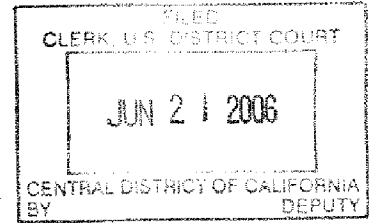


1 DEBRA WONG YANG
United States Attorney
2 GARY PLESSMAN
Assistant United States Attorney
3 Chief, Civil Fraud Section
California State Bar No. 101233
4 Room 7516, Federal Building
300 North Los Angeles Street
5 Los Angeles, California 90012
Telephone: (213) 894-2474
6 Facsimile: (213) 894-2380
Email: gary.plessman@usdoj.gov
7 Attorneys for Plaintiff
UNITED STATES OF AMERICA



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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13
14 v.
15 EXECUTIVE FINANCIAL HOME LOAN
CORP., dba Executive Home Loan, a
California corporation,
16
17 MICHAEL NIKRAVESH, individually
and as an officer of Executive
Financial Home Loan Corp., and
18
19 RON FATTAL, individually and as
an officer of Executive Financial
Home Loan Corp.,
20
21 Defendants.

Case No.

CV06-3896

STIPULATED JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION

22
23 Plaintiff, the United States of America, acting upon
24 notification and authorization to the Attorney General by the
25 Federal Trade Commission ("FTC" or the "Commission"), has
26 commenced this action by filing the complaint herein, and
27 Defendants have waived service of the summons and the complaint.
28 The parties, represented by the attorneys whose names appear

1 hereafter, have agreed to settlement of this action without
2 adjudication of any issue of fact or law, and without Defendants
3 admitting liability for any of the violations alleged in the
4 complaint.

5 **THEREFORE**, on the joint motion of the parties, it is hereby
6 **ORDERED, ADJUDGED AND DECREED** as follows:

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter and
9 the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and
10 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

11 2. Venue is proper as to all parties in this District.

12 3. The activities of Defendants are in or affecting
13 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

14 4. The complaint states a claim upon which relief may be
15 granted against Defendants, under Sections 5(a), 5(m)(1)(A), and
16 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
17 §§ 45(a), 45(m)(1)(A), and 53(b).

18 5. Defendants have entered into this Stipulated Judgment
19 and Order for Permanent Injunction ("Order") freely and without
20 coercion. Defendants further acknowledge that they have read the
21 provisions of this Order and are prepared to abide by them.

22 6. Plaintiff and Defendants hereby waive all rights to
23 appeal or otherwise challenge or contest the validity of this
24 Order.

25 7. Defendants have agreed that this Order does not entitle
26 Defendants to seek or to obtain attorneys' fees as a prevailing
27 party under the Equal Access to Justice Act, 28 U.S.C. § 2412,
28 and Defendants further waive any rights to attorneys' fees that

1 may arise under said provision of law.

2 8. Entry of this Order is in the public interest.

3 DEFINITIONS

4 For the purpose of this Order, the following definitions
5 shall apply:

6 1. "Asset" means any legal or equitable interest in, or
7 right or claim to, any real and personal property, including
8 without limitation, chattels, goods, instruments, equipment,
9 fixtures, general intangibles, leaseholds, mail or other
10 deliveries, inventory, checks, notes, accounts, credits,
11 contracts, receivables, shares of stock, and all cash, wherever
12 located.

13 2. "Customer" means any person who is or may be required
14 to pay for goods or services offered through telemarketing.

15 3. "Defendants" means the Corporate Defendant and
16 Individual Defendants. The "Corporate Defendant" is Executive
17 Financial Home Loan Corp., a California corporation. The
18 "Individual Defendants" are Michael Nikraves, individually and
19 as an officer of the Corporate Defendant, and Ron Fattal,
20 individually and as an officer of the Corporate Defendant.

21 4. "Established business relationship" means a
22 relationship between the seller and a person based on: (a) the
23 person's purchase, rental, or lease of the seller's goods or
24 services or a financial transaction between the person and
25 seller, within the eighteen (18) months immediately preceding the
26 date of the telemarketing call; or (b) the person's inquiry or
27 application regarding a product or service offered by the seller,
28 within the three (3) months immediately preceding the date of a

1 telemarketing call.

