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FEDERAL TRADE COMMISSION**16 CFR Part 310**

RIN 3084–AB19

Telemarketing Sales Rule**AGENCY:** Federal Trade Commission.**ACTION:** Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) adopts amendments to the Telemarketing Sales Rule (“TSR” or “Rule”) that extend the Rule’s applicability to inbound telemarketing calls in response to an advertisement through any medium or direct mail solicitation in which technical support products or services are offered for sale.

DATES: The amendments are effective January 9, 2025.

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at <https://www.ftc.gov>.

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SUPPLEMENTARY INFORMATION: This document states the basis and purpose for the Commission’s decision to adopt amendments to the TSR that were proposed and published for public comment in the **Federal Register** on April 16, 2024, in a notice of proposed rulemaking (“2024 NPRM”).¹ The Commission has carefully reviewed and considered the entire record on the issues presented in this rulemaking proceeding. The record includes 25 public comments submitted by a variety of interested parties, none of which opposed the issuance of a final rule amending the TSR to cover technical support calls made by consumers in response to solicitations. The Commission has decided to adopt, with one modification, the proposed amendments to the TSR that are intended to address consumer injury from deceptive technical support scams.

I. Background

Congress enacted the Telemarketing and Consumer Fraud and Abuse

¹ 89 FR 26798 (Apr. 16, 2024). This document also concludes the ongoing Regulatory Review.

Prevention Act (“Telemarketing Act” or “Act”) in 1994 to curb abusive telemarketing practices and provide key anti-fraud and privacy protections to consumers.² The Act directed the Commission to adopt a rule prohibiting deceptive or abusive telemarketing practices.³ Pursuant to the Act, the Commission promulgated the TSR on August 23, 1995.⁴

The Rule prohibits deceptive or abusive telemarketing practices, such as misrepresenting several categories of material information or making false or misleading statements to induce a person to pay for a good or service.⁵ The Rule also requires sellers and telemarketers to make specific disclosures and keep certain records of their telemarketing activities.⁶

Since 1995, the Commission has amended the Rule on five occasions: (1) in 2003 to create the National Do Not Call (“DNC”) Registry and extend the Rule to telemarketing calls soliciting charitable contributions (“charity calls”);⁷ (2) in 2008 to prohibit prerecorded messages (“robocalls”) in sales calls and charity calls;⁸ (3) in 2010 to ban the telemarketing of debt relief services requiring an advance fee;⁹ (4) in 2015 to bar the use in telemarketing of certain payment mechanisms widely used in fraudulent transactions;¹⁰ and

² Public Law 103–297, 108 Stat. 1545 (1997) (codified as amended at 15 U.S.C. 6101–6108).

³ 15 U.S.C. 6102(a)(1).

⁴ See Statement of Basis and Purpose and Final Rule (“Original TSR”), 60 FR 43842 (Aug. 23, 1995).

⁵ See, e.g., 16 CFR 310.3(a); see also Original TSR, 60 FR 43848–51.

⁶ See, e.g., 16 CFR 310.3(a)(1), 310.5; see also Original TSR, 60 FR 43846–48, 43851, 43857.

⁷ See Statement of Basis and Purpose and Final Amended Rule (“2003 TSR Amendments”), 68 FR 4580 (Jan. 29, 2003) (adding Do Not Call Registry, charitable solicitations, and other provisions). The Telemarketing Act was amended in 2001 to extend its coverage to telemarketing calls seeking charitable contributions. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“USA PATRIOT Act”)*, Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001) (adding charitable contribution to the definition of telemarketing and amending the Act to require certain disclosures in calls seeking charitable contributions).

⁸ See Statement of Basis and Purpose and Final Rule Amendments (“2008 TSR Amendments”), 73 FR 51164 (Aug. 29, 2008) (addressing the use of robocalls).

⁹ See Statement of Basis and Purpose and Final Rule Amendments (“2010 TSR Amendments”), 75 FR 48458 (Aug. 10, 2010) (adding debt relief provisions, including a prohibition on misrepresenting material aspects of debt relief services in § 310.3(a)(2)(x)). The Commission subsequently published technical corrections to § 310.4 of the TSR. 76 FR 58716 (Sept. 22, 2011).

¹⁰ See Statement of Basis and Purpose and Final Rule Amendments (“2015 TSR Amendments”), 80 FR 77520 (Dec. 14, 2015) (prohibiting the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms).

(5) in 2024 to modify the Rule’s recordkeeping requirements and prohibit deception in calls between businesses.¹¹

II. Overview of the Proposed Amendments to the TSR

The Rule exempts from its coverage certain calls that consumers make to telemarketers, known as inbound calls.¹² The Rule generally exempts inbound calls that are: (1) not the result of any solicitation, (2) in response to certain advertisements, and (3) in response to a direct mail solicitation that contains certain information.¹³ However, the exemptions for inbound calls contain exclusions for certain types of calls that are often deceptive, such as inbound calls relating to investment opportunities, debt relief services, and prize promotions.¹⁴ In the 2024 NPRM, the Commission proposed covering inbound telemarketing of technical support services (or tech support) in the Rule (*i.e.*, adding it to the exclusions identified in § 310.6(b)(5) and (6)) because of the harm associated with telemarketing these products and services.¹⁵

A. Tech Support

Tech support scams consistently generate large numbers of consumer complaints.¹⁶ The scams can begin in a variety of ways. Sometimes the scammer places an outbound call to consumers warning them that their computers have been infected.¹⁷ Other scammers use deceptive computer pop-up messages that claim the consumer’s computer has a problem and direct the consumer to call a phone number to fix the errors.¹⁸ Still other scammers place advertisements with search engines that appear when consumers search for their computer company’s tech support telephone number.¹⁹ And sometimes,

¹¹ See Statement of Basis and Purpose and Final Rule Amendments (“2024 Amendments”), 89 FR 26760 (Apr. 16, 2024).

¹² See 16 CFR 310.6(b)(4) through (6).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 2024 NPRM, 89 FR 26798.

¹⁶ See FTC Consumer Sentinel Network Databook 2023 at 87, available at https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf (last visited Sept. 5, 2024).

¹⁷ See, e.g., Prepared Statement of the Federal Trade Commission Before the United States Senate Special Committee on Aging on Combatting Technical Support Scams (“Tech Support Testimony”), at 3–5 (Oct. 21, 2015), available at https://www.ftc.gov/system/files/documents/public_statements/826561/151021techsupport_testimony.pdf (last visited Sept. 5, 2024).

