



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278; FCC 20-186; FRS 17388]

Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes steps to implement of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act). First, the Commission codifies the Telephone Consumer Protection Act (TCPA) exemptions for calls to wireless numbers into the rules to make those exemptions more clear and understandable for both callers and consumers. Second, the Commission amends the TCPA exemptions for artificial or prerecorded voice calls made to residential telephone lines so each satisfies the TRACED Act's requirements to identify who can call, who can be called, and any call limits. The Commission adopts limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and Health Insurance Portability and Accountability Act (HIPPA)-related calls to a residence. In addition, callers must have mechanisms in place to allow consumers to opt out of any future calls. This action will empower consumers to further limit the number of unwanted robocalls made under any TCPA exemption.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the amendments to § 64.1200(a)(3)(ii) through (v), (b)(2) and (b)(3), and (d), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date of these amendments.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338-2797 or Richard.Smith@fcc.gov. For information regarding the PRA information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418-2918, or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, document FCC 20-186, adopted on December 29, 2020, released on December 30, 2020. The full text of document FCC 20-186 is available online at <https://docs.fcc.gov/public/attachments/FCC-20-186A1.pdf>. To request this document in accessible formats for people with disabilities (*e.g.*, Braille, large print, electronic files, audio format) or to request reasonable accommodations (*e.g.*, accessible format documents, sign language interpreters, CART), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice). The amendments to § 64.1200(a)(3)(ii) through (v), (b)(2) and (b)(3), and (d) are delayed indefinitely as they contain information collection requirements under the Paperwork Reduction Act (PRA) which must first be approved by the Office of Management and Budget (OMB).

CONGRESSIONAL REVIEW ACT

The Commission sent a copy of document FCC 20-186 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

The Report and Order contains modified information collection requirements which are not effective until approval is obtained from OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the Report and Order as required by the PRA of 1995, Pub. L. 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

SYNOPSIS

1. In the Report and Order, the Commission adopts measures to implement section 8 of the TRACED Act to ensure that any exemption adopted under sections 227(b)(2)(B) or (C) of the TCPA includes requirements for: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.

A. Codifying Exemptions

2. First, the Commission codifies all existing exemptions under section 227(b)(2)(C) of the

TCPA for calls to wireless numbers in the Commission's rules to make the requirements more clear and easy to understand for both callers and called parties.

B. Section 227(b)(2)(B) Exemption Restrictions

1. Non-Commercial Calls to a Residence

3. *Callers.* The Commission has exempted calls “not made for a commercial purpose” from the prohibition on artificial or prerecorded voice messages to residential telephone lines. The Commission concludes that this exemption satisfies the TRACED Act's requirements with respect to “the classes of parties that may make such calls.” The class of parties that may make such calls is limited to callers that are not calling for a commercial purpose. The Commission has indicated, for example, that this exemption includes calls conducting research, market surveys, political polling, or similar noncommercial activities. The purpose of such calls is not to advertise or market a commercial product or service.

4. *Called parties.* The exemption for calls “not made for a commercial purpose” satisfies the TRACED Act's requirement with respect to the “classes of parties that may be called” because this exemption applies only to calls made to residential telephone lines. Thus, only residential telephone users may be called under this exemption.

5. *Number of calls.* The TRACED Act requires the Commission to limit “the number of such calls that a calling party may make to a particular called party.” The Commission therefore amends its rules to limit the number of calls that can be made to a particular residential line pursuant to the exemption for calls “not made for a commercial purpose” to three artificial or prerecorded voice calls within any consecutive 30-day period. These limits give non-commercial callers several opportunities over a month-long period to convey their message and to obtain consent for future calls. The Commission selected this limit as an appropriate balance in the context of federal debt collection calls, based on support in the record, while recognizing that there was no consensus what the exact number should be. These limits strike the appropriate balance between these callers reaching consumers with information and reducing the number of unexpected and unwanted calls consumers currently receive. The Commission intends to monitor these limits to determine whether they may require adjustment in the

future.

6. The Commission emphasizes that callers can simply get consumer consent to make more than three non-commercial calls using an artificial or prerecorded voice within any consecutive 30-day period. As the numerical limitations only apply to artificial or prerecorded calls to residential numbers, and not live agent calls, the impact on callers is limited.

