

telemarketer, except for such contacts related to certain employment services, business ventures, investment opportunities, prize promotions, or credit-related programs.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Is the scope of the proposed rule sufficiently limited to exempt businesses, such as restaurants, car rental companies, travel agents, and providers of services, such as plumbers, that rely on the telephone for the taking of orders or the scheduling of appointments?

c. Is it appropriate to exclude from this exemption contacts related to employment services, business ventures, investment opportunities, prize promotions, or credit-related programs? Are there other types of goods or services sold through these types of contacts that should not be exempted from the rule?

d. Is this exemption appropriate for on-line computer information services? How would this exemption affect advertising on computer bulletin boards? Is it more appropriate to include all contacts made over computer information services in the rule?

e. Are there other approaches to limiting the scope of the rule that would be more useful?

f. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing?

45. Are there other telemarketing activities, such as the sale of particular products or other particular kinds of telemarketing, currently covered by the proposed rule but which should be exempted? How would the exemption of these firms or activities affect the ability of law enforcement to stop deceptive or abusive telemarketing acts or practices? How would such exemptions affect consumers? How would they benefit the firms exempted from the rule's coverage? How many firms would be exempted from the coverage of the rule if any proposed change were adopted?

46. How many firms in the United States sell their products, either in whole or in part, through telemarketing, as that term is defined in the proposed rule? How many of these firms engage in telemarketing on their own behalf? How many employ others to engage in telemarketing for them? How would the number of firms subject to the rule be changed if one or more of the exemptions in § 310.6 were eliminated?

Section 310.8 Federal Preemption

47. Under § 310.8 of the proposed rule, State laws are preempted only when they are in direct conflict with any provision of the rule. Is this

preemption standard clear, meaningful, and appropriate?

Other

48. Is it appropriate for the proposed rule to take effect 30 days after its date of publication in the **Federal Register**?

a. Would 30 days be sufficient time to come into compliance with the rule? Why or why not?

b. For which specific provisions of the rule would compliance be possible within 30 days, and for which specific provisions would compliance take longer? Would a staggered effective date be more appropriate?

c. If 30 days is an insufficient period of time, what time period would be sufficient?

49. One of the findings which led Congress to pass the Telemarketing Act was that telemarketing differs from other sales activities because it can be carried out across State lines without direct, face-to-face contact with the consumer. Are there new types of technology by which sales can be made without direct contact between the buyer and seller? Is the proposed rule broad enough to encompass such forms of technology? Will the proposed rule requirements be appropriate and/or feasible for such other technology?

50. What kinds of technological changes may be anticipated in the area of telemarketing? Will the proposed rule requirements be appropriate and/or feasible after these technological changes are implemented?

51. As already noted in Section F, comment is invited on the effect of the proposed rule with regard to costs, profitability, competitiveness, and employment of small business entities.

52. To the extent not otherwise addressed by the questions above, are there any regulatory alternatives that would reduce any adverse economic impact of the proposed rule, yet fully implement the Telemarketing Act?

53. What are the aggregate costs and benefits of the proposed rule? Are there any provisions in the proposed rule that are not necessary to implement the statute or that impose costs not outweighed by benefits? Who will benefit and who will bear the cost? Can we expect either the costs or benefits of the rule to dissipate over time?

54. Does the proposed rule overlap or conflict with other Federal, State, or local government laws or regulations?

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, it is proposed that chapter I of 16 CFR be amended by adding a new part 310 to read as follows:

PART 310—TELEMARKETING SALES RULE

Sec.

310.1 Scope of regulations in this part.

310.2 Definitions.

310.3 Deceptive telemarketing acts or practices.

310.4 Abusive telemarketing acts or practices.

310.5 Recordkeeping requirements.

310.6 Exemptions.

310.7 Actions by states and private persons.

310.8 Federal preemption.

310.9 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101–6108).

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a State.

(c) *Business venture* means any written or oral business arrangement, however denominated, including but not limited to a "franchise," as that term is defined in the "Franchise Rule," 16 CFR 436.2(a), which consists of the payment of any consideration for:

(1) The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

(2) The promise of more than nominal assistance to any person or entity in connection with or incidental to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

The term "business venture" does not include any business arrangement in which persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses.

(d) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(e) *Commission* means the Federal Trade Commission.

(f) *Credit card* means any instrument or device, whether known as a credit