items to copy. We will provide fasteners for replacement as necessary.

(d) You may not leave documents unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) You must turn off any lights used with the camera when the camera is not in actual operation.

(g) You may operate microfilm equipment only in the presence of the research room attendant or a designated NARA employee. If NARA places microfilm projects in a common research area with other researchers, the project will not be required to pay for monitoring that is ordinarily provided. If the microfilm project is performed in a research room set aside for copying and filming, we charge the project fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects. We specify the monitoring service fees in the written agreement required for project approval in § 1254.102(h).

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this chapter) decides when you must remove equipment because of lack of regular use. You must promptly remove equipment upon request of the facility director.

(i) We assume no responsibility for loss or damage to microfilm equipment or supplies you leave unattended.

(j) We inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by part 1230 of this chapter. To enable us to properly inspect the film, we must receive the film within 5 days after it has been processed. You must provide NARA with a silver halide duplicate negative of the filmed records (*see* § 1254.100(g)) according to the schedule shown in paragraph (k) of this section. If the processed film does not meet the standards, we may require that you refilm the records.

(k) When you film 10,000 or fewer images, you must provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, you must provide a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count to NARA for evaluation. You also must provide subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, to NARA within 30 days after filming unless we approve other arrangements.

(l) If the microfilming process is causing visible damage to the documents, such as flaking, ripping, separation, fading, or other damage, filming must stop immediately and until the problems can be addressed.

§ 1254.110 Does NARA ever rescind permission to microfilm?

We may, at any time, rescind permission to microfilm records if:

(a) You fail to comply with the microfilming procedures in § 1254.108;

(b) Inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) You fail to proceed with the microfilming or project as indicated in the request, or

(d) The microfilming project has an unanticipated adverse effect on the condition of the documents or the space set aside in the NARA facility for microfilming.

(e) You fail to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

2. Revise part 1284 to read as follows:

PART 1284—EXHIBITS

Sec.
1284.1 Scope of part.
1284.20 Does NARA exhibit privately-owned material?
1284.30 Does NARA lend documents to other institutions for exhibit purposes?

Authority: 44 U.S.C. 2104(a), 2109.

§ 1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials.

§ 1284.20 Does NARA exhibit privately-owned material?

(a) NARA does not normally accept for display documents, paintings, or other objects belonging to private individuals or organizations except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that NARA judges to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Director of Museum Programs (NWE), in conjunction with the NARA General Counsel when appropriate, reviews all offers to display privately-owned material in the Washington, DC area, and negotiates the terms of exhibition for offers that NARA can accept. Directors of Presidential libraries perform these tasks for their respective libraries. The lender must provide in writing evidence of title to and authenticity of the item(s) to be displayed before NARA makes a loan agreement.

(d) The Director of Museum Programs or director of the pertinent Presidential library will inform the offering private individual or organization of NARA's decision in writing within 60 days.

§ 1284.30 Does NARA lend documents to other institutions for exhibit purposes?

Yes, NARA considers lending documents that are in appropriate condition for exhibition and travel. Prospective exhibitors must comply with NARA's requirements for security, fire protection, environmental controls, packing and shipping, exhibit methods, and insurance. For additional information, contact Registrar, Museum Programs (NWE), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Dated: March 24, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–7169 Filed 3–30–04; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 04–53 and 02–278; FCC 04–52]

Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on how best to implement

regulations to protect consumers from unwanted mobile service commercial messages. This document also seeks comment on two possible revisions to rules implementing the national do-not-call registry.

DATES: Comments in CG Docket No. 04–53, concerning unwanted mobile service commercial messages and the CAN–SPAM Act, are due on or before April 30, 2004 and reply comments are due on or before May 17, 2004. Comments in CG Docket No. 02–278, concerning both a limited safe harbor under the TCPA and the required frequency for telemarketers to access the national do-not-call registry, are due on or before April 15, 2004 and reply comments are due on or before April 26, 2004. Written comments by the public on the proposed information for this collection for CG Docket No. 04–53 and CG Docket No. 02–278, are due April 30, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 1, 2004.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, of the Consumer & Government Affairs Bureau at (202) 418–2512 (voice), or e-mail *ruth.yodaiken@fcc.gov*. For additional information concerning the information collection contained in this document, contact Leslie Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*; CG Docket No. 04–53; and this *Further Notice of Proposed Rulemaking* (FNPRM), *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, FCC 04–53, adopted March 11, 2004, and released March 19, 2004. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. 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* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should 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 reply. 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 of this proceeding, commenters must submit two additional copies for 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 Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., 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 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file paper comments also should send four paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4–C734, 445 12th Street, SW., Washington, DC 20554. In addition, commenters choosing to file in paper must send copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, D.C. 20554. 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.