¹⁸ *Id.*

¹⁹ *Id.*; see also Complaint, *FTC v. Click4Support, LLC*, No. 15–cv–05777–SD, at 9–10 (E.D. Pa. Oct. 26, 2015), available at <https://www.ftc.gov/system/>

scammers pay computer security software companies so that when consumers call to activate their service, they reach the scammer and are pitched additional and unnecessary products and services.²⁰ Once consumers connect with the scammer, whether through outbound telemarketing or inbound telemarketing, the scammers deceive consumers about a variety of problems with their computers and persuade consumers to purchase subscription tech support services or software that they do not need.²¹

Although tech support scams have typically targeted consumers looking for help with computers, tech support scams also target consumers looking for help with other electronic devices, such as cellular phones and smart home devices. News stories report on consumers encountering tech support scams when they search for help with their iPhones,²² receive pop-up messages on their iPads,²³ or look for support for their Kindle tablets.²⁴ In August 2022, Amazon filed a lawsuit alleging that a deceptive tech support operation targeted consumers who were seeking help with their smart home doorbells and streaming video services.²⁵

Consumer complaints about tech support scams have increased dramatically over the last few years, ranging from approximately 40,000 complaints in 2017 to more than 90,000 complaints in 2023.²⁶ In 2023, consumers reported losing

approximately \$242 million to these scams, with a median loss of \$1,400.²⁷

Moreover, tech support scams disproportionately harm older consumers. In 2023, consumers 60 years of age and older were six times more likely to report a financial loss to tech support scams compared to younger consumers.²⁸ Analysis of consumer fraud reports confirm that a disproportionate number of older consumers have reported losing money to tech support scams. From 2015 to 2018, older consumers filed more reports on tech support scams than on any other fraud category.²⁹

The Commission has responded to tech support scams through consumer education and law enforcement actions. For consumer education, the Commission has issued guidance to consumers including “New tech support scammers want your life savings,”³⁰ “How to Spot, Avoid, and Report Tech Support Scams,”³¹ and “Keep tech support strangers out of your computer.”³² The Commission has also responded to particular tech support

campaigns with consumer education such as “Fake Calls from Apple and Amazon Support: What you need to know,”³³ “No gift cards for tech support scammers,”³⁴ and “FTC asking for access to your computer? It’s a scam.”³⁵ Other government agencies and consumer organizations have also issued guidance on tech support scams.³⁶

In addition to consumer education, the Commission and other State and Federal law enforcement partners have brought a multitude of actions against tech support scammers. For example, on May 12, 2017, the Commission announced “Operation Tech Trap” which consisted of 29 law enforcement actions brought by the Commission and other law enforcement agencies against tech support schemes.³⁷ On March 7, 2019, the Department of Justice announced the largest-ever elder fraud sweep, which focused on tech-support scams and involved actions against “more than 260 defendants from around the globe who victimized more than two million Americans.”³⁸ In addition, the Commission has filed numerous tech support cases outside the scope of such coordinated law enforcement sweeps.³⁹

²⁷ See <https://public.tableau.com/app/profile/federal.trade.commission/viz/shared/GW63DJFGP> (last visited Sept. 5, 2024).

²⁸ See 2023 Protecting Older Consumers Report at 29, available at https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf (last visited Sept. 5, 2024). In 2022, older consumers were five times as likely to report a financial loss to tech support scams. See 2022 Protecting Older Consumers Report at 31, available at <https://www.ftc.gov/reports/protecting-older-consumers-2021-2022-report-federal-trade-commission> (last visited Sept. 5, 2024). In 2020, older consumers were six times as likely to report a financial loss to tech support scams as compared to younger consumers.

²⁹ Data Spotlight, Older adults hit hardest by tech support scams (March 7, 2019), available at <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams> (last visited Oct. 17, 2024); see also FTC Report to Congress, Protecting Older Consumers, 2018–2019 (“2019 Protecting Older Consumers Report”) at 5 (Oct. 18, 2019), available at <https://www.ftc.gov/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission> (last visited Sept. 5, 2024). In 2021, reports of online shopping frauds and business imposter frauds were the top fraud complaint for older consumers, with tech support scams dropping to third. 2022 Protecting Older Consumers Report, at 31. Older consumers, however, are disproportionately more likely to lose money to tech support scams. *Id.*

³⁰ “New tech support scammers want your life savings” (Mar. 7, 2024), available at <https://consumer.ftc.gov/consumer-alerts/2024/03/new-tech-support-scammers-want-your-life-savings> (last visited Sept. 5, 2024).

³¹ “How to Spot, Avoid, and Report Tech Support Scams” (Sept. 6, 2022), available at <https://consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams> (last visited Sept. 5, 2024).

³² “Keep tech support strangers out of your computer” (Mar. 7, 2019), available at <https://consumer.ftc.gov/consumer-alerts/2019/03/keep-tech-support-strangers-out-of-your-computer> (last visited Sept. 5, 2024).

³³ “Fake Calls from Apple and Amazon Support: What you need to know” (Dec. 3, 2020), available at <https://consumer.ftc.gov/consumer-alerts/2020/12/fake-calls-apple-and-amazon-support-what-you-need-know> (last visited Sept. 5, 2024).

³⁴ “No gift cards for tech support scammers” (June 6, 2018), available at <https://consumer.ftc.gov/consumer-alerts/2018/06/no-gift-cards-tech-support-scammers> (last visited Sept. 5, 2024).

³⁵ “FTC asking for access to your computer? It’s a scam” (Apr. 6, 2018), available at <https://consumer.ftc.gov/consumer-alerts/2018/04/ftc-asking-access-your-computer-its-scams> (last visited Sept. 5, 2024).

³⁶ See, e.g., AARP, “How to Get Good Tech Support” (Jan. 3, 2022), available at <https://www.aarp.org/home-family/personal-technology/info-2021/tips-for-getting-tech-support.html> (last visited June 23, 2023); Consumer Financial Protection Bureau, “What you should do about tech support scams” (Jan. 21, 2021), available at <https://www.consumerfinance.gov/about-us/blog/what-you-should-know-about-tech-support-scams/> (last visited Sept. 5, 2024).

³⁷ Press Release, FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams (May 12, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown> (last visited Sept. 5, 2024).

³⁸ Press Release, Justice Department Coordinates Largest-Ever Nationwide Elder Fraud Sweep (Mar. 7, 2019), available at <https://www.justice.gov/opa/pr/justice-department-coordinates-largest-ever-nationwide-elder-fraud-sweep-0> (last visited Sept. 5, 2024).