2 5. "National Do Not Call Registry" means the National Do
3 Not Call Registry, which is the "do-not-call" registry maintained
4 by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

5 6. "Representatives" means Defendants' successors,
6 assigns, officers, agents, servants, employees and those persons
7 in active concert or participation with them who receive actual
8 notice of this Order by personal service or otherwise.

9 7. "Seller" means any person who, in connection with a
10 telemarketing transaction, provides, offers to provide, or
11 arranges for others to provide goods or services to the customer
12 in exchange for consideration whether or not such person is under
13 the jurisdiction of the Commission.

14 8. "Telemarketer" means any person who, in connection with
15 telemarketing, initiates or receives telephone calls to or from a
16 customer or donor.

17 9. "Telemarketing Sales Rule" or "Rule" means the FTC Rule
18 entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached
19 hereto as Appendix A or as may be hereafter amended.

20 10. "Telemarketing" means a plan, program, or campaign
21 which is conducted to induce the purchase of goods or services or
22 a charitable contribution, by use of one or more telephones and
23 which involves more than one interstate telephone call. The term
24 does not include the solicitation of sales through the mailing of
25 a catalog which: contains a written description or illustration
26 of the goods or services offered for sale; includes the business
27 address of the seller; includes multiple pages of written
28 material or illustrations; and has been issued not less

1 frequently than once a year, when the person making the
2 solicitation does not solicit customers by telephone but only
3 receives calls initiated by customers in response to the catalog
4 and during those calls takes orders only without further
5 solicitation. For purposes of the previous sentence, the term
6 "further solicitation" does not include providing the customer
7 with information about, or attempting to sell, any other item
8 included in the same catalog which prompted the customer's call
9 or in a substantially similar catalog.

10 11. "Outbound telephone call" means a telephone call
11 initiated by a telemarketer to induce the purchase of goods or
12 services or to solicit a charitable contribution.

13 12. "Person" means any individual, group, unincorporated
14 association, limited or general partnership, corporation, or
15 other business entity.

16 ORDER

17 I. PROHIBITION AGAINST ABUSIVE
18 TELEMARKETING PRACTICES

19 IT IS ORDERED that, in connection with telemarketing,
20 Defendants and their Representatives are hereby permanently
21 restrained and enjoined from engaging in, causing other persons
22 to engage in, or assisting other persons to engage in, violations
23 of the Telemarketing Sales Rule, including but not limited to:

24 A. Initiating any outbound telephone call to a person's
25 telephone number on the National Do Not Call Registry of persons
26 who do not wish to receive outbound telephone calls to induce the
27 purchase of goods or services unless the seller proves:

28 1. The seller has obtained the express agreement, in

1 writing, of such person to place calls to that
2 person. Such written agreement shall clearly
3 evidence such person's authorization that calls
4 made by or on behalf of a specific party may be
5 placed to that person, and shall include the
6 telephone number to which the calls may be placed
7 and the signature of that person; or

8 2. The seller has an established business
9 relationship with such person and that person has
10 not previously stated that he or she does not wish
11 to receive outbound telephone calls made by or on
12 behalf of the seller; or

13 B. Initiating any outbound telephone call to a telephone
14 number within a given area code without first paying the required
15 annual fee for access to the telephone numbers within that area
16 code that are on the National Do Not Call Registry;

17 *Provided, however, that if the Commission promulgates rules*
18 *that modify or supersede the Telemarketing Sales Rule, in whole*
19 *or part, Defendants shall comply fully and completely with all*
20 *applicable requirements thereof, on and after the effective date*
21 *of any such rules.*

22 23 II. CIVIL PENALTY AND RIGHT TO REOPEN

24
25 IT IS FURTHER ORDERED that:

26 A. Judgment in the amount of One Million, One Hundred and
27 Thirty-Eight Thousand, Five Hundred and Fifty-One Dollars
28 (\$1,138,551.00) is hereby entered against the Corporate Defendant

1 as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal
2 Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Based upon the
3 Corporate Defendant's sworn representations in its financial
4 statements, full payment of the foregoing civil penalty is
5 suspended except for Fifty Thousand Dollars (\$50,000.00),
6 contingent upon the accuracy and completeness of the financial
7 statements, as set forth in Subparagraphs C and D of this
8 Paragraph.

