

April 15, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Telemarketing Rulemaking-Comment FTC File No. R41101

To Whom it May Concern:

I am writing on behalf of the National Pest Management Association (NPMA) to express concerns regarding the proposed changes to the Federal Trade Commission's Telemarketing Sales Rule. Specifically, NPMA is concerned about the Commission's decision to scale back the exemption for transactions in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller and the Commission's failure to provide for an exemption for existing business relationships.

Formed in 1933, NPMA is the only national trade group for businesses engaged in managing structural pests such as ants, cockroaches, rodents, spiders, stinging insects and termites. NPMA's 6,000 plus members manage pests in and around countless types of structures, including single and multi-family residences, schools, outdoor recreational facilities, industrial plants, office buildings, restaurants, hospitals, food processing plants, warehouses and ships. Many NPMA members also service lawns or make other exterior treatments to better manage both indoor and outdoor pests.

One of the most popular and important services pest management professionals provide is the management of termites. During the early spring months when termites are swarming and most visible, pest management professionals are flooded with calls from homeowners. Pest management professionals respond to such a call by conducting a thorough inspection of the home, confirming that the structure is infested with termites and responding accordingly.

If the structure is infested, the pest management professional treats the home, hoping to rid the structure of termites. A termite treatment is not, however, any guarantee that a structure will be termite free. Countless variables that are beyond the control of pest management professionals play a role in determining whether termites reinfest the structure. Such variables include construction type and upkeep of the structure.

When pest management professionals explain that reinfestation is a possibility, homeowners sometimes choose to purchase maintenance or renewal agreements. These types of agreements provide the customer protection in case their home is reinfested by providing for retreatment of the home, coverage of any damage termites might inflict on the structure or retreatment and damage repair. Generally, such a contract also obligates pest management professionals to conduct periodic inspections of the home.

Pest management professionals sometimes run into great difficulty in trying to schedule an inspection. Despite sending letters and postcards, their plea to fulfill their contractual obligation to their customers is sometimes ignored. Not surprisingly, many pest management professionals either completely eschew using the mail or run out of patience after a few letters and try to contact the customer to schedule an inspection by phone. While speaking with the customer, it is not uncommon to mention or discuss add on services with the homeowner. If the customer expresses interest, the employee who performs the inspection may follow up and possibly complete the sale of the add on service.

Under the proposed changes to the Telemarketing Sales Rule, it appears that pest management professionals who mention add-on services to customers during a call to schedule an inspection that they are contractually obligated to perform for a customer will now be covered. Being subject to the Telemarketing Sales Rule will require pest management professionals to familiarize themselves with, and possibly purchase, the central "no-call" registry list. The overwhelming majority of pest management professionals are small businesses that employ fewer than 10 employees and the additional requirement of having to comply with the Telemarketing Sales Rules will be extremely burdensome and costly.

With the scaling back of the exemption for face-to-face transactions that a limited "existing business relationship" be added to allow for companies to discuss add-on service with consumers with whom they have a contractual obligation. Any request by the customer to cease calls regarding add-on services are almost certain to be honored for fear of irritating or losing a paying customer. Furthermore, such an exemption would be consistent with the Federal Communication Commission's rules under the Telephone Consumer Protection Act.

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We appreciate your time and consideration of our comments and urge you to contact me at gharrington@pestworld.org if you have any questions regarding these comments.

Sincerely,

Gene Harrington
Manager of Government Affairs