each of the 3,000 entities that pay to gain access to the registry data. Thus, the mid-point in the range of area codes of data for which entities will be charged \$12 is approximately 83. That is, the Commission anticipates that the average telemarketer or seller will pay to obtain the information in 83 area codes of data. Is this expectation realistic and appropriate?

6. Given the potential need to raise \$3 million within FY 03, even though the registry may not be available for the entire fiscal year, are there any alternatives to charging the user fee on an annual basis, in advance of any access to the registry?

7. Is it appropriate not to charge telemarketers or sellers that obtain information from only one to five area codes of data from the registry? Why or why not? Should more than five area codes of data be offered free of charge? How many? If, instead of the current proposal, the Commission would charge a flat fee for every telemarketer that accesses the registry, regardless of the amount of data they access, would it still be appropriate not to charge telemarketers or sellers that obtain information from only one to five area codes of data?

8. Is the "buy-up" provision (permitting telemarketers to buy access to additional area codes of data) included in proposed section 310.9(b), reasonable and appropriate? Does it

make the user fee too complex? What alternatives would you offer?

9. Is it problematic to require telemarketers to identify the particular area codes of data they need to access from the national registry, and to limit their access during the entire one-year term to those area codes? Why or why not? Does the "buy-up" provision solve any potential problems caused by such identification?

10. The NPR states that only telemarketers will be permitted access to the national registry, since the information in the registry cannot be used for any purpose other than compliance with the do-not-call provisions of the Proposed Rule. Is that limitation appropriate and workable? Would there ever be a need for an entity other than a telemarketer to gain access to the national registry? (The Commission anticipates providing appropriate law enforcement access to the national registry.)

11. Should list brokers be given access to the national registry in order to "scrub" the telemarketing lists of other firms? Why or why not?

12. Is it appropriate to require the telemarketer that gains access to the national registry on behalf of other sellers or telemarketers to pay the required user fee for those other entities? Why or why not? If the telemarketer does not pay this fee, who, if anyone, should pay? If list brokers are allowed access to the national registry, should they be required to pay the required user fee for all of their clients on whose behalf they are obtaining access? If telemarketers or list brokers are not required to pay this fee, what would prevent only a few firms from gaining access to the national registry, and passing the information they obtain on to many other entities? If that happened, wouldn't the annual fee need to be raised significantly? Is this fair to the entities who do access the registry?

13. Are the certification requirements included in Section 310.9(d) reasonable and appropriate?

14. Identify any instances when it would be difficult or impossible for a telemarketer that gains access to the national registry to identify the other "sellers" or "telemarketers" on whose behalf they are working. For example, how should this provision operate as to a telemarketer working on behalf of numerous subsidiaries of the same company?

15. The Commission anticipates that if a seller changes telemarketers during the course of the year, the newly hired telemarketer will have to pay the appropriate user fee for that seller in order to gain access to the registry on its

behalf. Is this reasonable and appropriate? If not, identify other alternatives that could be used to ensure that the seller pays the appropriate user fee.

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

Telemarketing, Trade practices.

#### IX. Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Commission proposes to amend 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

2. Add a new § 310.9 to read as follows:

##### **§ 310.9 Fee for access to do-not-call registry.**

(a) Telemarketers who obtain access to the do-not-call registry, maintained by the Commission under § 310.4(b)(1)(iii)(B), shall pay an annual fee, prior to obtaining such access, of \$12.00 per area code of data they access. Telemarketers may obtain access to five or fewer area codes of data for no fee. The maximum annual fee is \$3,000.00, which will provide access to 250 or more area codes of data. Any telemarketer who engages in telemarketing on behalf of other sellers or telemarketers, or who uses the information included in the registry to remove telephone numbers from the telemarketing lists of other sellers or telemarketers, shall pay this fee for each such seller or telemarketer.

