

exemptions set forth in this section, the proposed rule covers all outbound telephone calls intended to induce payment for goods or services, except for calls made by a person who engages in fewer than ten telephone sales each year, or for telephonic contacts made from one business to another that do not involve the sale of office or cleaning supplies or certain charitable solicitations. The only inbound telemarketing calls covered are those received from a person who is responding to an initial communication, other than a catalog, from the seller or telemarketer that was directed to that particular person. In addition, all inbound telemarketing calls related to business ventures, investment opportunities, prize promotions, or credit-related programs are covered.

Section 310.7 Actions by States and Private Persons

The Telemarketing Act permits certain State officials and private persons to bring civil actions in an appropriate Federal district court for violations of this rule.³⁶ Section 310.7 of the proposed rule sets forth the notice such parties must provide to the Commission concerning those actions. Such parties must serve written notice of its action on the Commission, if feasible, prior to initiating an action under this rule. The notice must include a copy of the complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State official or private person must serve the Commission with the required notice immediately upon instituting its action.

Section 310.8 Federal Preemption

Section 310.8 of the proposed rule states that nothing in the rule shall be construed to preempt any State law that is not in direct conflict with any provision of the rule. Thus, State statutes concerning telemarketing that contain prohibitions or requirements that are not imposed by this rule would remain in effect, as long as those statutes do not conflict with this rule.

Section 310.9 Severability

Section 310.9 of the proposed rule sets forth the Commission's intent that the provisions of this rule be separate and severable from one another. Thus, if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

Section C. Invitation to Comment

Before adopting this proposed rule as final, consideration will be given to any

written comments submitted to the Secretary of the Commission on or before March 31, 1995. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Section D. Public Workshop-Conference

The FTC staff will conduct a Public Workshop-Conference to discuss written comments received in response to the Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the proposed regulations. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and

the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following affected interests: Sellers; telemarketers; list providers; representatives of the credit card system; consumers; Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 45-day comment period.

2. The party notifies Commission staff of its interest and authorization to represent an affected interest within 20 days of publication of the Notice of Proposed Rulemaking.

3. The party's participation would promote a balance of interests being represented at the conference.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in the rulemaking proceeding.

5. The party has expertise in activities affected by the proposed regulations.

6. The party adequately reflects the views of the affected interest(s) which it purports to represent, not simply a single entity or firm within that interest.

7. The number of parties selected will not be so large as to inhibit effective discussion among them.

A neutral third-party facilitator will be retained for the conference. It will be held over the course of three consecutive days, on April 18-20, 1995. Parties interested in participating and authorized to represent an affected interest at the conference must notify Commission staff by March 6, 1995. Prior to the conference, parties selected to represent an affected interest will be provided with computer disks containing copies of the comments received in response to this notice.

Section E. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral

³⁶ See 15 U.S.C. 6103 and 6104.