

seller whose goods or services are being offered.

Sellers and telemarketers are given a limited safe harbor against liability for violating these provisions. Section 310.4(b)(2) of the proposed rule states that a seller or telemarketer will not be liable for such violations once in any calendar year per person called if the following four requirements are met: (1) It has established and implemented written procedures to comply with §§ 310.4(b)(1)(i) and (ii); (2) it has trained its personnel in those procedures; (3) the seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with §§ 310.4(b)(1)(i) and (ii); and (4) any subsequent call is the result of administrative error.

### 3. Calling Time Restrictions

Under § 310.4(c) of the proposed rule, any telemarketer is prohibited from engaging in telephone solicitations<sup>29</sup> to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location. This prohibition does not apply if the person called gives his or her prior consent to receive a call at a different time.<sup>30</sup>

### 4. Required Oral Disclosures

Section 310.4(d) of the proposed rule sets forth certain oral disclosures that must be made in telemarketing.<sup>31</sup> The preamble to this section states that it is an abusive telemarketing act or practice, and a violation of the rule, for a telemarketer to fail to make any of these required oral disclosures.

All telephone solicitations must begin by disclosing key information to the person called. This information includes the caller's true first and last name, the seller's name, and that the purpose of the call is to sell goods or services. The proposed rule does not require that the telemarketer's name be disclosed, if it is different from the seller's. In addition, the proposed rule does not set forth the exact language that must be used to convey the message that the purpose of the call is to sell goods or services. The choice of language is left to the telemarketer.

<sup>29</sup> Based on the definition of "telephone solicitation" in § 310.2(w) of the proposed rule, these calling time restrictions apply only to outbound telemarketing calls.

<sup>30</sup> As with the pattern of calls requirement in § 310.4(b)(1), the person may give prior consent either orally or in writing.

<sup>31</sup> The disclosures required by this section are in addition to the disclosures required under § 310.3(a)(1) of the proposed rule, which must be made before any payment is requested for goods or services.

If the telephone solicitation includes a charitable solicitation, slightly different and additional information must be disclosed at the beginning of the call. Not only must the caller's true first and last name and the name of the seller or charity be disclosed, but the telemarketer's name also must be disclosed in these calls. In addition, the telemarketer's status as a paid professional fundraiser must be disclosed, as well as the fact that the purpose of the call is to solicit charitable donations. If other goods or services are offered for sale during the call, the caller must disclose that the purpose of the call is also to sell goods or services.

Section 310.4(d)(2) of the proposed rule states that if a caller verifies a telemarketing sale, either during the call containing the original sales presentation or in a separate call, the caller verifying the sale must repeat all of the disclosures required under § 310.3(a)(1).<sup>32</sup> In this fashion, consumers will hear all of the important terms and conditions of the sale at the time they are verifying that purchase.

Section 310.4(d)(3) of the proposed rule requires three additional oral disclosures for any telemarketing which includes a prize promotion. The first disclosure is that no purchase or payment is necessary to win.<sup>33</sup> Second, the caller must disclose the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than \$20.00.<sup>34</sup> The third required disclosure is the odds of winning each prize offered. A true statement that the odds of winning cannot be determined in advance, or that the odds of winning are determined by the number of entrants, would satisfy this requirement.

Under § 310.4(d)(4) of the proposed rule, any telemarketing which includes an offer of a premium must make the additional disclosure of the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than \$20.00.

<sup>32</sup> These disclosures include the total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services, the quantity of any goods or services, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies.

<sup>33</sup> If a purchase or payment were required in a prize promotion that by definition involves a game of chance, that promotion would be an illegal lottery. See 18 U.S.C. 1301.

<sup>34</sup> Misrepresenting the retail sales price would be a violation of § 310.3(a)(2)(xxiv) of the proposed rule because such information is required to be disclosed under the rule.

### 5. Written Disclosures/ Acknowledgements

Section 310.4(e) of the proposed rule states that it is an abusive telemarketing act or practice for a seller or telemarketer that conducts a prize promotion or offers for sale any investment opportunity to request or accept any payment from a person without first providing the person with a written disclosure, in duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information required to be disclosed must be printed in not less than 10-point type (unless otherwise noted), in a color or shade that readily contrasts with the background of the notice. The information in the investment opportunity disclosure must be segregated from all other information that may be included in the document, while the information in the prize promotion disclosure must be on one page.

Both disclosures must be sent in an envelope that contains no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. The envelope for the prize promotion disclosure may not contain any writing representing that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize.

For prize promotions, the following information is required: (1) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business; (2) if the seller has been in operation under any other name(s), each such name and the length of time the seller operated under each name; (3) the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than \$20.00; (4) the odds of winning each prize offered and the number of persons who will receive each prize; (5) the total amount and description of any shipping or handling fees or any other charges that must be paid to receive or use a prize; (6) a complete description of any restrictions, conditions, or limitations on eligibility to receive or use a prize, including all steps a person must take to receive the most valuable prize offered; (7) the statement: "No purchase or payment is necessary to win," with a description of the no-purchase entry method; (8) a statement that a list of winners is available and the address to which a person may write to obtain such a list; (9) a statement that it is a violation of this rule for the seller to accept payment in any form unless the