9 B. Prior to or concurrently with their execution of this
10 Order, the Corporate Defendant shall transfer Fifty Thousand
11 Dollars (\$50,000.00), as a non-suspended civil penalty payment,
12 to its attorney, who shall hold the entire sum for no purpose
13 other than payment to the Treasurer of the United States after
14 entry of this Order by the Court. Within ten (10) days of
15 receipt of notice of the entry of this Order, the Corporate
16 Defendant's attorney shall transfer such civil penalty payment in
17 the form of a wire transfer or certified or cashier's check made
18 payable to the Treasurer of the United States. The check or
19 written confirmation of the wire transfer shall be delivered to:
20 Director, Office of Consumer Litigation, U.S. Department of
21 Justice Civil Division, P.O. Box 386, Washington, D.C. 20044.
22 The cover letter accompanying the check shall include the title
23 of this litigation and a reference to DJ #102-3352. Such
24 transfer by the Corporate Defendant's attorney shall constitute
25 partial satisfaction of the judgment.

26 C. Upon payment by the Corporate Defendant's attorney as
27 provided in Subparagraph B of this Paragraph, the remainder of
28 the civil penalty judgment shall be suspended subject to the

1 conditions set forth in Subparagraph D of this Paragraph.

2 D. Plaintiff's agreement to this Order is expressly
3 premised upon the truthfulness, accuracy and completeness of the
4 Corporate Defendant's sworn financial statements and supporting
5 documents submitted to the Commission, namely those of Executive
6 Financial Home Loan Corp, signed and dated February 23, 2005, and
7 September 12, 2005, which include material information upon which
8 Plaintiff relied in negotiating and agreeing to this Order. If,
9 upon motion by Plaintiff, this Court finds that the Corporate
10 Defendant has failed to disclose any material asset or materially
11 misstated the value of any asset in the financial statements and
12 related documents described above, or has made any other material
13 misstatement or omission in the financial statements and related
14 documents described above, then this Order shall be reopened and
15 suspension of the judgment shall be lifted for the purpose of
16 requiring payment of civil penalty in the full amount of the
17 judgment (\$1,138,551.00), less the sum of all amounts paid to the
18 Treasurer of the United States pursuant to Subparagraph B of this
19 Paragraph. Provided, however, that in all other respects this
20 Order shall remain in full force and effect, unless otherwise
21 ordered by the Court.

22 E. In accordance with 31 U.S.C. § 7701, the Corporate
23 Defendant is hereby required, unless it has done so already, to
24 furnish to Plaintiff and the FTC its taxpayer identifying number
25 (social security numbers or employer identification numbers)
26 which shall be used for purposes of collecting and reporting on
27 any delinquent amount arising out of the Corporate Defendant's
28 relationship with the government.

1 F. The Corporate Defendant agrees that the facts as
2 alleged in the complaint filed in this action shall be taken as
3 true, without further proof, in any subsequent litigation filed
4 by or on behalf of the Commission to collect any unpaid amount or
5 otherwise enforce its rights pursuant to this Order, including a
6 nondischargeability complaint filed in any bankruptcy case.

7 G. Proceedings instituted under this Paragraph are in
8 addition to, and not in lieu of, any other civil or criminal
9 remedies that may be provided by law, including any other
10 proceedings the Plaintiff may initiate to enforce this Order.

11 12 **III. RECORD KEEPING PROVISIONS**

13 **IT IS FURTHER ORDERED** that, for a period of five (5) years
14 from the date of entry of this Order, Defendants, and their
15 successors and assigns, shall maintain and make available to the
16 Plaintiff or Commission, within seven (7) days of the receipt of
17 a written request, business records demonstrating compliance with
18 the terms and provisions of this Order.