³⁹ See, e.g., *FTC v. Restoro Cyprus Ltd.*, No. 1:24-cv-754 (D.D.C. Mar. 14, 2024) (complaint alleging that tech support scammers took tens of millions of dollars from consumers through pop-ups and internet ads), available at https://www.ftc.gov/system/files/ftc_gov/pdf/1-ComplaintagainstRestoro.pdf (last visited Sept. 5, 2024); *United States v. Nexway SASU*, No. 1:23-cv-900 (D.D.C.

<files/documents/cases/151113click4supportcmpt.pdf> (last visited Sept. 5, 2024) (“Click4Support”).

²⁰ See Complaint, *FTC v. Inbound Call Experts*, No. 9:14-cv-81935 (S.D. Fla. Nov. 19, 2014), available at <https://www.ftc.gov/system/files/documents/cases/141119icemcpt.pdf> (last visited Sept. 5, 2024) (“Inbound Call Experts”).

²¹ Tech Support Testimony at 3.

²² “Woman loses \$1,500 to fake Apple Customer Service Scam,” WCPO ABC 9, Cincinnati, (May 20, 2022), available at <https://www.wcpo.com/money/consumer/dont-waste-your-money/woman-loses-1-500-to-fake-apple-customer-service-scam> (last visited Sept. 5, 2024).

²³ “Computer scam costs 2 older Pittsburgh women thousands of dollars, police warn,” CBS News, Pittsburgh (Feb. 20, 2024) available at <https://www.cbsnews.com/pittsburgh/news/pittsburgh-scam-tech-support-bitcoin-older-residents-targeted> (last visited Sept. 5, 2024).

²⁴ “Don’t get Scammed by Fake Amazon Kindle and Fire Tablet Support Sites” (Feb. 22, 2016), available at <https://blog.the-ebook-reader.com/2016/02/22/dont-get-scammed-by-fake-amazon-kindle-and-fire-tablet-support-sites/> (last visited Sept. 5, 2024).

²⁵ *Amazon.com, Inc. v. Pionera, Inc.*, No. 2:22-cv-1491 (E.D. Cal. Aug. 23, 2022).

²⁶ FTC Consumer Sentinel Network Databook 2023 at 87.

While the Commission has sued tech support scams for engaging in deceptive practices under the TSR where applicable, the Commission has also brought cases under the FTC Act alone if the telemarketer's practices could arguably fall within an exemption to the TSR. In *FTC v. PCCare247*, for example, the Commission used the FTC Act to seek monetary relief from a tech support operation that placed deceptive online advertisements to induce consumers to place inbound calls.⁴⁰ The calls at issue in *PCCare 247* may have fallen outside of the Rule to the extent they were telephone calls initiated by a consumer in response to an advertisement.⁴¹ Similarly, in *FTC v. Vylah Tec LLC*, the Commission used the FTC Act to seek monetary relief from a tech support operation that lured consumers by placing deceptive pop-up messages warning consumers that their computers had been infected with viruses.⁴² The calls at issue in *Vylah Tec* may have fallen outside the Rule if a court were to have determined that pop-up messages are a form of advertisement or a direct mail solicitation under the Rule.⁴³

Apr. 3, 2023) (complaint alleging that Nexway provided payment processing services for several deceptive tech support operations), available at https://www.ftc.gov/system/files/ftc_gov/pdf/nexway-complaint.pdf (last visited Sept. 5, 2024); *FTC v. RevenueWire, Inc.*, No. 1:20-cv-1032 (D.D.C. April 21, 2020) (complaint alleging that companies to which RevenueWire provided payment processing services used pop-up dialog boxes that claimed to have detected computer infections and directed consumers to call a 1-800 number), available at <https://www.ftc.gov/system/files/documents/cases/revcomp3.pdf> (last visited Sept. 5, 2024); *FTC v. Boost Software, Inc.*, No. 14-cv-81397 (S.D. Fla. Nov. 10, 2014), available at <https://www.ftc.gov/system/files/documents/cases/141119vastboostcmpt.pdf> (last visited Sept. 5, 2024); Click4Support: Inbound Call Experts.

⁴⁰ Complaint, *FTC v. PCCare247, Inc.*, No. 12-cv-7189 (S.D.N.Y. Oct. 3, 2012) (“PCCare247”), available at <https://www.ftc.gov/sites/default/files/documents/cases/2012/10/121003pccarecmpt.pdf> (last visited Sept. 5, 2024) (“PCCare247”).

⁴¹ See 16 CFR 310.6(b)(5). Even if the consumer's call was in response to an advertisement, the Rule would apply to instances of upselling included in the call. *Id.* at § 310.6(b)(5)(iii). If, for example, the consumer initiated a call for technical support with their computer and the consumer was pitched additional software products or computer services, that transaction would likely be an upsell under the Rule.

⁴² See Complaint, *FTC v. Vylah Tec LLC*, No. 17-cv-228-FIM-99MRM (M.D. Fla. May 17, 2017) (“Vylah Tec”), available at https://www.ftc.gov/system/files/documents/cases/162_3253_vylah_tec_llc_complamt.pdf (last visited Sept. 5, 2024).

⁴³ In an abundance of caution, the Commission pursued its claim regarding the pop-ups under section 5 of the FTC Act, 15 U.S.C. 45. The Commission, however, does not believe such pop-up messages are exempt under the Rule. The exemption in § 310.6(b)(5) “applies to calls in response to television commercials, infomercials, home shopping programs, magazine and newspaper advertisements, and other forms of mass media

Prior to April 2021, the Commission routinely relied upon section 13(b) of the FTC Act, 15 U.S.C. 53(b), to obtain monetary relief for consumers injured by conduct that fell outside the scope of the Rule, such as the conduct described in the preceding paragraph. The Supreme Court's decision in *AMG Capital Management, LLC v. FTC*, held the Commission could not obtain monetary relief under section 13(b).⁴⁴ As a result, the Commission is now constrained in its ability to redress consumers harmed by tech support scams whose deceptive business practices arguably fall beyond the reach of the Rule. Amending the Rule, by adding tech support services to the list of exclusions from the inbound call exemption, will clarify that all tech support scams are potentially subject to the Rule, and allow the Commission to redress consumer injuries under section 19(a)(1) of the FTC Act, 15 U.S.C. 57b(a)(1).