7. *Opt-out Requirement.* The Commission's rules require that residential telephone subscribers be permitted to opt out of artificial and prerecorded voice calls that contain telemarketing messages. Under these rules, a consumer who wants to avoid further artificial or prerecorded *telemarketing* calls can "opt out" by dialing a telephone number (required to be provided in the artificial or prerecorded voice message) to register his or her do-not-call request in response to that call. The rules also require that, in every case where an artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line, the caller must provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request.

8. To effectuate an opt-out mechanism, noncommercial callers must comply with the requirements of §§ 64.1200(b) and (d) of the Commission's rules, which govern the process for handling do-not-call requests.

2. Commercial Calls to a Residence that Do Not Constitute Telemarketing

9. *Callers.* The Commission has exempted calls "made for a commercial purpose but [that] do[] not include or introduce an advertisement or constitute telemarketing" from the prohibition on using an artificial or prerecorded voice message to call residential telephone lines. If these calls do not contain advertising or solicit the purchase of goods or services and otherwise conform to the requirements of the TRACED Act, the Commission concludes they should remain exempt from the TCPA prohibitions as the record shows consumers generally want and expect them.

10. *Called parties.* The Commission further concludes that the exemption for commercial calls already satisfies the TRACED Act's requirement with respect to the "classes of parties that may be called" because this exemption applies only to calls made to residential telephone lines.

11. *Number of calls.* The Commission limits the number of calls that can be made pursuant to the exemption for commercial calls to three artificial or prerecorded voice calls within any consecutive 30-day period. The Commission incorporates by reference the discussion relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, as well as the discussion on the timeframe and effective date for implementation mechanisms to comply with these requirements.

12. *Opt-Out Requirement.* The Commission also requires callers to allow recipients of artificial and prerecorded voice message calls made pursuant to the exemption for commercial calls to opt out of such calls using either of the mechanisms described in the Commission's rules. The Commission incorporates by reference the analysis relating to the adoption of an opt-out mechanism for non-commercial calls to residential telephone numbers.

3. Tax-exempt Nonprofit Organization Calls to a Residence

13. *Callers.* The Commission has exempted calls made by or on behalf of a tax-exempt nonprofit organization from the prohibition on using an artificial or prerecorded voice to deliver a message to a residential telephone line. The Commission agrees that this exemption remains in the public interest and should be retained subject to conformance with the requirements of the TRACED Act.

14. *Called parties.* The Commission concludes that the exemption for tax-exempt nonprofit organizations already satisfies the TRACED Act's requirements with respect to the "classes of parties that may be called" because this exemption applies only to calls made to residential telephone lines.

15. *Number of calls.* The Commission limits the number of calls that can be made pursuant to the exemption for calls by tax-exempt nonprofit organizations to three artificial or prerecorded voice calls within any consecutive 30-day period. The Commission incorporates by reference the discussion relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, as well as the discussion on the timeframe and effective date for implementing mechanisms to comply with these requirements.

16. *Opt-Out Requirement.* The Commission also requires callers to allow recipients of artificial and prerecorded voice message calls made pursuant to the exemption for tax-exempt nonprofit

organizations to opt out of such calls using either of the mechanisms described in the Commission's rules. The Commission incorporates by reference the analysis relating to the adoption of an opt-out mechanism for non-commercial calls to residential telephone numbers.

4. HIPAA Calls to a Residence

17. *Callers.* The Commission has exempted HIPAA-related calls that deliver a healthcare message from the prohibition on using an artificial or prerecorded voice to deliver a message to residential telephone lines. The Commission concluded that such calls serve a public interest purpose: to ensure continued consumer access to healthcare-related information. The Commission finds that the record shows that the exemption continues to benefit consumers and should be retained subject to compliance with the requirements of the TRACED Act. The exemption satisfies the TRACED Act's requirements with respect to the "classes of parties that may make" such calls (calls "made by, or on behalf of, a 'covered entity' or its 'business associate' as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103").

18. *Called parties.* The Commission also concludes that the exemption for HIPAA-related calls satisfies the TRACED Act's requirements with respect to the "classes of parties that may be called" because this exemption applies only to calls made to residential telephone lines.

19. *Number of calls.* The Commission amends its rules to limit the number of calls that can be made pursuant to the exemption for HIPAA-related calls to one artificial or prerecorded voice call per day up to a maximum of three artificial or prerecorded voice calls per week. The Commission notes that this limitation is identical to the condition imposed on healthcare calls to wireless numbers that are exempted under section 227(b)(2)(C) of the TCPA.

