



FTC ANNOUNCES AMENDMENT TO TELEMARKETING SALES RULE

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The Federal Trade Commission (FTC) has announced an amendment to the Telemarketing Sales Rule (TSR) that expressly bars telemarketing calls, whether answered in person by the recipient or by an answering machine or by voicemail service, that deliver prerecorded messages. However, the TSR amendment permits sellers to obtain the required permission from a consumer for prerecorded sales calls in any manner permitted by the Electronic Signatures In Global and National Commerce Act (E-SIGN Act). As such, unless the seller previously has obtained the recipient's written consent to receive such calls, telemarketing sales calls that deliver prerecorded messages are expressly prohibited.

The amendment does not however prevent prerecorded calls that provide "informational" messages. Such "informational" messages consist of calls notifying recipients of flight changes and cancellations, service appointment reminders, prescription instructions, or similar messages. These types of calls that

notify the recipients of information are not prohibited by the TSR amendment because the prerecorded messages do not attempt to sell the recipient any goods or services.

The new TSR amendment adopted by the Commission also provides for several exemptions. Indeed, healthcare-related prerecorded messages, which are subject to the Health Insurance Portability and Accountability Act (HIPAA), are exempted from the prohibition on telemarketing calls that deliver prerecorded messages. Moreover, prerecorded message calls for charitable solicitation placed by for-profit telemarketers on behalf of non-profits -- to members of, or prior donors to the non-profits -- are exempt from the written agreement requirement so long as such calls include a prompt keypress or voice-activated opt-out system.

The FTC's amendment to the TSR has many asking is this is the end of the prerecorded telemarketing sales call. For more information on this amendment, contact any Elarbee Thompson attorney.