

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 3, 2008.

**Michael K. Buckley,**

*Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-278; FCC 08-147]

### Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission amends its rules under the Telephone Consumer Protection Act (TCPA) to require telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely. This action is consistent with Congress's mandate in the Do-Not-Call Improvement Act of 2007, which prohibits the removal of numbers from the Registry unless the consumer cancels the registration or the number has been disconnected and reassigned or is otherwise invalid. The Commission also will continue to coordinate with the FTC on additional ways to improve the Registry's accuracy.

**DATES:** 47 CFR 64.1200 (c)(2) contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date for the amendment and information collection requirements. Interested parties (including the general public, OMB, and other Federal agencies) that wish to submit written comments on the PRA information collection requirements must do so on or before September 12, 2008.

**ADDRESSES:** Interested parties may submit PRA comments identified by OMB Control Number 3060-0519, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's Web Site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- **E-mail:** Parties who choose to file by e-mail should submit their comments to [PRA@fcc.gov](mailto:PRA@fcc.gov). Please include CG Docket Number 02-278 and OMB Control Number 3060-0519 in the subject line of the message.

- **Mail:** Parties who choose to file by paper should submit their comments to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Erica McMahon, Consumer & Governmental Affairs Bureau at (202) 418-0346 (voice), or e-mail [Erica.McMahon@fcc.gov](mailto:Erica.McMahon@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Do-Not-Call Registry, Report and Order (DNC Report and Order)*, FCC 08-147, adopted on June 11, 2008, and released on June 17, 2008. FCC 08-147 addresses issues arising from the Commission's *Rules and Regulations Implementing the TCPA of 1991, Do-Not-Call Registry, Notice of Proposed Rulemaking (DNC NPRM)*, FCC 07-203, released on December 4, 2007, published at 72 FR 71099, December 14, 2007, in which the Commission sought comment on its tentative conclusion that registrations with the National Do-Not-Call Registry should be honored indefinitely. The full text of document FCC 08-147 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document FCC 08-147 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: <http://www.bcpweb.com> or call 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). FCC 08-147 can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy>.

### Paperwork Reduction Act of 1995 Analysis

FCC 08-147 contains modified information collection requirements subject to the PRA of 1995. It will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. Public and agency comments are due September 12, 2008.

In addition, pursuant to the Small Business Paperwork Review Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission has assessed the effect of rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. The Commission has taken steps, however, to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. In this present document, we have assessed the effect of these rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. However, the amended rules do not require the maintenance of any additional records or require entities to alter their current practices to comply with the National Do-Not-Call Registry. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

### Synopsis

In the *DNC Report and Order*, the Commission amends its rules under the TCPA to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Consistent with the Do Not Call Improvement Act of 2007 (DNC Act), the Commission extends this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights. The Commission recognizes the importance of maintaining an accurate Do-Not-Call Registry. The DNC Act provides that the FTC shall periodically check the numbers in the Registry and purge those numbers that have been disconnected and reassigned. Currently, the database administrator checks all telephone numbers in the Registry once a month against national databases to remove any disconnected and reassigned

numbers. The Commission intends to work closely with the FTC to consider options to enhance the Registry's accuracy, including whether scrubbing the database more frequently is possible and might improve the overall accuracy of the database. The Commission also encourages local exchange carriers (LECs) to report information on disconnected and reassigned numbers to the FTC subcontractor as timely as possible so that such numbers might be purged more than once per month. The Commission does not believe that the amended rules will be burdensome for sellers and/or telemarketers, including small businesses. Small businesses can continue to access the Registry on an area-code-by-area-code basis and need only purchase those area codes in which the seller intends to telemarket. In addition, the national database provides a single number feature whereby a small number of telephone numbers can be entered on a web page to determine whether any of those numbers are included on the Registry.

The Commission concludes that eliminating the need for consumers to re-register their numbers will enhance consumer privacy protections and benefit the federal government in administering the National Registry. Making registrations permanent adequately balances the need to maintain a high level of accuracy in the National Registry with the desire to have a simple and effective means to limit unwanted telemarketing calls.

#### Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *DNC NPRM*, released by the Commission on December 4, 2007. The Commission sought written public comment on the proposals contained in the Notice, including comment on the IRFA. Comments filed in this proceeding that address the impact of the proposed rules and policies on small entities are discussed below.