B. Overview of Public Comments

The Commission has carefully reviewed and analyzed the record developed in this proceeding. The Commission received 25 comments, 24 of which were either from individual consumers or anonymous commenters. Of the individual and anonymous comments, one comment from a former tech support employee supported the proposal and noted that it does not burden employees.⁴⁵ The rest of the 24 individual and anonymous comments did not respond to the questions in the 2024 NPRM. The comments ranged from requesting a complete ban of telemarketing, to consumers expressing frustration at the volume of unwanted telemarketing calls they receive.

The Electronic Privacy and Information Center and the National Consumer Law Center (on behalf of its low-income clients) (“EPIC and NCLC”) submitted a comment that recommended several additional amendments to the Rule and requested several clarifications.⁴⁶ First, EPIC and NCLC recommended that the definition of tech support be modified to explicitly

advertising solicitation. . . . In the Commission's experience, calls responding to general media advertising do not typically involve the forms of deception and abuse the Act seeks to stem.” 60 FR 43860. The Commission also generally has not observed pop-up messages that contained the disclosures necessary to fall within the exemption for direct mail solicitations.

⁴⁴ See *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021).

⁴⁵ We cite public comments by the name of the commenting organization or individual. See Kilmer 2024–27.

⁴⁶ See EPIC and NCLC 2024–25 (“EPIC and NCLC”).

include repair to software programs or applications in addition to electronic devices.⁴⁷ The Commission's definition of tech support, which applies to “any device on which code can be downloaded, installed, run, or otherwise used,” is intended to include problems with software or applications on those devices. The definition is not limited to the physical device itself, or the hardware components of the device, and the Commission's law enforcement experience shows that tech support scammers often tell consumers that problems exist with the programs on their electronic devices. For example, some tech support scams tell consumers that particular software programs are malfunctioning.⁴⁸ Other tech support scams warn consumers that they have inadvertently installed malicious programs on their computers.⁴⁹ Still other scams begin with an offer to help consumers with software applications, such as help resetting email passwords.⁵⁰ To avoid any potential confusion, the Commission will modify the definition to explicitly include software, as discussed below.

Second, EPIC and NCLC suggested that the definition of tech support be modified to note that the term device “specifically include[s] the performance or security of both hardware components and firmware used in conjunction with the device, even if the telemarketer does not reference the device through which those components may be used.”⁵¹ The Commission does not believe that EPIC and NCLC's proposed change is necessary because the unmodified term “device” includes all parts of the device such as hardware or firmware regardless of whether those components are specifically referenced.

Third, EPIC and NCLC suggested that the definition of tech support be modified to include “offers for insurance, extended warranty, or similar plans for device software.”⁵² Many tech support scams sell consumers long-term and continuity programs that will purportedly repair devices in the future if other problems arise.⁵³ The definition

⁴⁷ EPIC and NCLC at 4.

⁴⁸ See *Click4Support* at 4.

⁴⁹ See *Inbound Call Experts* at 11.

⁵⁰ See Complaint, *FTC v. Elite IT Partners, Inc.*, No. 2:19-cv-125 (D. Utah Feb. 25, 2019), available at https://www.ftc.gov/system/files/documents/cases/elite_dkt_1_complaint_3-7-19.pdf (last visited Sept. 5, 2024) (“Elite IT”).

⁵¹ EPIC and NCLC at 4.

⁵² EPIC and NCLC at 4.

⁵³ Complaint, *FTC v. Pecon Software Ltd.*, No. 12-cv-7186 (S.D.N.Y. Sep. 24, 2012), available at <https://www.ftc.gov/sites/default/files/documents/cases/2012/10/121003peconcmpt.pdf> (last visited Sept. 5, 2024); *Elite IT* at 13.

of tech support encompasses such products because it includes a “plan” or “program” to “repair, maintain, or improve the performance or security of any device.” To the extent EPIC and NCLC suggest that the Commission explicitly extend the definition to cover insurance or warranty plans that replace the device rather than repair, maintain or improve the device, the Commission declines to do so. The Commission has not encountered tech support scams that sell only insurance or warranties to replace a device rather than repair a device. As such, the Commission does not believe the record supports such an extension or that one is necessary. The Commission notes, however, that the current definition does reach warranties or similar plans that are offered to repair, maintain, or improve the performance of devices.⁵⁴

III. Final Amended Rule

A. Definition of Technical Support Service

The final rule defines technical support service as any plan, program, software, or service that is marketed to repair, maintain, or improve the performance or security of any device on which code can be downloaded, installed, run, or otherwise used, such as a computer, smartphone, tablet, or smart home product, including any software or application run on such device. This definition has one modification from the definition proposed in the 2024 NPRM. It adds the phrase “any software or application run on such device” to avoid any potential confusion as to whether tech support services or products that are related only to software or applications are covered by the Rule.

This definition is drafted broadly because, in the Commission’s experience, tech support scams have evolved with changes in consumer behavior and technology, and will continue to evolve. While drafted to be flexible to evolving schemes, the definition’s focus on a type of plan or service marketed in a particular manner provides specificity regarding its coverage.

The definition of tech support also excludes “any plan, program, software, or service in which the person

providing the repair, maintenance, or improvement obtains physical possession of the device being repaired.” In the Commission’s experience, tech support scams typically do not involve situations where the repair includes physical interaction with the device, such as replacing a computer hard drive or repairing a broken phone screen.⁵⁵ Whether this interaction involves face-to-face contact between the consumer and the person providing the repair, or the consumer shipping the device to the repair person and waiting for a return shipment, the Commission believes that tech support scams rarely involve physical repair of electronic devices.⁵⁶ The Rule currently exempts calls in which payment is not required until “after a face-to-face sales or donation presentation by the seller.”⁵⁷ In creating that exemption, the Commission explained that the “occurrence of a face-to-face meeting limits the incidence of telemarketing deception and abuse” because the “paradigm of telemarketing fraud involves an interstate telephone call in which the customer has no other direct contact with the caller.”⁵⁸ Here too, the “paradigm” of tech support scams involves consumers speaking with third parties with whom they have limited contact and often at a time when they have been misled to believe that they have a problem with their electronic device. Physical in-person repair does not involve the same pressures as remote tech support, and it is less conducive to scams.

B. Requirements for Technical Support Telemarketing Calls

The final rule adds “technical support services” to the categories of calls excluded from the TSR’s exemptions for inbound calls “in response to an advertisement through any medium” and inbound calls in response to “a direct mail solicitation,” including email.⁵⁹ The Commission created these exemptions in the Rule based on its

⁵⁵ Tech support scammers sometimes obtain remote access to a computer or electronic device. “Physical possession” does not include such remote access.

