

disclose 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 is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. This disclosure must be made before the prize is described to the person called. If requested by that person, the telemarketer must disclose the no-purchase entry method for the prize promotion.

§ 310.5 Recordkeeping requirements.

- (a) Any seller or telemarketer shall keep, in any form, 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 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; and
 - (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.
- (b) 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), the seller shall be responsible for keeping such records.

- (d) Absent a written agreement described in Section 310.5(c) between the seller and the telemarketer, the seller shall be responsible for complying with Sections 310.5(a)(1)-(3); the telemarketer shall be responsible for complying with Section 310.5(a)(4). The seller and telemarketer may keep any required records in the manner, format, or place as they keep such records in the ordinary course of business.
- (e) 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, succession, 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.

The following telemarketing acts or practices are exempt under this Rule:

- (a) Pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308.
- (b) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller during which the customer has the opportunity to examine the goods or services offered.
- (c) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer.
- (d) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in Sections 310.4(a)(2)-(3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit.
- (e) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly and conspicuously discloses all material information listed in Section

310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to investment opportunities, goods or services described in Sections 310.4(a)(2)-(3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit.

- (f) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable 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) This Rule does not vest the attorney general of any State or any private person with jurisdiction over any person or activity outside the jurisdiction of the Federal Trade Commission Act.

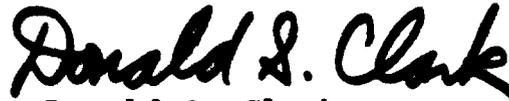
§ 310.8 Federal preemption.

Nothing in this Rule shall be construed to preempt any State law that is not in direct conflict with any provision of this Rule.

§ 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.

By direction of the Commission.

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive, slightly slanted style.

Donald S. Clark
Secretary

Billing Code: 6750-01P