

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state law implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to approve a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 30, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7-24243 Filed 12-13-07; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-278, FCC 07-203]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission tentatively concludes that it should amend the Commission's rules under the Telephone Consumer

Protection Act (TCPA) to require telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the five year registration period. The Commission proposes extending 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. Also in this document, the Commission seeks comment on this tentative conclusion and on how best to coordinate this rule change with the Federal Trade Commission (FTC).

**DATES:** Comments are due on or before January 14, 2008. Reply comments are due on or before January 28, 2008.

**ADDRESSES:** You may submit comments identified by CG Docket No. 02-278 and/or FCC Number 07-203, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting electronic filings.
- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting electronic filings.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting electronic filings and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Lynne Montgomery, Consumer & Governmental Affairs Bureau, Policy Division, at (202) 418-2229 (voice), or e-mail [Lynne.Montgomery@fcc.gov](mailto:Lynne.Montgomery@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On July 3, 2003, the Commission released the *Rules and Regulations Implementing the TCPA of 1991*, Report and Order (2003 TCPA Order), CG Docket No. 02-278, FCC 03-153, published at 68 FR 44144, July 25, 2003, revising the TCPA rules, and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations. These new rules established a national do-not-call registry, set a maximum rate on the number of abandoned calls, required telemarketers to transmit caller ID information, and modified the

Commission's unsolicited facsimile advertising requirements. This is a summary of the Commission's document *Rules and Regulations Implementing the TCPA of 1991, Notice of Proposed Rulemaking (Do-Not-Call Registry NPRM)*, CG Docket No. 02-278, FCC 07-203, adopted November 27, 2007, and released December 4, 2007, seeking comment on its tentative conclusion to amend its rules to eliminate the five-year registration period for the Do-Not-Call Registry and require telemarketers to honor registrations indefinitely, unless the consumer has cancelled the registration or the database administrator removes the telephone number because it was disconnected or reassigned. The *Do-Not-Call Registry NPRM* does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

• *ECFS filers must transmit one electronic copy of the comments for CG Docket No. 02-278.* In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the docket number, CG Docket No. 02-278. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than

one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

A copy of document FCC 07-203 and any subsequently filed documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, (202) 418-0270. Document FCC 07-203 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at their Web site, <http://>

[www.bcpweb.com](http://www.bcpweb.com), or call (800) 378-3160. A copy of document FCC 07-203 and any subsequently filed documents in this matter may also be found by searching the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 02-278 into the Proceeding block).

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). Document FCC 07-203 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy>.

### Synopsis

The Commission tentatively concludes that it should amend its rules so that telemarketers will be required to honor registrations with the National Do-Not-Call Registry until the registration is cancelled by the consumer or the telephone number is removed by the database administrator because it was disconnected or reassigned. Under this tentative conclusion, consumer registrations will not expire after five years. The Commission seeks comment on this tentative conclusion and how to implement this rule change in coordination with the FTC.

The National Do-Not-Call Registry was adopted in large part to make it easier and more efficient for consumers to prevent unwanted telemarketing calls. As explained in Reports to Congress, the Commission believes the number of telephone numbers added to the Registry and the FCC's experience in both helping to ensure compliance with the Registry and in enforcing the do-not-call rules are strong indicators that the Registry has been successful in curbing the number of unwanted telemarketing calls. Therefore, the Commission is concerned that, starting June 28, 2008, five years after the opening of the registry, as many as 10 million registered numbers will expire and be automatically removed from the database, unless consumers take steps to re-register the numbers. By August 2008, as many as 20 million additional numbers will potentially expire and be purged from the registry. Such expirations will leave millions of consumers without protection against unwanted telemarketing calls—protections they have come to rely on since registering their numbers in 2003. Removing the current 5-year registration period will alleviate any burdens on

consumers associated with re-registering numbers, including the time and effort necessary to register and the need to remember when to re-register. The Commission believes requiring telemarketers to continue honoring do-not-call registrations will also minimize any consumer confusion resulting from a sudden increase in telemarketing calls received when registrations begin to expire next year. In addition, eliminating the need to re-register numbers every five years should lower the cost of operating the National Registry.

In adopting the National Registry, the Commission was mindful of concerns regarding the accuracy of the database. Initially, the Commission determined that a re-registration requirement should be included given that telephone numbers change hands, are disconnected and reassigned over time. However, the Commission believes the database administrator's use of technology to check all registered telephone numbers on a monthly basis and remove those numbers that have been disconnected or reassigned will maintain the database's high-level of accuracy. In addition, consumers will continue to be able to verify or cancel their registration status using either the telephone or Internet. Allowing consumers to verify their registration status or cancel their registrations at any time also enhances the accuracy of the National Registry.

The Commission recognizes that absent a similar change in the FTC's policies, numbers that have been in the Registry for five years may be purged by the database administrator beginning in June 2008, and that telemarketers will no longer have access to those numbers in order to avoid calling them. The Commission notes, however, that the FTC recently committed that "it will not drop any telephone numbers from the Registry based on the five-year expiration period pending final Congressional or agency action on whether to make registration permanent." The Commission envisions working closely with the FTC to ensure that telephone numbers are not removed at the end of the 5-year registration period, and that telemarketers continue to have access to those numbers. The Commission seeks comment on how best to coordinate with the FTC to most effectively institute this rule change in a meaningful, consistent way.