⁵⁶ The Commission’s lawsuit against Office Depot is an exception to this pattern. See *FTC v. Office Depot Inc.*, 9:19-cv-80431 (S.D. Fla. Mar. 29, 2019) (alleging that Office Depot and Support.com deceived consumers who brought their computers into Office Depot stores for support services).

⁵⁷ 16 CFR 310.6(b)(3).

⁵⁸ Original TSR, 60 FR 43860.

⁵⁹ 16 CFR 310.6(b)(5) and (6). For “direct mail solicitations” to qualify for the exemption, the solicitations must “clearly, conspicuously, and truthfully disclose[] all material information listed in § 310.3(a)(1)” and contain “no material misrepresentation regarding any item contained in § 310.3(d).”

consideration of four factors: whether Congress intended certain types of sales activity to be exempt under the Rule; whether the conduct or business in question “already is regulated extensively by Federal or State law”; whether the conduct “lends itself easily to the forms of deception or abuse that the Act is intended to address”; and whether requiring business to comply the Rule would be “unduly burdensome weighed against the likelihood that sellers or telemarketers engaged in fraud would use an exemption to circumvent Rule coverage.”⁶⁰

The Commission decided to create exemptions from the Rule for calls in response to advertisements and direct mail solicitation because, in the Commission’s experience, calls in response to these solicitations “do not typically involve the forms of deception and abuse the Act seeks to stem.”⁶¹ At the same time, the Commission recognized that “some deceptive sellers or telemarketers use mass media or general advertising to entice their victims to call, particularly in relation to the sale of investment opportunities, specific credit-related programs” and other areas.⁶² The Commission decided to exclude certain categories of calls from the exemptions given its “experience with the marketing of these deceptive telemarketing schemes.”⁶³ The Commission’s experience with tech support schemes also supports excluding tech support calls from the exemptions for inbound calls in response to advertisements and direct mail solicitations.⁶⁴

The final rule minimizes the burden on tech support businesses that do not engage in deceptive practices. First, tech support calls “that are not the result of any solicitation by a seller, charitable organization, or telemarketer” are still exempt under § 310.6(b)(5). Under this exemption, as long as the call is not solicited, a telephone call initiated by a consumer to the consumer’s computer manufacturer for technical support or a home security company about a disruption to their service due to a device malfunction would not be subject to the Rule unless, as part of that transaction, the company also engaged in an upsell.⁶⁵

Second, excluding tech support where the person providing the service takes physical possession of the device will also limit the breadth of the Rule. For

⁶⁰ Original TSR, 60 FR 43859.

⁶¹ *Id.* 43860.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See *supra*, notes 37–39.

⁶⁵ 16 CFR 310.6(b)(4).

⁵⁴ EPIC and NCLC also requested that the Commission make additional clarifications to the FTC’s Business Guidance, “Complying with the Telemarketing Sales Rule” available at <https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule> (last visited Sept. 5, 2024). The Commission will not respond to these suggestions because the content of the business guidance is not related to the ongoing rulemaking.

example, consumer calls to a local repair shop or to the manufacturer of their device seeking physical repairs will not be subject to the Rule.

IV. Paperwork Reduction Act

The Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (“OMB”) regulations implementing the Paperwork Reduction Act (“PRA”). 44 U.S.C. chapter 35. OMB has approved the Rule’s existing information collection requirements through April 30, 2027 (OMB Control No. 3084–0097). The amendment newly requires certain inbound tech support calls to comply with the Rule’s recordkeeping and disclosure requirements. This will increase the PRA burden for sellers or telemarketers as detailed below. Accordingly, FTC staff is simultaneously submitting this final rule and associated Supporting Statement to OMB for review under the PRA.⁶⁶

A. Estimated Annual Hours Burden

The Commission estimates the PRA burden of the proposed amendments based on its knowledge of the telemarketing industry and data compiled from the Do Not Call Registry. The annual hours of burden for sellers or telemarketers will consist of two components: the time required to make disclosures and the costs of complying with the Rule’s recordkeeping requirements.

First the Commission estimates that the disclosure burden will take 18,318 hours. The Commission uses the same methodology it has used in the past to calculate the disclosure burden for categories of calls that are excluded from the TSR’s exemptions for inbound calls.⁶⁷ The Commission estimates that there are 63,900,000 inbound tech support calls per year. To arrive at this figure, the Commission estimates that there are 1.8 billion inbound telemarketing calls annually that result in sales.⁶⁸ To estimate how many of those calls are for tech support, the Commission uses the ratio of tech support complaints to the total number of telemarketing complaints it receives, based on the assumption that the percentage of total complaints also reflects the percentage of total calls. In

2023, there were 91,196 complaints about tech support and 2,566,261 fraud complaints.⁶⁹ Thus the Commission estimates 3.55% of the inbound calls were related to tech support, *i.e.*, 91,196 ÷ 2,566,261. That translates to 63,900,000 inbound tech support calls, *i.e.*, 3.55% of 1.8 billion.

Staff assumes that there will be no disclosure burden for non-fraudulent calls because those calls likely already disclose the information required by the Rule. Thus, the Rule would create a new disclosure burden only on fraudulent calls. Staff estimates that 12.90% of telemarketing calls are fraudulent. This estimate is based on dividing a Congressional estimate of annual consumer injury from telemarketing fraud (\$40 billion)⁷⁰ by available data on total consumer and business-to-business telemarketing sales (\$310.0 billion projected for 2016).⁷¹ Thus, staff estimates that 12.90% of the 63,900,000 tech support calls are fraudulent, which amounts to 8,243,100 calls. Staff further assumes that the disclosures take 8 seconds per call. Thus, the total burden is the number of fraudulent calls multiplied by the disclosure burden per call and converted to hours (8,243,100 calls × 8 seconds per call ÷ 3,600 to convert to hours), or 18,318 hours.

