

modem, or any other telephonic medium, as well as calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic, or electronic communications by or on behalf of the seller.

a. Is this definition clear, meaningful, and appropriate?

b. Is the definition of "telemarketing" sufficiently broad to encompass current as well as future technology?

c. Are there other approaches to defining the term "telemarketing" that would be more useful?

8. The proposed definition of "telemarketing" includes within the rule's coverage on-line information services which a person accesses by computer modem.

a. Is such coverage appropriate?

b. Is the proposed rule as drafted sufficiently comprehensive to regulate the types of plans, programs, or campaigns for the sale of goods or services that have been, are, or may be conducted through such computer information services?

9. The proposed definition of "telemarketing" tracks the Telemarketing Act in exempting catalog sales from coverage under the rule. One of the requirements of this exemption is that "the person making the solicitation * * * only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation." The proposed rule states that the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call.

a. Does the proposed rule sufficiently clarify the types of solicitation activities that are permitted in connection with catalog sales?

b. How much will the additional flexibility provided by this definition benefit catalog sellers? How will it affect law enforcement efforts to stop fraudulent or deceptive telemarketers?

10. The proposed rule defines the term "verifiable retail sales price."

a. Is this definition clear, meaningful, and appropriate?

b. Are there other approaches to defining this term that would be more useful?

Section 310.3 Deceptive Telemarketing Acts or Practices

11. Section 310.3(a) of the proposed rule sets forth certain conduct that will be considered a deceptive telemarketing act or practice and a violation of the rule, including the failure to make

certain disclosures and the misrepresentation of certain information. Questions 13 through 18 seek comments on the particular types of acts and practices included in this Section of the proposed rule. Looking at § 310.3(a) as a whole:

a. Would it be appropriate to include in the final rule a general prohibition against material misrepresentations or the failure to disclose material information? What would be the advantages and disadvantages to this approach?

b. Are there other approaches to prohibiting deceptive telemarketing acts or practices that would be more useful to consumers? That would be more useful to law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses forced to comply with it?

c. Are there other approaches to prohibiting deceptive telemarketing acts or practices that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

12. Section 310.3(a) of the proposed rule makes both the seller and the telemarketer equally liable for any deceptive telemarketing acts or practices.

a. Are there parts of this Section that should apply only to the seller or to the telemarketer? If so, what specific Sections should apply only to sellers? To telemarketers? Why are such limitations appropriate?

b. What are the benefits of making both sellers and telemarketers jointly liable for violations?

c. What additional costs or other burdens will the rule impose on sellers and/or telemarketers if the rule makes both liable for any violations of this Section? If the rule makes telemarketers jointly liable with sellers, will this reduce the ability of telemarketers to respond to the needs of their clients in a timely fashion?

d. If telemarketers are not jointly liable for deceptive practices of the sellers for whom they work, would some telemarketers simply seek to avoid knowledge of any questionable practices of the sellers from whom they work? Are there alternative ways to keep telemarketers from taking such an approach, without imposing full liability for all of the actions taken by their clients?

13. Section 310.3(a)(1) of the proposed rule requires that certain disclosures be made before payment is requested for any goods or services

offered, and that the disclosures be made in the same manner and form as the payment request.

a. Are there other disclosures that should be required? Are any of the required disclosures unnecessary?

b. Is the description of the information to be disclosed clear, meaningful, and appropriate?

c. What are the current practices of sellers and telemarketers regarding such disclosures?

d. What costs will this disclosure requirement impose on legitimate businesses?

e. What are the advantages or disadvantages of requiring these disclosures before payment is requested? Is it more appropriate to require these disclosures at some other time?

14. As part of the prohibition against deceptive telemarketing acts or practices, § 310.3(a)(2) of the proposed rule prohibits specific misrepresentations in connection with telemarketing.

a. Are there other misrepresentations that should be included in the prohibited list? Are any of the prohibited misrepresentations unnecessary?

b. Is the description of the prohibited misrepresentations clear, meaningful, and appropriate?

c. How will this section benefit consumers or law enforcement efforts? What, if any, costs will this Section impose on legitimate businesses?

15. As part of the prohibition against deceptive telemarketing acts or practices, § 310.3(a)(3) of the proposed rule prohibits specific misrepresentations in connection with the offer, offer for sale, or sale of any business venture.

a. Are there other misrepresentations that should be included in the prohibited list? Are any of the prohibited misrepresentations unnecessary?

b. Is the description of the prohibited misrepresentations clear, meaningful, and appropriate?

c. How will this section benefit consumers or law enforcement efforts? What, if any, costs will this Section impose on legitimate businesses?

16. Section 310.3(a)(4) of the proposed rule prohibits obtaining or submitting a check, draft, or other form of negotiable paper for payment from a person's checking, savings, share, or similar account without that person's express written authorization.

a. Is this prohibition clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this prohibition?