#### *Need for, and Objectives of, the Adopted Rules*

In 2003, the Commission released the *Rules and Regulations Implementing the TCPA of 1991*, Do-Not-Call Registry, Report and Order, (2003 TCPA Order), published at 68 FR 44144, July 25, 2003, revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, the Commission established, in conjunction with the Federal Trade Commission (FTC), a National Do-Not-Call Registry for consumers who wish to avoid

unwanted telemarketing calls. The National Do-Not-Call Registry supplements long-standing company-specific rules which require companies to maintain lists of consumers who have directed the company not to contact them by phone. The 2003 TCPA Order required telemarketers to honor do-not-call registrations on the National Registry for five years. It also revised the company-specific do-not-call rules to reduce the retention period for such do-not-call requests from ten to five years.

On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration. Subsequently, on February 15, 2007, Congress enacted the Do-Not-Call Improvement Act of 2007 (DNC Act), which prohibits the automatic removal of registered numbers, unless a number has been disconnected, reassigned, or is otherwise invalid. The *DNC Report and Order* amends the Commission's rules so that registrations with the National Do-Not-Call Registry will not expire after a period of five years, consistent with the DNC Act and FTC policy. This action will benefit consumers, who will no longer be required to re-register every five years, thereby reducing any burdens on consumers in terms of the time and effort required to register and the need to remember when to re-register.

#### *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

No comments were filed in response to the IRFA directly. However, in response to the *DNC NPRM*, some commenters raised concerns about the impact of the Commission's proposed rule changes on small businesses. The National Association of Realtors (NAR) argued that requiring telemarketers to honor registrations indefinitely will result in increased economic burdens for small businesses. The American Teleservices Association contended that the rule change will lead to a larger Registry, and consequently larger Registry file sizes, which will adversely impact small businesses due to their limited resources. Others argued that the rule change would have a negligible effect on small businesses. NASUCA and the Nebraska Public Services Commission pointed out, for example, that small businesses will be required to access the Registry and avoid calling numbers in the Registry just as they do today.

#### *Description and Estimate of the Number of Small Entities to Which the Adopted Rules Apply*

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Small Business Act, 15 U.S.C. 632 (1996).

The modifications to the regulations adopted in this item apply to a wide range of entities, including all entities that use the telephone to advertise. That is, the rule changes affect the myriad of businesses throughout the nation that telemarket and, therefore, must access the National Registry to avoid calling registered numbers, including the following:

*Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees. Consequently, the Commission estimates that a majority of interexchange carriers may be affected by the rules.

*Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers

reported that they were engaged in the provision of local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

**Wireless Service Providers.** In November of 2007, the SBA developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)." 13 CFR 121.201, NAICS code 517210. Under that SBA category, a business is small if it has 1,500 or fewer employees. Thus, under this category and the associated small business size standard, the great majority of firms can be considered small. For a census category that existed for a prior version of the NAICS codes, namely "Cellular and Other Wireless

Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

The *DNC Report and Order* amends the Commission's rules to require sellers and/or telemarketers to honor registrations on the National Do-Not-Call Registry until the registration is either cancelled by the consumer or the number is removed by the database administrator. This rule change will affect compliance requirements, as numbers currently registered will not be automatically removed from the Registry five years after they were registered. However, the Commission expects that sellers and/or telemarketers will continue to access the Registry and avoid calling numbers on the Registry as they do today. There are no new or additional reporting or recordkeeping requirements associated with the amended rules.

#### *Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered*

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of

differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. See 5 U.S.C. 603(c).

In the *DNC Report and Order*, the Commission amends its rules to require sellers and/or telemarketers to honor national do-not-call registrations indefinitely. The alternative would be to not modify the rules and leave the period for honoring registrations at 5 years for sellers and/or telemarketers subject to our rules. This would result in the Commission's rules being inconsistent with FTC policy and Congress's mandate in the DNC Improvement Act to not remove numbers after 5 years.