Paperwork Reduction Act

This *NPRM* and *FNRPM* contain proposed and modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public and OMB to comment on the information collection contained in this *NPRM* and *FNPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due 60 days from date of publication of this NPRM and FNPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM); FCC 04–52.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit entities.

Number of Respondents: There are approximately 22,620,000 total businesses in the USA. We would assume that only—at most—half of those send unwanted commercial electronic mail messages.

Estimated Time per Response: Varies with proposed rules. For the domain name proposals, this might only affect CMRS carriers to report domain names, and senders of commercial messages to check periodically. Census data indicates that there are approximately 350 CMRS carriers. The proposal involving a registry of individual addresses would involve checking a list of mail addresses regularly and comparing that to any list the sender has. We note that with the adoption of the CAN–SPAM Act in general, since January 1, 2004, senders are prohibited from sending commercial electronic mail messages to any recipient who makes a request not to receive any more such mail from that sender. Hence, senders must already check a list of electronic mail addresses against a list they must keep of anyone who has requested not to receive such mail. The Commission noted in the CMRS Competition Report that there are approximately 142 million mobile subscribers. 1.5–12 hours

Frequency of Responses: On occasion. This is a recordkeeping requirement.

Total Annual Burden: Approximately 17 million hours–132 million hours (depending on the options).

Total Annual Cost: $1,750,000.

Needs and Uses: The item asks how senders can identify electronic mail addresses as belonging to mobile services messaging systems, which the statute requires the FCC to protect. We seek comment in particular on whether there could be a list or standard naming convention of domain names; or an individual registry of electronic mail addresses. Further we ask about whether there are automatic challenge-response mechanisms that would alert senders that they are sending their message to such a subscriber. Further, we explore mechanisms that do not require the sender to recognize the addresses. These methods are filtering mechanisms. We also explore the use of senders tagging their messages to identify them as commercial. These steps are examined for their usefulness in giving wireless subscribers the ability to stop receiving unwanted commercial mobile services messages.

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, NPRM, CG Docket No. 02–278, FCC 04–52.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time per Response: 3 hours (average).

Frequency of Response: On occasion. This is a reporting requirement.

Total Annual Burden: 90,000 hours.

Total Annual Costs: $1,710,000.

Needs and Uses: The current total public disclosure and recordkeeping burden for collections of information under the TCPA rules is 1,728,600 hours, as stated most recently in the Commission's OMB submission to extend approval of the information collection in connection with the TCPA rules. We believe that the amended safe harbor, which would require telemarketers to scrub their call lists monthly, could increase the burdens by 60,000 hours and increase the total annual costs by $855,000 to $1,710,000.

Proposal Revision to Certain Recordkeeping Requirements

The Commission seeks comment on whether to revise certain recordkeeping requirements that must be met before companies may avail themselves of any ''safe harbor'' protections for violating the do-not-call rules. Companies that conduct telemarketing already maintain their own do-not-call lists and many of them must reconcile their lists with the national do-not-call list on a quarterly basis. We believe that any additional recordkeeping burden as a result of specific ''safe harbor'' requirements would be minimal for most telemarketers. We estimate that this requirement will account for an additional 2 hours of recordkeeping burden per company, or an additional 60,000 hours.

Synopsis

I. CAN–SPAM

A. Definition of Mobile Service Commercial Messages

Section 14(b)(1) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act or the Act) states that the Commission shall adopt rules to provide subscribers with the ability to avoid receiving a ''mobile service commercial message'' (MSCM) unless the subscriber has expressly authorized such messages beforehand. The Act defines an MSCM as a ''commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service'' as defined in 47 U.S.C. 332(d) ''in connection with that service.'' For purposes of this discussion, we shall refer to mobile service messaging as MSM. As a threshold matter, we commence our inquiry by exploring the scope of messages covered by section 14.