Second, the estimated recordkeeping burden is 92,250 hours. Estimating this burden requires estimating how many new telemarketing entities will be subject to the TSR when the amendment goes into effect. Staff first estimates the number of existing telemarketing entities that engage in tech support sales. In calendar year 2023, 10,350 telemarketing entities accessed the Do Not Call Registry; however, 566 were “exempt” entities obtaining access to data.⁷² Of the non-exempt entities, 6,318

obtained data for a single State. Staff assumes that these 6,318 entities are operating solely intrastate, and thus would not be subject to the TSR. Therefore, staff estimates that approximately 3,466 telemarketing entities (10,350 – 566 exempt – 6,318 intrastate) are currently subject to the TSR. To estimate the percentage of those entities that sell tech support products and services, staff again divides the number of telemarketing fraud complaints for tech support by the total number of telemarketing fraud complaints, *i.e.*, 91,196 ÷ 2,566,261 = 3.55%. Staff then multiplies that percentage by the number of telemarketing entities (3,466) to produce the estimate that 123 telemarketing entities sell tech support products and services.

When the amendment goes into effect, additional businesses will likely be covered by the TSR. For example, tech support companies that advertise their products through general advertisements and do not engage in upselling may be subject to the Rule for the first time.⁷³ On the other hand, companies that market through a combination of advertisements and outbound telemarketing are already subject to the Rule. Companies that receive inbound calls from consumers with questions about their products and that engage in upsells of technical support services are also already subject to the Rule. The Commission estimates that the amendment will increase the number of telemarketing entities that receive inbound tech support calls by a factor of 5, which would mean that an additional 615 entities (123 × 5) will be covered by the Rule.

The Commission estimates that complying with the TSR’s current recordkeeping requirements requires 150 hours for new entrants to develop recordkeeping systems that comply with the TSR, for a total annual recordkeeping burden of 92,250 hours (150 × 615).

B. Estimated Annual Labor Costs

The Commission estimates annual labor costs by applying appropriate hourly wage rates to the burden hours described above. The Commission estimates that the annual labor cost for disclosures will be \$323,130. This total is the product of applying an assumed hourly wage of \$17.64 for 18,318 hours

exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

⁷³ 16 CFR 310.6(b)(5).

⁶⁹ See FTC, Consumer Sentinel Network Data Book 2023 at 9, 88.

⁷⁰ House Committee on Government Operations, *The Scourge of Telemarketing Fraud: What Can Be Done Against It*, H.R. Rep. 421, 102nd Cong., 1st Sess. at 7 (Dec. 18, 1991). The Federal Bureau of Investigation (FBI) believes that this estimate overstates telemarketing fraud losses as a result of its investigations and closings of once massive telemarketing boiler room operations. See FBI, *A Byte Out of History: Turning the Tables on Telemarketing Fraud* (Dec. 8, 2010), available at https://www.fbi.gov/news/stories/2010/december/telemarketing_120810/telemarketing_120810. See also Internet Crime Complaint Center, 2020 Annual Report on Internet Crime (citing \$4.1 billion of losses claimed in consumer complaints for 2020), available at https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf.

⁷¹ Direct Marketing Association (DMA) 2013 Statistical Fact Book (Jan. 2013) at 5 (providing projections up through 2016).

⁷² See National Do Not Call Registry Data Book for Fiscal Year 2023 (“Data Book”), available at https://www.ftc.gov/system/files/ftc_gov/pdf/Do-Not-Call-Data-Book-2023.pdf (last visited Sept. 5, 2024). An

⁶⁶ This PRA analysis focuses specifically on the information collection requirements created by or otherwise affected by the amendment.

⁶⁷ See, e.g., Agency Information Collection Activities; Proposed Collection; Comment Request; Extension. 87 FR 23179 (Apr. 19, 2022).

⁶⁸ *Id.*

of disclosures.⁷⁴ The Commission estimates that the annual labor cost for recordkeeping will be \$2,947,388. This is calculated by applying a skilled labor rate of \$31.95/hour⁷⁵ to the estimated 150 burden hours for the estimated 615 entities that will now be covered by the Rule ($\$31.95 \times 150 \times 615$).

C. Estimated Annual Non-Labor Costs

The Commission estimates that the annual non-labor costs per entity for recordkeeping are \$55 a year, which is derived from \$5 for electronically storing audio files, and \$50 for storing the required records. The Commission thus estimates that the annual non-labor costs will be \$33,855 (615 entries \times \$55).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that the Commission conduct an analysis of the anticipated economic impact of the amendment on small entities.⁷⁶ The RFA requires that the Commission provide a Final Regulatory Flexibility Analysis (“FRFA”) with a final rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.⁷⁷

The Commission believes that the final rule will not have a significant economic impact upon small entities, nor will it affect a substantial number of small businesses. In the Commission’s view, the final rule should not significantly increase the costs of small entities that are sellers or telemarketers. Therefore, based on available information, the Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration (“SBA”). Nevertheless, because the Commission included an IFRA in the NPRM, the Commission has also performed an FRFA below.

⁷⁴ This figure is derived from the mean hourly wage shown for Telemarketers. See “Occupational Employment and Wages—May 2023,” U.S. Department of Labor, (Apr. 3, 2024) Table 1 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2023”), available at https://www.bls.gov/oes/current/oes_nat.htm (last visited Sept. 5, 2024).

⁷⁵ This figure is derived from the mean hourly wage shown for Computer Support Specialists from the U.S. Department of Labor source set out in the prior footnote.

⁷⁶ 5 U.S.C. 601 through 612.

⁷⁷ 5 U.S.C. 605.

A. Statement of the Need for, and Objective of, the Rule

The legal basis for the amendment is the Telemarketing Act, which authorizes the Commission to issue rules to prohibit deceptive or abusive telemarketing practices.⁷⁸ The Commission is issuing the final rule to expressly exclude tech support calls from the exemptions for inbound calls by consumers in response to advertisements and direct mail solicitations from tech support services. As described in section II of this final rule, the amendment is intended to address the widespread harm caused by deceptive tech support services, which disproportionately impact older consumers compared to younger ones.

B. Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

The agency did not receive public comments that responded to the initial regulatory flexibility analysis.

C. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Small Business Administration did not file comments in response to the proposed rule.

D. Description and Estimated Number of Small Entities to Which the Rule Will Apply

The amendment to the Rule affects sellers and telemarketers that sell technical support services through inbound telemarketing calls that are made in response to advertisements and direct mail solicitations. As noted in section IV of this final rule (Paperwork Reduction Act), staff estimates that there are 615 such entities that would be covered by the Rule. For telemarketers, a small business is defined by the SBA as one whose average annual receipts do not exceed \$25.5 million.⁷⁹ Commission

⁷⁸ 15 U.S.C. 6102(a)(1).