20. The Commission imposed this same limit on exempted HIPAA calls to wireless telephone numbers five years ago and has no credible evidence it has unduly restricted healthcare providers' ability to communicate with their patients. The Commission incorporates by reference the discussion relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, as well as the discussion on the timeframe and effective date for implementing mechanisms to comply with these requirements.

21. *Opt-Out Requirement.* The Commission also requires callers to allow recipients of artificial and prerecorded voice message calls made pursuant to the HIPAA exemption to opt out of such calls using either of the opt-out mechanisms described in the Commission's rules. The Commission incorporates by reference the analysis relating to the adoption of an opt-out mechanism for non-commercial calls to residential telephone numbers.

5. Implementation and Effective Date

22. The Commission recognizes that implementation of the numerical limits and opt-out requirements may present some burdens to callers and therefore establishes a six-month period to do so before the new requirements take effect.

23. The technology needed for compliance with the Commission's opt-out requirements is commonplace and easily accessible; the Commission's rules have required certain callers to utilize the available tools and equipment since 2012. Therefore, based on a review of the record and these considerations, the appropriate time for implementation of these amended rules is six months. The requirements that callers comply with a three-call limit within any consecutive 30-day period, and the HIPAA exemption restriction of one call per day up to three calls per week, and opt-out requests from consumers implicate the PRA. Thus, the six-month period before compliance is required will commence upon publication in the Federal Register of OMB approval of the rules.

C. Section 227(b)(2)(C) Exemptions

1. Package Delivery Calls to a Wireless Number

24. The Commission has exempted package delivery calls to wireless consumers subject to several conditions. *See Cargo Airline Association Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Order, published at 80 FR 15688, March 25, 2015. The record shows that the exemption continues to serve the public interest and that the conditions on such calls satisfy section 8 of the TRACED Act. As a result, the Commission concludes that no further action is required to bring this exemption into compliance with section 8 of the TRACED Act.

2. Financial Institution Calls to a Wireless Number

25. The Commission has exempted calls made by financial institutions to wireless consumers

subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. The Commission noted that calls by financial institutions regarding fraudulent transactions, security data breaches, and identity theft are “intended to address exigent circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harms.” This exemption has been in place for five years, and the Commission finds that it remains in the public interest and that the conditions on such calls satisfy section 8 of the TRACED Act. As a result, the Commission concludes that no further action is required to bring this exemption into compliance with section 8 of the TRACED Act.

3. Healthcare Provider Calls to a Wireless Number

26. The Commission has exempted certain healthcare provider calls to wireless consumers subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. The Commission found that calls for which there is an exigency and that have a healthcare treatment purpose such as appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, lab results, prescription notifications, and home healthcare instructions provide vital, time-sensitive information patients welcome, expect, and often rely on to make informed decisions. This exemption has been in place for five years, and the Commission finds that it remains in the public interest and that the conditions on such calls satisfy section 8 of the TRACED Act. The Commission concludes that no further action is required to bring this exemption into compliance with section 8 of the TRACED Act.

4. Inmate Calling Service Calls to a Wireless Number

27. The Commission has exempted calls from inmate phone service providers subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. The Commission found such calls to be beneficial, provided they do not include any telemarketing and are solely intended to arrange for the billing of a specific collect call that an inmate caller has already attempted to initiate. This exemption has been in place for five years, and the

Commission finds that it remains in the public interest and that the conditions on such calls satisfy section 8 of the TRACED Act. As a result, the Commission concludes that no further action is required to bring this exemption into compliance with section 8 of the TRACED Act.

D. Additional Matters

28. Several commenters request amendments to various TCPA exemptions for reasons that extend beyond the scope of section 8. To the extent that there are open proceedings on related subject matters, the Commission encourages these parties to direct their comments to those proceedings.

FINAL REGULATORY FLEXIBILITY ANALYSIS

29. As required by the Regulatory Flexibility Act of 1980, as amended, RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking (NPRM) in this docket, published at 85 FR 64091, October 9, 2020. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Final Regulatory Flexibility Analysis FRFA conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

30. In the Report and Order, the Commission takes action to implement section 8 of the TRACED Act, to ensure that any exemption adopted pursuant to sections 227(b)(2)(B) and (C) of the TCPA contains requirements for: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.