1. Commercial Electronic Mail Message

Although the Act defines an electronic mail message broadly as a message having a unique electronic mail address with ''a reference to an Internet domain,'' the scope of electronic messages covered under section 14 is narrowed. MSCMs are only those electronic mail messages ''transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service'' as defined in 47 U.S.C. 332(d) ''in connection with that service.'' Section 332(d) defines the term ''commercial mobile service'' as a mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. The Commission equates the statutory term ''commercial mobile service'' with ''commercial mobile radio service'' or CMRS used in its rules.

Accordingly, it appears that only commercial electronic messages transmitted directly to a wireless device used by a CMRS subscriber would fall within the definition of MSCMs under the Act. Further, we note that the Act states that an electronic mail message shall include a unique electronic mail address, which is defined to include two parts: (1) ''a unique user name or mailbox;'' and (2) ''a reference to an Internet domain.'' Thus, it appears that MSCM would be limited under the Act, to a message that is transmitted to an electronic mail address provided by a CMRS provider for delivery to the addressee subscriber's wireless device. We seek comment on this interpretation and its alternatives. Commenters should address whether only these or other messages would fall under the definition of MSCM.

Under the Act, whether an electronic mail message is considered ''commercial'' is based upon its ''primary purpose.'' It meets this definition if its primary purpose is ''the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).'' A ''commercial'' message for

purposes of the Act does not include a transactional or relationship message. The Act requires the FTC to issue regulations defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message by January of 2005.

2. Transmitted Directly to a Wireless Device Used by a Subscriber of Commercial Mobile Service

As explained above, in order to satisfy the definition of an MSCM, the message must be ''transmitted directly to a wireless device.'' In light of the definition of an MSCM, as discussed above, it appears that the statutory language would be satisfied when a message is transmitted to an electronic mail address provided by a CMRS provider for delivery to the addressee subscriber's wireless device. As discussed below, we believe that the specific transmission technique used in delivering a particular message may not be relevant under the statute, and that messages ''forwarded'' by a subscriber to his or her own wireless device are not covered under section 14. We seek comment on these interpretations as well as the issues described below.

We have asked above whether a message becomes an MSCM only if it is transmitted to a wireless device used by a subscriber of CMRS ''in connection with that service.'' We seek comment on whether an interpretation that all commercial electronic mail messages sent to CMRS carriers' mobile messaging systems are MSCMs would be consistent with the definition of MSCM in the Act. For example, do CMRS carriers offer services through which electronic mail messages are sent directly to wireless devices other than in connection with commercial mobile service as defined in section 332(d)? Commenters should also discuss any other relevant issues involving the definition of MSCM.

Transmission techniques. Currently, there appear to be two main methods for transmitting messages to a wireless device, and those methods are through push and pull technologies. Message transmission techniques using ''pull'' technologies store messages on a server until a recipient initiates a request to access the messages from either a wireless or non-wireless device. ''Push'' technologies automatically—without action from the recipient—send messages to a recipient's wireless device. Certain messages that are initiated as electronic mail messages on the Internet and converted for delivery to a wireless device, discussed below in the context of SMS messaging, are examples of messages delivered to wireless devices using such push technologies. We believe that the definition of a MSCM should include all messages transmitted to an electronic mail address provided by a CMRS provider for delivery to the addressee subscriber's wireless device irrespective of the transmission technique. We seek comment on this interpretation and alternatives.

The legislative history of the Act suggests section 14, in conjunction with the Telephone Consumer Protection Act (TCPA), was intended to address wireless text messaging. SMS messages are text messages directed to wireless devices through the use of the telephone number assigned to the device. When SMS messages are sent between wireless devices, the messages generally do not traverse the Internet and therefore do not include a reference to an Internet domain. However, a message initially may be sent through the Internet as an electronic mail message, and then converted by the service provider into an SMS message associated with a telephone number. We seek comment on whether the definition of an MSCM should include messages using such technology and similar methods, and specifically whether it should include either or both of these types of SMS messages described above. We note here that the TCPA and Commission rules prohibit calls using autodialers to send certain voice calls and text calls, including SMS messages, to wireless numbers.