⁷⁹ Telemarketers are typically classified as “Telemarketing Bureaus and Other contact Centers,” (NAICS Code 561422). See Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf (last visited, Sept. 5, 2024).

staff are unable to determine a precise estimate of how many sellers or telemarketers constitute small entities as defined by SBA. The Commission sought comment on this issue but did not receive any information from commenters.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Small Entities and Professional Skills Needed To Comply

The amendment will require sellers and telemarketers that sell technical support services through inbound telemarketing calls made in response to advertisements and direct mail solicitations to comply with the TSR’s disclosure and recordkeeping requirements. The small entities potentially covered by the amendment will include all such entities subject to the Rule. The Commission has described the skills necessary to comply with these recordkeeping requirements in section IV of this final rule (Paperwork Reduction Act).

F. Significant Alternatives to the Amendment

The Commission believes that there are no significant alternatives to the amendment. The Commission has over many years pursued alternatives to the amendment in the form of law enforcement and consumer outreach. The continued injury caused by these scams shows that the amendment to the Rule is necessary. See section II.A of this final rule for more details.

Additionally, the final rule modified the scope of the definition of technical support services by adding the phrase “any software or application run on such device,” in order to avoid any potential confusion as to whether tech support services or products that are related only to software or applications are covered by the Rule. This definition is still otherwise drafted broadly because, in the Commission’s experience, tech support scams have evolved with changes in consumer behavior and technology and will continue to evolve. But while drafted to be flexible to evolving schemes, the definition of technical support services focuses on a type of plan or service marketed in a particular manner provides specificity regarding its coverage. See section III.A of this final rule for more details.

Lastly, the final rule minimizes the burden on tech support businesses that do not engage in deceptive practices. First, tech support calls “that are not the result of any solicitation by a seller, charitable organization, or telemarketer” are still exempt under § 310.6(b)(5).

Second, excluding tech support where the person providing the service takes physical possession of the device will also limit the breadth of the Rule. See section III.B of this final rule for more details.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, the Office of Information and Regulatory Affairs designated these rule amendments as not a “major rule,” as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Telephone, Trade practices.

For the reasons stated above, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Amend § 310.2 by:

■ a. Redesignating paragraphs (gg) through (ii) as paragraphs (hh) through (jj); and

■ b. Adding new paragraph (gg).

The addition reads as follows:

§ 310.2 Definitions.

* * * * *

(gg) *Technical support service* means any plan, program, software, or service that is marketed to repair, maintain, or improve the performance or security of any device on which code can be downloaded, installed, run, or otherwise used, such as a computer, smartphone, tablet, or smart home product, including any software or application run on such device. Technical support service does not include any plan, program, software, or service in which the person providing the repair, maintenance, or improvement obtains physical possession of the device being repaired.

* * * * *

■ 3. Amend § 310.6 by revising paragraphs (b)(5)(i) and (b)(6)(i) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(5) * * *

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, technical support services, business opportunities other

than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

* * * * *

(6) * * *

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, technical support services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

* * * * *

By direction of the Commission, Commissioner Ferguson dissenting.

April J. Tabor,
Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Concurring Statement of Commissioner Melissa Holyoak

Older American adults are squarely in the crosshairs of fraudsters that use technical support scams.¹ So are our veterans.² Unfortunately, these “older adults [are] disproportionately impacted by [technical support] scams and are five times more likely than younger adults to report losing money to them.”³ And financial losses due to such scams have been increasing in recent years.⁴ I believe the Commission is at its best when it works to address such fraud—the central focus of our consumer protection mission, which will continue to be one of my key priorities while I serve at the Commission. And the Telemarketing Sales Rule (TSR), as amended today, is an extension of the Commission’s focus on fraud and will ensure that we can protect some of America’s most vulnerable consumers through more robust enforcement. Because today’s amendment is sound and will help protect some of America’s most vulnerable consumers, I concur.⁵

Elections have consequences. But it is hardly novel policy to lawfully amend the long-standing, bipartisan TSR—which Congress, not the current Chair, decided the Commission should promulgate and

¹ See Report, Fed. Trade Comm’n, Protecting Older Consumers 2023–2024, at 12–13, 15, 21 (2024), https://www.ftc.gov/system/files/ftc_gov/pdf/federal-trade-commission-protecting-older-adults-report_102024.pdf.

² See *id.* at 15; see also Oral Remarks of Commissioner Melissa Holyoak, Open Commission Meeting, at 1 (Nov. 14, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-ocm111424remarks.pdf.

³ Report, *supra* note 1, at 12.

⁴ *Id.*

⁵ I thank the Commission’s Division of Marketing Practices for their efforts.

enforce—to cover an ongoing and increasing threat to some of the most vulnerable in America. And even if this amendment were somehow novel policy, it is entirely consistent with President-elect Trump’s past aggressive anti-fraud policies, along with his “relentless commitment to keep America’s seniors safe.”⁶

Since joining the Commission, I have not hesitated to dissent when the Majority has gone beyond what Congress has authorized or otherwise acted wrongly,⁷ including when I have stood alone in articulating such concerns.⁸ While it is true that the current Majority has prioritized controversial and unlawful rulemakings over the last four years, as we turn the page I believe the Commission should redirect its efforts and resources toward enforcement against fraud and, only where appropriate, rulemakings that ensure the Commission can robustly prosecute fraud and provide consumers redress. Today’s amendment is consistent with this new direction I believe the Commission should chart. And it is sound policy that fits squarely within the Commission’s storied past and its mission to protect the American people from fraudsters and scammers.

Dissenting Statement of Commissioner Andrew N. Ferguson

I dissent from this rulemaking not because it is bad policy, but because the time for rulemaking by the Biden-Harris FTC is over. The American people have roundly rejected its regulatory assault on American business. They delivered a resounding victory for President Trump and a decisive mandate for his vision for the most pro-innovation, pro-competition, pro-worker, and pro-consumer administration in the history of our country. The proper role of this lame-duck Commission is not to announce new policies,

⁶ Cf., e.g., Remarks by President Trump in Roundtable Discussion on Fighting for America’s Seniors, The White House (June 15, 2020) (describing then-President Trump’s “ironclad commitment to protecting and caring for America’s seniors” and work to protect them from fraud), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-roundtable-discussion-fighting-americas-seniors/>. To my knowledge, no other Commissioner believes this amendment is poor policy or inconsistent with our legal authorities, or would do anything but help older Americans—including those that played a pivotal role in President-elect Trump’s recent victory. See, e.g., Susan Milligan, *How Older Voters Powered Trump’s Election Engine*, AARP (Nov. 7, 2024), <https://www.aarp.org/politics-society/government-elections/info-2024/election-analysis-older-voters.html>.