In light of our tentative conclusion and the FTC's indication that it will retain registrations after the 5-year period, the Commission believes the Registry will continue to operate as it does today. The Commission, therefore,

seeks comment on what impact, if any, our proposed rule change would have on telemarketers, particularly small businesses. Because telemarketers would be required to continue honoring do-not-call registrations as they do now, the Commission tentatively concludes that the enhanced consumer privacy protections created by this proposed rule amendment, taken in conjunction with the benefits to the federal government in administering the National Registry, outweigh any potential impact.

The Commission believes 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. The proposed rule changes do not impose any new or modified information collection requirements.

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Do-Not-Call Registry NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this document. The Commission will send a copy of this *Do-Not-Call Registry NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Do-Not-Call Registry NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

In 2003, the Commission released the *2003 TCPA Order* revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, the Commission established in conjunction with the 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. This Notice tentatively concludes to amend the Commission's rules so that registrations with the National Do-Not-Call Registry will not expire after a period of five years. Telemarketers will instead be required to honor such registrations until consumers cancel the registrations or the numbers are removed because they were disconnected or reassigned.

#### *Legal Basis*

The proposed action is authorized under sections 1-4, 227, and 303(r) of the Communications Act of 1934, as amended; the Telephone Consumer Protection Act of 1991, Public Law Number 102-243, 105 Statute 2394; and the Do-Not-Call Implementation Act, Public Law Number 108-10, 117 Statute 557.

#### *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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.

The modifications to the regulations proposed in this item on telephone solicitation apply to a wide range of entities, including all entities that use the telephone to advertise. That is, the proposed rule changes would affect the myriad of businesses throughout the nation that use telemarketing to advertise. Thus, the Commission expects that the proposals in the *Do-Not-Call Registry NPRM*, could have a significant economic impact on a substantial number of small entities, 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. 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. 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)." 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 great majority of firms can be considered small.

Ordinarily, the Commission does not seek comment on the entities that must comply with proposed rules. However, the proposed rules in this document potentially could apply to any entity, including any telecommunications carrier that uses the telephone to advertise. Thus, under these unusual circumstances, the Commission seeks comment on whether the approximately 4.44 million small business firms in the United States, as identified in SBA data,

will need to comply with these rules, or whether it is reasonable to assume that only a subset of them will be subject to these rules given that not all small businesses use the telephone for advertising purposes. After evaluating the comments, the Commission will examine further the effect any rule changes might have on small entities not named herein, and will set forth our findings in the final Regulatory Flexibility Analysis.

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

The *Do-Not-Call Registry NPRM* proposes to amend the National Do-Not-Call Registry rules to require telemarketers to honor registrations until consumers cancel their registrations. This proposed rule change will affect reporting, recordkeeping and other compliance requirements, as numbers currently registered will not be removed from the Registry after five years. However, as long as the FTC similarly changes its policies, we expect that telemarketers would continue to access the Registry and avoid calling numbers on the Registry as they are required to do so today.

*Steps Taken To Minimize the Significant Economic 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.

The Commission is considering amending its rules to require telemarketers to honor national do-not-call registrations indefinitely and is seeking comment on this option. The alternative would be to not modify the rules and leave the registration period at 5 years. This would result is millions of national do-not-call registrations being removed from the registry in 2008 and leaving consumers without protection from unwanted telemarketing calls unless they take action to re-register. Small businesses, which believe the elimination of any date of expiration for

registrations would impact their business in a negative way, are requested to file comments and advise the Commission about such an impact.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

The FCC's TCPA rules and the FTC's Telemarketing Sales Rule are duplicative in part. Should the Commission determine to amend its rules and there is no similar amendment made to the FTC's policies, the two sets of rules may be inconsistent.

**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 *Do-Not-Call NPRM* in CG Docket No. 02-278 is adopted.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Do-Not-Call Registry NPRM* on or before January 14, 2008, and reply comments on or before January 28, 2008.

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

Telecommunications, Telephone. Federal Communications Commission. **Marlene H. Dortch**, *Secretary*.

**Proposed Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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 paragraphs (c)(2) introductory text and (c)(2)(i)(D) 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. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) \* \* \*

(D) *Accessing the national do-not-call database.* It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process; and

Note to paragraph(c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

\* \* \* \* \*

[FR Doc. E7-24280 Filed 12-13-07; 8:45 am] BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 223**

[Docket No. 071120724-7618-01]

RIN 0648-AU92

**Endangered and Threatened Species; Conservation of Threatened Elkhorn and Staghorn Corals**

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

**ACTION:** Proposed rule; request for comments; notice of availability of a draft environmental assessment.

**SUMMARY:** We, NMFS, are proposing to issue protective regulations under of the Endangered Species Act (ESA) for two species listed as threatened, the elkhorn