31. The TRACED Act requires the Commission, no later than December 30, 2020, to “prescribe such regulations or amend such existing regulations, as necessary to ensure that [any] such exemption [issued under sections 227(b)(2)(B) or (C) of the TCPA] contains each requirement [listed in section 8(a) of the TRACED Act].” Section 8(b) of the TRACED Act provides that “[t]o the extent such an exemption contains such a requirement before such date of enactment, nothing in this section or the amendments made by this section shall be construed to require the Commission to prescribe or amend regulations relating to such requirement.”

32. The Report and Order confirms that the conditions imposed by the Commission by order for exemptions under section 227(b)(2)(C) of the TCPA for calls to wireless numbers satisfy the

TRACED Act's section 8 requirements, and the only action necessary is to codify those exemptions in the rules. The Commission does not adopt additional rules or reporting and recordkeeping requirements in that context.

33. With respect to the exemptions for artificial and prerecorded voice message calls to residential numbers, the Report and Order retains all existing exemptions and adopts certain conditions on such calls. Specifically, to satisfy the TRACED Act's requirement regarding "the number of such calls that a calling party may make to a particular called party," the Report and Order amends the Commission's rules to generally limit the number of exempted calls that can be made to a particular residential line to three calls within any consecutive 30-day period. For HIPAA-related calls to a residence, however, the Commission amends the rules to limit the number of calls that can be made pursuant to this exemption to one artificial or prerecorded voice call per day up to a maximum of three artificial or prerecorded voice calls per week. The adopted rules also allow recipients of artificial and prerecorded voice message calls to residential numbers to opt out of future calls. Such residential subscribers may do so by dialing a telephone number (required to be provided in the prerecorded message) to register his or her do-not-call request in response to that call or by using an automated, interactive voice- and/or key press-activated opt-out mechanism to make a do-not-call request. Thus, the amended rules will bring these exemptions into line with the Commission's treatment of exempted calls to wireless numbers. To effectuate an opt-out mechanism, callers must comply with the requirements of § 64.1200(b) and (d) of the Commission's existing rules, which govern the process for handling do-not-call requests.

34. In so doing, the Report and Order implements the requirements of the TRACED Act and, at the same time, minimizes any compliance burdens for both small and large entities that make calls pursuant to one of the exemptions in the law.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

35. In the NPRM, the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. Three commenters, however, focused on the challenges certain entities would face in complying with the opt-out requirements given their small staffs and limited

resources. The Credit Union National Association (CUNA) argues that the opt-out proposals would impose significant burdens for many credit unions that do not engage in telemarketing, and thus would have had no reason to create and maintain do-not-call lists. CUNA states that nearly 40 percent of all credit unions employ five or fewer full-time employees, approximately 25 percent have less than \$10 million in assets, and over two-thirds have less than \$100 million in assets. The Illinois Credit Union states that an opt-out requirement would be burdensome for smaller institutions which have limited staff and resources, and the Professional Association for Customer Engagement similarly states that many healthcare providers are smaller entities that do not have the financial resources to implement an automated do-not-call system with a toll-free number.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

36. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

37. The Report and Order does not adopt any additional conditions on calls made to wireless numbers pursuant to the exemptions adopted under section 227(b)(2)(C) of the TCPA, but instead concludes that the exemptions already meet the requirements of the TRACED Act. With respect to the exemptions for calls to residential numbers, the Report and Order adopts a numerical limit of three calls within a consecutive 30-day period that an entity may make pursuant to three of the four exemptions. The one exception is for HIPAA-related calls to a residence where the Commission amends the rules to limit the number of calls that can be made pursuant to this exemption to one artificial or prerecorded voice call per day up to a maximum of three artificial or prerecorded voice calls per week. The Commission explained that this limitation is identical to the condition imposed on healthcare calls to wireless numbers that are exempted under section 227(b)(2)(C) of the TCPA.