19 20 **IV. DISTRIBUTION OF ORDER BY DEFENDANTS AND 21 ACKNOWLEDGMENTS OF RECEIPT**

22 **IT IS FURTHER ORDERED** that Defendants, and their successors
23 and assigns, shall within thirty (30) days of the entry of this
24 Order, provide a copy of this Order including Appendix A to all
25 of their owners, principals, members, officers, and directors, as
26 well as managers, agents, servants, employees, and attorneys
27 having decision-making authority with respect to the subject
28 matter of this Order; secure from each such person a signed

1 statement acknowledging receipt of a copy of this Order; and
2 shall, within ten (10) days of complying with this Paragraph,
3 file an affidavit with the Court and serve the Commission, by
4 mailing a copy thereof, to the Associate Director for
5 Enforcement, Federal Trade Commission, 601 New Jersey Avenue,
6 N.W., Washington, D.C. 20580, setting forth the fact and manner
7 of their compliance, including the name and title of each person
8 to whom a copy of the Order has been provided.

9
10 **V. NOTIFICATION OF BUSINESS CHANGES**

11 **IT IS FURTHER ORDERED** that the Corporate Defendant, and its
12 successors and assigns, shall notify the Associate Director for
13 Enforcement, Federal Trade Commission, 601 New Jersey Avenue,
14 N.W., Washington, D.C. 20580, at least thirty (30) days prior to
15 any change in the Corporate Defendant's business, including, but
16 not limited to, merger, incorporation, dissolution, assignment,
17 and sale, which results in the emergence of a successor
18 corporation, the creation or dissolution of a subsidiary or
19 parent, or any other change, which may affect the Corporate
20 Defendant's obligations under this Order.

21
22 **VI. NOTIFICATION OF INDIVIDUALS' AFFILIATIONS**

23 **IT IS FURTHER ORDERED** that each Individual Defendant shall,
24 for a period of seven (7) years from the date of entry of this
25 Order, notify the Associate Director for Enforcement, Federal
26 Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C.
27 20580, within thirty (30) days of his or her affiliation with a
28 new business or employment whose activities include

1 telemarketing.

2
3 **VII. COMMUNICATION WITH DEFENDANTS**

4 **IT IS FURTHER ORDERED** that for the purposes of compliance
5 reporting, if undersigned counsel no longer represents a
6 Defendant, Plaintiff and the Commission are authorized to
7 communicate directly with such Defendant.

8
9 **VIII. FEES AND COSTS**

10 **IT IS FURTHER ORDERED** that each party to this Order hereby
11 agrees to bear its own costs and attorneys' fees incurred in
12 connection with this action.

13
14 **IX. SEVERABILITY**

15 **IT IS FURTHER ORDERED** that the provisions of this Order are
16 separate and severable from one another. If any provision is
17 stayed or determined to be invalid, the remaining provisions
18 shall remain in full force and effect.

19
20 **X. RETENTION OF JURISDICTION**

21 **IT IS FURTHER ORDERED** that this Court shall retain
22 jurisdiction of this matter for purposes of construction,
23 modification and enforcement of this Order.

24
25 **XI. COMPLETE SETTLEMENT**

26 The parties, by their respective counsel, hereby consent to
27 entry of the foregoing Order which shall constitute a final
28 judgment and order in this matter. The parties further stipulate

1 and agree that the entry of the foregoing Order shall constitute
2 a full, complete and final settlement of this action.

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JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and
against Defendants, pursuant to all the terms and conditions
recited above.

SO ORDERED this 21 day of June, 2000.

AUDREY COLLINS


UNITED STATES DISTRICT JUDGE

1 FOR THE PLAINTIFF:

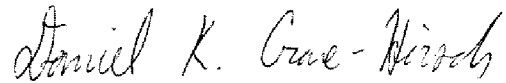
2 FOR THE UNITED STATES OF AMERICA:

3
4 PETER D. KEISLER
Assistant Attorney General
5 Civil Division
for U.S. Department of Justice

6 DEBRA WONG YANG
7 United States Attorney
Central District of California

8
9 By: 
10 ~~GARY PLESSMAN~~
Assistant U.S. Attorney
11 1200 U.S. Courthouse
312 North Spring Street
12 Los Angeles, CA 90012
PHONE: (213) 894-2474
13 FAX: (213) 894-2380
EMAIL: gary.plessman@usdoj.gov