Forwarding. The manner in which recipients of MSCMs utilize messaging options may also be relevant to our interpretation of the definition of MSCM. For example, another way for a commercial mobile service subscriber to obtain electronic mail messages is for that subscriber to take steps to have messages forwarded from a server to the subscriber's wireless device. With this type of electronic mail transmission, a subscriber can, for example, obtain messages initially sent to an electronic mail account that is normally accessed by a personal computer. We do not believe that section 14 was intended to apply to all such messages. First, defining the scope of section 14 to include all ''forwarded'' messages could result in our rules applying to virtually all electronic mail covered by the CAN–SPAM Act because subscribers can forward most electronic mail to their wireless devices. We do not believe that Congress intended such a result given that it would duplicate in large measure the FTC's authority under the Act. Moreover, the legislative history of the Act suggests that section 14 was not intended to address messages ''forwarded'' in this manner. Congressman Markey, in support of section 14, stated: ''Spam sent to a desktop computer e-mail address, and which is then forwarded over to a wireless network to a wireless device, *i.e.*, delivered 'indirectly' from the initiator to the wireless device, would be treated by the rest of this bill and not by the additional section 14 wireless-specific provisions we subject to an FCC rulemaking.'' We seek comment on the view that such transmissions fall outside the category of those ''transmitted directly to a wireless device.'' Commenters should address our assumption that a broad interpretation of ''transmitted directly to a wireless device'' to cover ''forwarded'' electronic mail messages would expand the scope of section 14 to cover all electronic mail covered by the CAN–SPAM Act in general.

Section 14 requires that the FCC ''consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.'' We seek comment on how a sender would know that it was sending an MSCM if any action by a recipient to retrieve his messages by a wireless device could convert a non-MSCM into an MSCM, or vice-versa. We seek comment on the technical and administrative characteristics relevant to distinguishing forwarded messages as well as other messages.

B. The Ability To Avoid Receiving MSCMs

1. How To Enable Consumers To Avoid Unwanted MSCMs

We seek comment on ways in which we can implement Congress's directive to protect consumers from ''unwanted mobile service commercial messages.'' As explained above, section 14(b)(1) of the CAN–SPAM Act states that the Commission shall adopt rules to provide subscribers with the ''ability to avoid receiving [MSCMs] unless the subscriber has provided express prior authorization to the sender.'' The legislative history of the Act suggests that section 14 was included so that wireless subscribers would have greater protections from commercial electronic mail messages than those protections provided elsewhere in the Act. As explained below, we believe that section 14(b)(1) is intended to provide consumers the opportunity to generally bar receipt of all MSCMs (except those from senders who have obtained the consumer's prior express consent). However, we believe that in order to do so, the consumer must take affirmative action to bar the MSCMs in the first

instance. Although it appears that Congress intended to afford wireless subscribers greater protection from unwanted commercial electronic mail messages than those protections provided elsewhere in the Act, it is not clear that Congress necessarily sought to impose a flat prohibition against such messages in the first instance. However, as set forth below, we seek comment on both of these different interpretations of section 14(b)(1).

The language of the CAN–SPAM Act requires the Commission to ''protect consumers from unwanted mobile service commercial messages.'' The protections extend to unwanted MSCMs from senders who may ignore the provisions of the CAN–SPAM Act. As a practical matter, the particular protections for wireless subscribers required by the Act may require comprehensive solutions. Therefore, in addition to those considerations directed by the CAN–SPAM Act discussed below, we seek comment generally on technical mechanisms that could be made available to wireless subscribers so that they may voluntarily, and at the subscriber's discretion, protect themselves against unwanted mobile service commercial messages. We seek comment on means by which wireless providers might protect consumers from MSCMs transmitted by senders who may willfully violate the wireless provisions of the CAN–SPAM Act addressed in this proceeding. We seek comment on how, in particular, small businesses would be affected by the various proposals we consider.