38. The Commission's ruling therefore satisfies the requirements of the TRACED Act while bringing the exemptions for calls made to residential telephone numbers in line with the treatment of exempted calls to wireless numbers. The adopted limitation will reduce the number of intrusive or unwanted robocalls consumers receive at their homes while still allowing legitimate businesses to provide services and information consumers want. The Report and Order also requires entities making artificial or prerecorded voice calls to residential numbers pursuant to any of the exemptions to honor opt-out requests from consumers who wish to avoid future calls. In such cases, a caller will need to have opt-out mechanisms in place to accept do-not-call requests and to record and track such opt-out requests in order to avoid making any additional calls to those consumers. If the caller makes a call using an artificial or prerecorded voice message, they must provide a telephone number in the message to allow a consumer to register his or her do-not-call request in response to that call. The Commission's existing rules also require that, in every case where an artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line, the caller must provide an automated, interactive voice and/or key press-activated opt-out mechanism for the called person to make a do-not-call request. Entities will have up to 30 days to honor a residential subscriber's do-not-call request and ensure that they no longer call such residential subscriber's telephone number. While these rules will necessitate that entities keep records associated with the number of calls they make to a particular called party and to track opt-out requests from consumers, entities are not required to routinely report these records to the Commission. These requirements will apply to both large and small entities alike that make calls to residential consumers pursuant to one of the exemptions carved out from the Commission's rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. The Commission considered feedback in response to the NPRM in crafting the final order. The Commission evaluated the comments with the goal of removing regulatory roadblocks and giving industry the flexibility to continue to make calls pursuant to any exemption previously carved out by the Commission while still protecting the interests of consumers who do not want to receive unlimited calls from such entities and allowing consumers to opt out of future calls from such entities. For example, the Commission retained all existing exemptions for calls to residential numbers, concluding that such exemptions satisfy the TRACED Act's requirements regarding the classes of parties that may make such calls and the classes of parties that may be called. The Commission also considered the benefits to consumers of adopting a numerical limit on the number of calls made to them and weighed those benefits against the costs to entities to ensure they make no more than three calls per 30-day period to each residential number and allow consumers to opt out of future calls. The Commission concluded that such conditions fulfilled the TRACED Act's directive that any exemption contain requirements with respect to the number of calls that may be made to any particular number. While entities that are exempted under the rules will need to keep internal records to ensure they do not call residential consumers more than three times within any consecutive 30-day period and avoid calling those consumers who have made a do-not-call request altogether, the Commission did not require that any records of compliance with these requirements be routinely reported to the Commission.

41. In response to comments on the timing necessary for entities that currently take advantage of exemptions from the TCPA to implement any new limitations on such exemptions, the Report and Order delays implementation of the new three-call-per-30-day period (or three calls per week for HIPAA calls) and opt-out requirements for six months. Thus, the rules will not become effective until six months from the date of publication in the Federal Register of OMB approval of the information collection requirements associated with the new rules. This delay considers the potential compliance costs for small businesses that several commenters argued would result from the need to implement new procedures to comply with the do-not-call requirements. Small businesses may avoid any additional compliance costs entirely by declining to make such calls unless they first obtain prior express consent

from consumers.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications,
Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend § 64.1200 by revising paragraph (a)(1)(iv) and adding paragraph (a)(9) to read as follows:

§ 64.1200 Delivery Restrictions.

(a) * * *

(1) * * *

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list. A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when making calls exempted by paragraph (a)(9) of this section.

* * * * *

(9) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section for making any call exempted in this paragraph (a)(9), provided that the call is not charged to the called person or counted against the called person's plan limits on minutes or texts. As used in this paragraph (a)(9), the term "call" includes a text message, including a short message service (SMS) call.

(i) Calls made by a package delivery company to notify a consumer about a package delivery, provided that all of the following conditions are met:

(A) The notification must be sent only to the telephone number for the package recipient;

(B) The notification must identify the name of the package delivery company and include contact information for the package delivery company;

(C) The notification must not include any telemarketing, solicitation, or advertising content;

(D) The voice call or text message notification must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(E) The package delivery company shall send only one notification (whether by voice call or text message) per package, except that one additional notification may be sent for each attempt to deliver the package, up to two attempts, if the recipient's signature is required for the package and the recipient was not available to sign for the package on the previous delivery attempt;

(F) The package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and must honor an opt-out request within a reasonable time from the date such request is made, not to exceed 30 days; and,

(G) Each notification must include information on how to opt out of future delivery notifications; voice call notifications that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice call notifications that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future package delivery notifications; text notifications must include the ability for the recipient to opt out by replying "STOP."