(b) After a telemarketer pays the fees set forth in paragraph (a) of this section, the telemarketer may access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the telemarketer paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the telemarketer must first pay \$12 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, the telemarketer must first pay \$6 for each additional area code of data not initially selected. The payment of the additional fee will permit the telemarketer to access the additional area codes of data for the remainder of the annual period.

(c) Access to the do-not-call registry is limited to telemarketers working on



their own behalf or working on behalf of other sellers or telemarketers. Prior to accessing the do-not-call registry, a telemarketer must provide the identifying information required by the operator of the registry to collect the user fee, and must certify, under penalty of law, that the telemarketer is accessing the registry solely to comply with the provisions of this rule. If the telemarketer is accessing the registry on behalf of other sellers or telemarketers, that telemarketer also must identify each of the other sellers or telemarketers on whose behalf it is accessing the registry, and it must certify, under penalty of law, that the other sellers or telemarketers will be using the information gathered from the registry solely to comply with the provisions of this rule.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 02-13320 Filed 5-28-02; 8:45 am]

BILLING CODE 6750-01-P

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## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Part 542

RIN 3141-AA24

#### Minimum Internal Control Standards

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule: Notice of extension of time.

**SUMMARY:** On April 23, 2002, the National Indian Gaming Commission (Commission) reopened the comment period on proposed revisions to the Minimum Internal Control Standards, 66 FR 66500 (December 26, 2001) for the limited purpose of giving small entities an opportunity to comment on the Commission's certification that the proposed revisions will not have a significant economic impact on them. Upon request from tribes, the date for filing comments is being extended.

**DATES:** Comments shall be filed on or before May 30, 2002.

**ADDRESSES:** Send comments by mail, facsimile, or hand delivery to: Minimum Internal Control Standards, Revision Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Fax number: 202-632-7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Michele F. Mitchell at 202-632-7003 or, by fax, at 202-632-7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act ("IGRA" or "Act") 25 U.S.C. 2701-2721, enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission published proposed revisions to its existing Minimum Internal Control Standards on December 26, 2001. 66 FR 66500. The Commission received numerous comments on the proposed rule. As a result of one of the comments received, the Commission determined that certain Indian gaming operations, if they meet specific definitional criteria, might qualify as "small entities," under the Regulatory Flexibility Act (RFA). 5 U.S.C. 601(3). As a result of requests from potentially affected tribes, the Commission has agreed to extend the deadline for comment by one week. The public comment period will now end on May 30, 2002.

Dated: May 21, 2002.

**Kevin K. Washburn,**  
*General Counsel, National Indian Gaming Commission.*

[FR Doc. 02-13309 Filed 5-28-02; 8:45 am]

BILLING CODE 7565-01-P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-107100-00]

RIN 1545-AY26

#### Disallowance of Deductions and Credits for Failure To File Timely Return; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** This document provides notice of cancellation of proposed regulations and notice of public hearing relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations that fail to file a timely U.S. income tax return.

**DATES:** The public hearing originally scheduled for Monday, June 3, 2002, at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Donna Poindexter of the Regulations

Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Tuesday, January 29, 2002 (67 FR 4217), announced that a public hearing was scheduled for June 3, 2002, at 10 a.m., in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under section 874 and 882 of the Internal Revenue Code. The public comment period for these proposed regulations expired on April 29, 2002.

The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed as of May 13, 2002; no one has requested to speak. Therefore, the public hearing scheduled for June 3, 2002, is cancelled.

**Cynthia Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).*

[FR Doc. 02-13397 Filed 5-28-02; 8:45 am]

BILLING CODE 4830-01-P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IL189-1b; FRL-7213-1]

#### Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve revisions to particulate matter control requirements for rural grain elevators in Illinois. On April 8, 1999, the Illinois Environmental Protection Agency submitted section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89-491) as a requested revision to the Illinois State Implementation Plan (SIP). The requested SIP revision exempts rural grain elevators from certain particulate matter control requirements. An air quality modeling analysis was conducted to show that this rule change would not cause or contribute to violation of the National Ambient Air Quality Standards (NAAQS) for