⁷ See, e.g., Dissenting Statement of Commissioner Melissa Holyoak, Joined by Commissioner Andrew N. Ferguson, *In re the Non-Compete Clause Rule*, Matter No. P201200 (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf.

⁸ See, e.g., Dissenting Statement of Commissioner Melissa Holyoak, *Negative Option Rule*, FTC Matter No. P064202 (Oct. 16, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-dissenting-statement-re-negative-option-rule.pdf; Dissenting Statement of Commissioner Melissa Holyoak, *In re Pharmacy Benefit Managers Report*, Matter No. P221200 (July 9, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Holyoak-Statement-Pharmacy-Benefit-Managers-Report.pdf.

but to hold down the fort, conduct routine law enforcement, and provide for an orderly transition to the Trump Administration. I will vote against all new rules not required by statute, and any enforcement action that advances an unprecedented theory of liability until that transition is complete.

[FR Doc. 2024–28399 Filed 12–9–24; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 12446]

RIN 1400–AF82

Visas: Special Immigrant Visas—U.S. Government Employee Special Immigrant Visas for Service Abroad

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule makes updates to reflect a statutory change to the class of individuals who may qualify for Special Immigrant Visas (SIVs).

DATES: This final rule is effective December 10, 2024.

FOR FURTHER INFORMATION CONTACT: Jami Thompson, Senior Regulatory Coordinator, U.S. Department of State, Bureau of Consular Affairs, Visa Services, 600 19th Street NW, Washington, DC 20522, (202) 485–7586, VisaRegs@state.gov.

SUPPLEMENTARY INFORMATION:

I. Special Immigrant Visas for Certain Employees or Former Employees of the United States Abroad, and for the Surviving Spouses or Children of Certain Deceased Employees of the U.S. Government Abroad

A. Legal Authority

Section 203(b)(4) of the Immigration and Nationality Act (INA), as amended 8 U.S.C. 1153(b)(4), generally provides that visas may be issued to qualified special immigrants described in INA section 101(a)(27). Among the individuals considered “special immigrants” as defined in this provision, INA section 101(a)(27)(D), 8 U.S.C. 1101(a)(27)(D), defines “special immigrant” to include employees, or honorably retired former employees, of the U.S. Government abroad, or of the American Institute in Taiwan, who have performed faithful service for a total of fifteen years or more, in addition to their accompanying spouse and children, and who have been recommended and approved for such status in accordance with enumerated criteria.

Section 403(a) of the Emergency Security Supplemental Appropriations Act, 2021 (“ESSAA”), Public Law 117–31, 135 Stat. 309, 318, amended the definition of a special immigrant at INA section 101(a)(27)(D) to include a new subclause (ii). The new subclause includes in the definition of “special immigrant” the surviving spouse or child of an employee of the United States Government abroad: *Provided*, [t]hat the employee performed faithful service for a total of not less than 15 years or was killed in the line of duty.” Under this provision, the qualifying surviving spouse or child of a U.S. Government employee is a principal applicant for special immigrant status, and consequently, their current spouse and minor child(ren) are entitled to SIVs as derivatives under INA section 203(d), 8 U.S.C. 1153(d), if accompanying or following to join the qualifying surviving spouse or parent. Pursuant to section 403(d) of the ESSAA, these changes are effective June 30, 2021, and have retroactive effect.

In addition to the qualifications for this group of “special immigrants,” INA section 204(a)(1)(G)(ii) governs the process through which an individual claiming status as a special immigrant under INA section 101(a)(27)(D) must file a petition with the Department of State, requiring that they first be recommended and approved for such status.

B. Processing for Special Immigrants Under INA Section 101(a)(27)(D)

Under INA sections 204(a)(1)(G)(ii) and 101(a)(27)(D)(i), acquisition of special immigrant status under INA section 101(a)(27)(D) requires multiple sequential steps. First, the principal officer of the U.S. embassy or consulate with jurisdiction over where the individual was employed must have recommended the granting of special immigrant status in exceptional circumstances, and the Secretary of State or appropriate designee must have approved the recommendation and found that it is in the national interest to grant such status. Second, under INA section 204(a)(1)(G)(ii), only after the approval of the recommendation, the applicant may submit a Form DS–1884, Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad, to a consular officer at a foreign service post. Under Department regulations at 22 CFR 42.34(b)(2), the date the applicant’s properly completed DS–1884 is accepted becomes the applicant’s

priority date. Those same regulations at 22 CFR 42.34(b)(4) provide that a petition from a qualifying individual is valid for six months from the date of approval or the date an immigrant visa number becomes available, whichever is later.

C. What is the impact of the ESSAA?

Prior to passage of the ESSAA, if the employee were to die before entering the United States using their immigrant visa, the surviving spouse or child would be ineligible for immigrant status. With the passage of the ESSAA, a surviving spouse and surviving child(ren), as a principal applicant, are eligible to seek qualification as a special immigrant. Additionally, in situations where the employee did not pursue special immigrant status prior to the employee’s death, their surviving spouse and/or child may now qualify to be approved for status. These changes apply retroactively, meaning that the surviving spouse or child of an employee who died prior to the effective date of the ESSAA may also seek to qualify. To be a surviving spouse, the spousal relationship must have existed at the time of the deceased employee’s death. To be a surviving child, the adult son or daughter of the deceased employee must have met the definition of “child” under INA section 101(b)(1) on the date of the employee’s death.

II. Changes the Department Is Making

A. 22 CFR 42.11

This rule makes updates to the Department’s regulations at 22 CFR 42.11 that list the symbols of the current immigrant visa classifications to conform with the new classifications added by the ESSAA. Specifically, under the “Employment 4th Preference (Certain Special Immigrants)” header, the Department is adding: The “SS1” symbol that will be used for issuance of SIVs to the surviving spouse or child of a U.S. Government employee; the “SS2” symbol that will be used for issuance of an SIV to the current spouse of an SS1 who qualifies as a derivative under INA 203(d); and the “SS3” symbol that will be used for issuance of an SIV to the minor child(ren) of an SS1 who meet(s) the definition of “child” under INA 101(b)(1) and 203(h), and qualify(ies) as a derivative under INA 203(d).

B. 22 CFR 42.34

This rule makes changes to Department regulations at 22 CFR 42.34 to conform with the expanded definition of “special immigrant” under the ESSAA. For the reasons explained below, the Department believes these (or