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FEDERAL TRADE COMMISSION

[RIN: 3084-AA98]

16 CFR Part 310

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the “Commission”) is amending its Telemarketing Sales Rule (“TSR”) by updating the fees charged to entities accessing the National Do Not Call Registry (the “Registry”) as required by the Do-Not-Call Registry Fee Extension Act of 2007.

DATES: This final rule (the revised fees) will become effective October 1, 2018.

ADDRESSES: Copies of this document are available on the Internet at the Commission’s website: <https://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Ami Joy Dziekan, (202) 326-2648, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room CC-9225, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. No. 110-188, 122 Stat. 635) (“Act”), the Commission is amending the TSR by updating the fees entities are charged for accessing the Registry as follows: the revised rule increases the annual fee for access to the Registry for each area code of data from \$62 to \$63 per area code; and increases the maximum amount that

will be charged to any single entity for accessing area codes of data from \$17,021 to \$17,406. Entities may add area codes during the second six months of their annual subscription; the fee for those additional area codes of data increases from \$31 to \$32.

These increases are in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) (“CPI”) for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amounts if the change in the CPI since the last fee increase is less than one percent. For fiscal year 2009, the Act specified that the original annual fee for access to the Registry for each area code of data was \$54 per area code, or \$27 per area code of data during the second six months of an entity’s annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be \$14,850.

The determination whether a fee change is required and the amount of the fee change involves a two-step process. First, to determine whether a fee change is required, we measure the change in the CPI from the time of the previous increase in fees. There was an increase in the fees for fiscal year 2018. Accordingly, we calculated the change in the CPI since last year, and the increase was 2.25 percent. Because this change is over the one percent threshold, the fees will change for fiscal year 2019.

Second, to determine how much the fees should increase this fiscal year, we use the calculation specified by the Act set forth above: the percentage change in the baseline CPI applied to the original fees for fiscal year 2009. The average value of the CPI for July 1, 2007 to June 30, 2008 was 211.702; the average value for July 1, 2017 to June 30, 2018 was 248.126, an increase of 17.21 percent. Applying the 17.21 percent increase to the base amount from fiscal year 2009, leads to a \$63 fee for access to a single area code of data for a full year for fiscal year 2019, an increase of \$1 from last year. The actual amount is \$63.29, but when rounded, pursuant to the Act, \$63 is the appropriate fee. The fee for accessing an additional area code for a half year increases from \$31 to \$32 (rounded from \$31.65). The maximum amount charged increases to \$17,406 (rounded from \$17,405.69).

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork Reduction Act. The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501-3521, the Office of Management and Budget (“OMB”) approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084-0169. The amendments outlined in this Final Rule pertain only to the fee provision

(§ 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

Accordingly, the Federal Trade Commission amends 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; 15 U.S.C. 6151-6155.

2. In § 310.8, revise paragraphs (c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$63 for each area code of data accessed, up to a maximum of \$17,406; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the

National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$63 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, each person required to pay the fee under paragraph (c) of this section must first pay \$32 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

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By direction of the Commission.

Donald S. Clark,
Secretary.

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