(ii) Calls made by an inmate collect call service provider following an unsuccessful collect call to establish a billing arrangement with the called party to enable future collect calls, provided that all of the following conditions are met:

(A) Notifications must identify the name of the inmate collect call service provider and include contact information;

(B) Notifications must not include any telemarketing, solicitation, debt collection, or advertising content;

(C) Notifications must be clear and concise, generally one minute or less;

(D) Inmate collect call service providers shall send no more than three notifications following

each inmate collect call that is unsuccessful due to the lack of an established billing arrangement, and shall not retain the called party's number after call completion or, in the alternative, after the third notification attempt; and

(E) Each notification call must include information on how to opt out of future calls; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future notification calls; and,

(F) The inmate collect call service provider must honor opt-out requests immediately.

(iii) Calls made by any financial institution as defined in section 4(k) of the Bank Holding Company Act of 1956, 15 U.S.C. 6809(3)(A), provided that all of the following conditions are met:

(A) Voice calls and text messages must be sent only to the wireless telephone number provided by the customer of the financial institution;

(B) Voice calls and text messages must state the name and contact information of the financial institution (for voice calls, these disclosures must be made at the beginning of the call);

(C) Voice calls and text messages are strictly limited to those for the following purposes: transactions and events that suggest a risk of fraud or identity theft; possible breaches of the security of customers' personal information; steps consumers can take to prevent or remedy harm caused by data security breaches; and actions needed to arrange for receipt of pending money transfers;

(D) Voice calls and text messages must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;

(E) Voice calls and text messages must be concise, generally one minute or less in length for voice calls (unless more time is needed to obtain customer responses or answer customer questions) or 160 characters or less in length for text messages;

(F) A financial institution may initiate no more than three messages (whether by voice call or text message) per event over a three-day period for an affected account;

(G) A financial institution must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated,

interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying “STOP,” which will be the exclusive means by which consumers may opt out of such messages; and,

(H) A financial institution must honor opt-out requests immediately.

(iv) Calls made by, or on behalf of, healthcare providers, which include hospitals, emergency care centers, medical physician or service offices, poison control centers, and other healthcare professionals, provided that all of the following conditions are met:

(A) Voice calls and text messages must be sent only to the wireless telephone number provided by the patient;

(B) Voice calls and text messages must state the name and contact information of the healthcare provider (for voice calls, these disclosures would need to be made at the beginning of the call);

(C) Voice calls and text messages are strictly limited to those for the following purposes: appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions;

(D) Voice calls and text messages must not include any telemarketing, solicitation, or advertising; may not include accounting, billing, debt-collection, or other financial content; and must comply with HIPAA privacy rules, 45 CFR 160.103;

(E) Voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(F) A healthcare provider may initiate only one message (whether by voice call or text message) per day to each patient, up to a maximum of three voice calls or text messages combined per week to each patient;

(G) A healthcare provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an

opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future healthcare calls; text messages must inform recipients of the ability to opt out by replying “STOP,” which will be the exclusive means by which consumers may opt out of such messages; and,

(H) A healthcare provider must honor opt-out requests immediately.

3. Delayed indefinitely, further amend § 64.1200 by revising paragraphs (a)(3)(ii) through (v), (b)(2) and (3) and (d) to read as follows:

§ 64.1200 Delivery Restrictions.

(a) ***

(3) * * *

(ii) Is not made for a commercial purpose and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party’s request to opt out of future calls as required in paragraphs (b) and (d) of this section;

(iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party’s request to opt out of future calls as required in paragraphs (b) and (d) of this section;

(iv) Is made by or on behalf of a tax-exempt nonprofit organization and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party’s request to opt out of future calls as required in paragraphs (b) and (d) of this section; or

(v) Delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103, and the caller makes no more than one call per day to each patient’s residential line, up to a maximum of three calls combined per week to each patient’s residential line and honors the called party’s request to opt out of future calls as required in paragraphs (b) and (d) of this section.

* * * * *

(b) * * *

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours; and

(3) In every case where the artificial or prerecorded-voice telephone message is made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism must automatically record the called person's number to the caller's do-not-call list and immediately terminate the call. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the caller's do-not-call list.

* * * * *

(d) No person or entity shall initiate any artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel.* Personnel engaged in making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or who are engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

(4) *Identification of callers and telemarketers.* A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may

not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for 5 years from the time the request is made.

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