14 EUGENE THIROLF
15 Director
Office of Consumer Litigation

16 
17 Daniel K. Crane-Hirsch
18 Trial Attorney
Office of Consumer Litigation
19 P.O. Box 386
U.S. Department of Justice
20 Washington, D.C. 20044-0386
PHONE: 202-616-8242
21 FAX: 202-5148742
EMAIL: daniel.crane-hirsch@usdoj.gov

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1 FOR THE FEDERAL TRADE COMMISSION:

2 
3 JEFFREY KLERFELD
4 Regional Director
5 Western Region
6 Federal Trade Commission

7 
8 KERRY O'BRIEN
9 Attorney
10 Federal Trade Commission
11 901 Market Street, Suite 570
12 San Francisco, California
13 PHONE: 415-848-5189
14 FAX: 415-848-5142
15 EMAIL: kobrien@ftc.gov

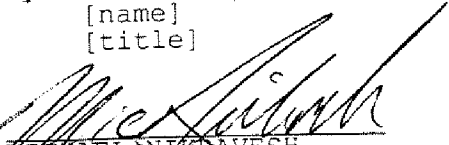
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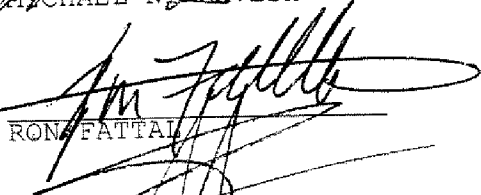
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FOR THE DEFENDANTS:

EXECUTIVE FINANCIAL HOME LOAN CORP.

By: Michael N. Navvesh Cfo / Ron Fattal COO
[name]
[title]


~~MICHAEL NAVVESH~~


~~RON FATTAL~~

~~CLAYTON S. FRIEDMAN
MICHAEL YAGHI
Buchalter Nemer
18400 Von Karman Ave, Ste 800
Irvine, California 92612-0514
PHONE: 949-224-6284
FAX: 949-224-6406~~

Attorney for Defendants

APPENDIX A

["Telemarketing Sales Rule," 16 C.F.R. § 310]

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310.7 Actions by states and private persons.
 310.6 Exemptions.
 310.5 Recordkeeping requirements.
 310.4 Abusive telemarketing acts or practices.
 310.3 Deceptive telemarketing acts or practices.
 310.2 Definitions.
 310.1 Scope of regulations in this part.

Sec. 310.9 Severability.
 310.8 Fee for access to the National Do Not Call Registry.
 AUTHORITY: 15 U.S.C. 6101-6108.
 SOURCE: 69 FR 4669, Jan. 29, 2003, unless otherwise noted.

§ 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, as amended.

PART 310—TELEMARKETING SALES RULE

(60 FR 26956, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004)

Figure 6

← 7 inches →

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Before Selecting An Alternative Fueled Vehicle Consider:

- FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power the vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- OPERATING COSTS:** Fuel and maintenance costs for A/FVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.
- PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering the vehicle is typically produced.
- EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicles.

Additional information

DEPARTMENT OF ENERGY (DOE)
 For more information about A/FVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1000, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
 For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 308.
 For more information call toll-free (877) FIT-HELP or visit www.ftc.gov.

← 7.5 inches →

§ 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) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *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.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

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

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, 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 or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays¹ for goods or services offered, failing to disclose

¹When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the

²For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for

goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴ Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁵

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

³Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁴Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁵For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating*. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering*. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not

the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or

services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the

requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶ of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule

⁶For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(1);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(1); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁷; and

(iv) the seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(1)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services,

⁷This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

§310.5

16 CFR Ch. I (1-1-06 Edition)

the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

§310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁸

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fic-

⁸For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

titious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this

exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding

any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

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

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given

§310.8**16 CFR Ch. I (1-1-06 Edition)**

area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$56 per area code of data accessed, up to a maximum of \$15,400; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, 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 the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the 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) After a person, either directly or through another person, pays the fees set forth in §310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following 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, the person must first pay \$56 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, the person must first pay \$28 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.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[88 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005]

§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.

- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.
- 311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of §311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by §311.5 of this part.

§311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API") Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of API Publication 1509, "Engine Oil Licensing and Certification System," may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

[60 FR 55421, Oct. 31, 1995, as amended at 69 FR 18903, Apr. 9, 2004]

§311.5 Labeling.

A manufacturer or other seller may represent, on a label on a container of