We are aware that a number of other countries have taken a variety of technical and regulatory steps to protect their consumers from unwanted electronic mail messages in general. In doing so, some countries such as Japan and South Korea have adopted an opt-out approach; while others such as the United Kingdom, France, and Germany had adopted an opt-in approach. Still others have a mixed approach. Also, different countries have taken a variety of positions on whether labeling and identification of commercial messages is required, whether a Do-Not-E-Mail registry can be developed, and whether the use of ''spamware'' is prohibited. We seek comment on any of these approaches, consistent with section 14, applicable to unwanted mobile service commercial messages, with particular emphasis on their effectiveness, associated costs and burdens, if any, on carriers, subscribers or other relevant entities. Commenters should not only focus on the present, but also on the foreseeable future.

a. Prohibiting the Sending of MSCMs. Section 14(b)(1) states that the Commission's rules shall ''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.'' One possible interpretation of this provision is that Congress intended to prohibit all senders of commercial electronic mail from sending MSCMs unless the senders first obtain express authorization from the recipient. This reading would allow the subscriber to avoid all MSCMs unless the subscriber acts affirmatively to give express permission for messages from individual senders.

Another interpretation of this provision is that Congress intended the subscriber to take affirmative steps to avoid receiving MSCMs to indicate his or her desire not to receive such messages. For example, under this interpretation, the customer might, at the time he or she subscribes to the mobile service, affirmatively decline to receive MSCMs. The subscriber would still have the option to agree to accept MSCMs from particular senders. We invite comment on both interpretations, particularly in light of the technological abilities and any constitutional concerns.

We also ask for comment on the practical aspects of either interpretation of this provision, given potential problems senders might have currently in determining whether the message sent is an MSCM. Commenters should address enforcement and administrative concerns associated with any Commission action taken to protect subscribers from unwanted MSCMs. We also ask whether the mechanisms described below might help alleviate those problems. In addition, we ask for comment on the effect either interpretation might have upon small businesses.

We seek comment on whether senders at this time have the practical ability to ''reasonably determine'' whether an electronic mail message is sent directly to a wireless device or elsewhere. Some MSM subscriber addresses might be identifiable if they use a phone number in front of a reference to an Internet domain of a recognizable wireless carrier. For example, ''2024189999@[wireless company].com'' would be such an address. However, we understand that other MSM subscriber addresses do not have such easily distinguishable addresses, such as ''nickname@[wireless company].com.'' Moreover, as technology evolves, the options available for accessing and reading electronic mail messages from mobile devices will only expand. Therefore, as required by the Act, we must ''consider the ability of a sender'' of a commercial message to ''reasonably determine'' that the message is an MSCM.

There appear to be a variety of mechanisms that, if implemented, could allow a sender to reasonably determine that a message is being sent to an MSM subscriber. We seek comment on the efficacy and cost considerations of each of the specific mechanisms identified below, as well as any reasonable alternatives, whether they are offered at the network level by service providers, at the device level by manufacturers, or even by other mechanisms involving subscribers themselves. We especially seek comment from small businesses on these issues. If wireless providers are to follow direction from subscribers as to which senders' messages should be blocked or allowed to pass through any filter, we seek comment on whether such information about the subscribers' choices is adequately protected. We seek comment on whether other protections are needed and what they might be.

In this section we focus on possible mechanisms to enable senders to recognize MSMs by the recipient's electronic mail message address, specifically the Internet domain address portion.

List of MSM domain names. We seek comment on whether we should establish a list of all domain names that are used exclusively for MSM subscribers, to allow senders to identify the electronic mail addresses that belong to MSM subscribers. We note that this list would not include unique user names or mailboxes—rather, it would solely be a registry of a small number of mail domains to allow senders to identify whether any messages they were planning to send would in fact be MSCMs. If an MSM provider were to use a portion of their domain exclusively for MSMs, the list would include the portion of its domain devoted to that purpose. In that case, we believe that a sender could consult such a list to reasonably determine if a message was addressed to a mobile service subscriber. We seek comment on whether it is industry practice for providers to employ subdomains that are exclusively used to serve their MSM subscribers that distinguish such customers from other customers. For example, if a company offers both MSM and non-MSM services, does it assign subscribers to those different services the same or different domain names for their addresses? If not, we seek

comment on whether we should require MSM providers to do so. We seek comment on whether using exclusive subdomain names should be required for all MSM service, or whether we should require carriers to offer subscribers the option of using such a name.

