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## FTC Issues Telemarketing Sales Rule Amendments Regarding Prerecorded Calls

On August 19, 2008, the FTC announced changes to the Telemarketing Sales Rule (TSR). One major change includes prohibiting prerecorded message calls unless the customer has previously agreed to accept the calls from the seller.

The FTC now expressly prohibits telemarketing sales calls that deliver prerecorded messages, whether answered in person, answering machine, or voicemail, unless the seller has previously obtained the recipient's signed, written agreement to receive such calls. The change does not affect "informational calls." Since the TSR does not apply to "informational" calls, that is, calls that do not attempt to sell any goods or services, neither does the prohibition. The prohibition on prerecorded calls takes effect September 1, 2009.

Other changes include:

- The FTC has adopted the FCC's "30 day rule" when it comes to calculating abandonment rate. The "per day/per calling campaign" standard will not apply after October 1, 2008.
- Sellers and telemarketers must provide, at the outset of all prerecorded messages, an automated keypress or voice-activated interactive opt-out mechanism so that consumers can opt out as easily as they can from a live telemarketing call. This change takes effect December 1, 2008.
- The FTC has ended the forbearance policy with regard to EBR's as an exemption to the FTC's prerecorded calling rules. However, sellers are still permitted until September 1, 2009, to continue to place calls delivering prerecorded messages as long as they employ an IVR or voice-activated opt out mechanism, to their EBR's, after which no prerecorded calls can be made to consumers without their express permission.
- Permitting sellers to obtain the required permission for prerecorded message sales calls from a consumer in any manner permitted by the E-SIGN Act.
- Exempting healthcare-related prerecorded message calls that are subject to the HIPAA from the prohibition on telemarketing calls that deliver prerecorded messages.
- Exempting from the written agreement requirement, all charitable solicitation calls placed by for-profit telemarketers (telefundors) that deliver prerecorded messages on behalf of non-profits to members of, or previous donors to, the nonprofit, but require that



such calls include prompt keypress or voice activated interactive opt-out mechanism so that consumers can opt out as easily as they can from a live telemarketing call.

For full details, please visit: <http://www.ftc.gov/opa/2008/08/tsr.shtm>.