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FTC Modifies the Telemarketing Sales Rule (TSR)

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You may have heard that the Federal Trade Commission (FTC) was recently looking into modifying the Telemarketing Sales Rule (TSR). On October 4, 2006, the FTC:

1. Denied a petition for a proposed "safe harbor" from the call abandonment provisions of the TSR that would have permitted telemarketers to deliver prerecorded messages to consumers with whom the seller had an established business relationship;
2. Stated that, starting January 2, 2007, the agency would start bringing enforcement actions against companies that use prerecorded messages in accordance with that previously proposed safe harbor; and
3. Proposed to amend the TSR to make explicit a prohibition of telemarketing calls delivering prerecorded messages that is currently implicit in the TSR's call abandonment prohibition. The prerecorded message proposal provides an exception permitting such calls if the seller has obtained a consumer's express prior written consent to receive them.

Luckily for survey and opinion researchers, this interpretation or change does not include our business practices. The new interpretation of the TSR removes a safe harbor provision applicable to telemarketers. Telemarketing, as defined by the TSR, is "a plan, program or campaign which is conducted to induce the purchase of goods or services." Based in part on the explicit language provided and the extent of the definition, legitimate research professionals are not included in the scope of this portion of the TSR, as it specifically applies to **telemarketers**. Researchers will still be able to make automated reminder calls to a household under the TSR.

However, there are existing limitations to the use of autodialers under the Telephone Consumer Protection Act (TCPA) which is promulgated by the Federal Communications Commission (FCC). Under the TCPA, "Automatic telephone dialing systems" (determined by the FCC in 2003 to include predictive dialers) cannot be used to call a "911 line, an emergency line of a hospital, a doctor's office, a health care facility, a poison control center, a fire department, a law enforcement agency, a paging service, a cellular telephone service where the called party is charged for the call or in such a way that two or more telephone lines of a multi-line business are engaged simultaneously."

As a result, the use of auto-dialers are restricted from conducting cell phone calls under this framework, and there is no good faith exception for inadvertent calls to cell phones. But, based on the current scope of the law, survey research calls to cell phones are not prohibited outright. If a researcher is not using an "automatic telephone dialing device" but calls cell-phone numbers manually OR has consent from the called party to call his/her cell phone, that researcher is outside the scope of the law's restrictions.

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