

# FTC Publishes Notices Proposing Updates to Telemarketing Sale Rules

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On April 28, 2022, the Federal Trade Commission [published](#) a Notice of Proposed Rulemaking ("NPRM") and an Advance Notice of Proposed Rulemaking ("ANPRM"), proposing several updates to the Telemarketing Sale Rules ("TSR").

The NPRM proposes three major changes to the TSR:

1. **Narrowing the business-to-business telemarketing exemption.** The FTC proposes to further narrow the business-to-business telemarketing exemption by including business-to-business calls within the TSR's prohibitions on the use of false or misleading statements in telemarketing.
2. **Enhancing record keeping requirements.** The FTC proposes to enhance the current record keeping requirements in the TSR by requiring sellers and telemarketers to maintain the following categories of documents: (1) copies of each unique prerecorded message; (2) call detail records of telemarketing campaigns; (3) records showing the existence of an established business relationship with the consumer, if one exists; (4) records showing that the consumer is a "previous donor" to that particular charitable organization, if applicable; (5) records showing the service providers used to place outbound calls; (6) copies of the specific entity's internal do not call registries; and (7) records showing use of the federal do not call registry used to comply with the TSR. Failure to maintain such records would, in itself, be a violation of the TSR. In addition, if the seller and telemarketer do not coordinate to allocate responsibility for maintaining the required sets of records, both entities can be liable for a violation of the TSR where records are not properly kept.
3. **Revising the definition of "previous donor."** In the context of charitable solicitations, the FTC has proposed adding a new definition of the term "previous donor" to clarify that the consumer must have made a prior donation to that specific non-profit charitable organization within the two-year period immediately preceding the date of the call to fit within this definition.

In the APNRM, the FTC seeks public comment on its proposal to entirely eliminate the business-to-business exemption from the TSR. The FTC further seeks comment on whether telemarketers

making sales involving negative option offers should be required to provide clearer disclosures regarding the terms of a subscription and available cancellation options. Finally, the APNRM seeks comment on whether exemptions for telemarketers who induce inbound calls from consumers in connection with computer technical support services should be repealed.

Comments on the NPRM and the APNRM are due within 60 days after their publication in the Federal Register, which is expected in the coming days.

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