

**§ 7711. Regulations****(a) In general**

The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be issued in accordance with section 553 of title 5.

**(b) Limitation**

Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 7704(a)(5)(A) of this title to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 7704(a)(5)(A) of this title in any particular part of such a mail message (such as the subject line or body).

(Pub. L. 108-187, §13, Dec. 16, 2003, 117 Stat. 2717.)

**Editorial Notes**

## REFERENCES IN TEXT

This Act (not including the amendments made by sections 4 and 12), referred to in subsec. (a), is Pub. L. 108-187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. Section 4 enacted section 7703 of this title, section 1037 of Title 18, Crimes and Criminal Procedure, and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure. Section 12 amended section 227 of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108-187, set out as a note under section 7701 of this title.

**§ 7712. Application to wireless****(a) Effect on other law**

Nothing in this chapter shall be interpreted to preclude or override the applicability of section 227 of title 47 or the rules prescribed under section 6102 of this title.

**(b) FCC rulemaking**

The Federal Communications Commission, in consultation with the Federal Trade Commission, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages. The Federal Communications Commission, in promulgating the rules, shall, to the extent consistent with subsection (c)—

(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, except as provided in paragraph (3);

(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the sender;

(3) take into consideration, in determining whether to subject providers of commercial mobile services to paragraph (1), the relation-

ship that exists between providers of such services and their subscribers, but if the Commission determines that such providers should not be subject to paragraph (1), the rules shall require such providers, in addition to complying with the other provisions of this chapter, to allow subscribers to indicate a desire not to receive future mobile service commercial messages from the provider—

(A) at the time of subscribing to such service; and

(B) in any billing mechanism; and

(4) determine how a sender of mobile service commercial messages may comply with the provisions of this chapter, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.

**(c) Other factors considered**

The Federal Communications Commission shall consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.

**(d) Mobile service commercial message defined**

In this section, the term “mobile service commercial message” means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service (as such term is defined in section 332(d) of title 47) in connection with such service.

(Pub. L. 108-187, §14, Dec. 16, 2003, 117 Stat. 2718.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(3), (4), was in the original “this Act”, meaning Pub. L. 108-187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108-187, set out as a note under section 7701 of this title.

**§ 7713. Separability**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected.

(Pub. L. 108-187, §15, Dec. 16, 2003, 117 Stat. 2718.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108-187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108-187, set out as a note under section 7701 of this title.