The Commission considered the burdens to small businesses of having to comply with these amended rules. The record revealed that some commenters suspected that the Commission's proposed rule change would negatively impact small businesses. They argued that small businesses would have to purchase additional storage space and experience lengthier download times to accommodate the increased size of the Registry. Commenters also feared that numbers that had been disconnected or reassigned would not be purged from the Registry in a timely manner. The Commission considered these concerns and concluded that the rule change will not be overly burdensome for small entities. Such entities will be required to continue to access the Registry as they do today. Small businesses can obtain the data on an area-code-by-area-code basis and need only purchase those area codes in which they intend to telemarket. In addition, the Commission found that the rule change's benefits to the public and to consumer privacy interests outweighed the potential negative effect on small businesses of eliminating the 5-year registration period. Consumers will no longer be required to re-register every 5 years or need to remember when and how to re-register. In response to concerns about the accuracy of the Registry, the Commission notes that Congress requires the FTC to check the database and remove disconnected and reassigned numbers. In addition, the Commission encourages LECs to provide information to the database administrator timely and accurately to enhance the FTC's ability to remove disconnected and reassigned numbers,

thereby improving the overall accuracy of the Registry. The Commission also encourages parties to submit additional proposals directly to the FTC for consideration.

#### **Congressional Review Act**

The Commission will send a copy of the *DNC Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### **Ordering Clauses**

Pursuant to sections 1–4, 227 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227 and 303(r); and § 64.1200 of the Commission's rules, 47 CFR 64.1200, the *DNC Report and Order* in CG Docket No. 02–278 is adopted, and Part 64 of the Commission's rules, 47 CFR 64.1200, is amended.

The *DNC Report and Order* shall be effective July 14, 2008, except § 64.1200(c)(2) of the Commission's rules, which contains information collection requirements that are not effective until approval by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of the amended rule.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis (FRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 64**

Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### **Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### **PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

■ 2. Section 64.1200 is amended by revising paragraph (c)(2) introductory text to read as follows:

**§ 64.1200 Delivery restrictions.**

\* \* \* \* \*

(c) \* \* \*

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

\* \* \* \* \*

[FR Doc. E8-15994 Filed 7-11-08; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 99-25; FCC 07-204]

**Creation of a Low Power Radio Service****AGENCY:** Federal Communications Commission.**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the revised information collections associated with the *Creation of a Low Power Radio Service*. This notice is consistent and satisfies the Ordering Clause of the Report and Order published at 73 FR 3202-02, on January 17, 2008, which stated that changes to FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License and FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, OMB Control Number 3060-0031, will become effective 60 days after a notice is published in the **Federal Register** announcing OMB approval of the forms.

**DATES:** FCC Forms 314 and 315 are effective September 12, 2008.**FOR FURTHER INFORMATION CONTACT:** Peter Doyle or Kelly Donohue, Audio Division, Media Bureau at (202) 418-2700.**SUPPLEMENTARY INFORMATION:** This document announces that, on June 23, 2008, OMB approved, for a period of

three years, the revised information collection requirements resulting in changes to FCC Forms 314 and 315 contained in the Commission's Report and Order concerning the Creation of a Low Power Radio Service, FCC 07-204, published at 73 FR 3202-02, January 17, 2008. The OMB Control Number is 3060-0031 for both FCC Forms 314 and 315. The Commission publishes this notice as an announcement of the effective date of the forms and announcement of OMB approval for the information collections. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060-0031 in your correspondence. The Commission will also accept your comments via the Internet if you send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on June 23, 2008, for the revised information collection requirements resulting in changes to FCC Forms 314 and 315. The OMB Control Number assigned to the information collections is 3060-0031. For revisions to Forms 314 and 315 the total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 4,510 respondents, total annual burden hours of 18,790 hours, and \$33,989,570 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,***Secretary.*

[FR Doc. E8-15845 Filed 7-11-08; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 080306389-8810-02]

RIN 0648-AW53

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allowance of New Gear (Haddock Rope Trawl, Previously Referred to as the Eliminator Trawl) in Specific Special Management Programs**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS approves the use of an additional type of trawl gear known as the "haddock rope trawl" (formerly called the "eliminator trawl") in the Regular B Days-at-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP). Vessels fishing in the Regular B DAS Program or the Eastern U.S./Canada Haddock SAP must use approved trawl gear in order to reduce the catch of Northeast (NE) multispecies (groundfish) stocks of concern. The NE Regional Administrator, NMFS, may approve additional gears for use in these programs if research demonstrates that the gear meets specific standards for the reduction of catch of stocks of concern. The intent of this action is to reduce catch of stocks of concern in the NE multispecies fishery and to provide for the conservation and management of stocks managed by the NE Multispecies Fishery Management Plan (FMP).

**DATES:** This rule is effective August 13, 2008.

**ADDRESSES:** Copies of the Technical Report "Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery" and a diagram of the haddock rope trawl may be obtained from NMFS at the following address: National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281-9315. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in