In connection with this approach, we seek comment on whether we should establish such a list and prohibit the sending of commercial electronic mail messages to domains on that list as violations of the Act. We seek comment on what steps the Commission may take to encourage or require the use of domain name oriented solutions by entities subject to our jurisdiction. Further, we seek comment on what steps the Commission could take to facilitate these solutions through interaction with industry and other entities not directly regulated by the Commission. We seek comment on any practical, enforceability, cost or other concerns related to establishing such a list. We seek comment on how it might be established, maintained, accessed and updated. We seek comment regarding any burdens on small business owners who advertise using electronic mail to check such a list in order to comply with the Act.

Registry of individual subscriber addresses. We seek comment on whether we should establish a limited national registry containing individual electronic mail addresses, similar to the national ''do-not-call'' registry. The FTC is tasked with reviewing how a nationwide marketing ''Do-Not-E-Mail'' registry might offer protection for those consumers who choose to join. Would a similar registry just for MSM addresses be consistent with the Act in general and with the greater protections provided in section 14(b)(1) for MSM subscribers? If the FTC implements a registry, how would ours differ? We seek comment on any practical, technical, security, privacy, enforceability, and cost concerns related to establishing such a registry. In particular, we seek comment on how it might be established, maintained, accessed and updated. We seek information about the volume of addresses potentially included in such a registry, how MSM providers could verify that submitted addresses were only for MSM service, and how such a registry might be funded. In particular, could the confidentiality of MSM subscriber electronic mail addresses be adequately protected if maintained on a widely-accessible list? We seek comment on the burdens on small businesses to participate in such a registry. We seek comment on whether the establishment of a registry of electronic mail addresses could result in more, rather than less, unwanted electronic mail messages being sent to those addresses.

MSM-only domain name. We seek comment on whether it would be possible and useful to require the use of specific top-level and second-level domains, which form the last two portions of the Internet domain address. For example, could we allow carriers to use a top-level domain, particularly the ''.us'' country-code top-level domain, and require that to be preceded by a standard second-level domain (such as ''<reserved domain>'' for mobile message service)? Under such an approach, MSM providers wireless company ABC and wireless company XYZ would gradually transition the domain parts of their subscribers' electronic mail addresses to ''@[wireless company ABC].<reserved domain>.us'' and ''@[wireless company XYZ].<reserved domain>.us'' respectively. Could carriers or other parties subject to the Commission's jurisdiction implement such solutions independently, or would such approaches require cooperation of entities not generally under our jurisdiction? We seek comment on the burdens on small businesses to use such domain names.

Common MSM subdomain names. We seek comment on whether we should require one portion of the domain to follow a standard naming convention to be used for all MSM service, or whether each carrier could choose its own naming convention within its own domains, as long as it was only used for such service. We note that one apparently significant difficulty with this approach is that entities that do not provide MSM service might also adopt such names. Thus, the sender might not be able to distinguish those addresses to which sending an MSCM was prohibited from some other addresses to which it is not prohibited. We seek comment on these and any other domain name-based approaches, their respective merits, and their practicality. In addition, we seek comment as to the effect a domain-name based approach will have on small communications carriers and whether there are less burdensome alternatives for such businesses.

b. Challenge and Response Mechanisms. As an alternative, we seek comment on whether we should require wireless providers to adopt mechanisms that would offer what is known as a ''challenge-response'' system. A challenge-response mechanism sends back a challenge that requires a response verifying some aspect of the message. It is our understanding that technical mechanisms exist that could automatically hold a message and send a response to the sender to let the sender know the message was addressed to an MSM subscriber. For example, such technology might either ask for confirmation from the sender before forwarding the message to the intended recipient, or just return the first message from a sender with a standard response noting that the intended recipient was an MSM subscriber. Data suggests that this ''challenge-response'' approach is available in countering unwanted electronic mail, and a number of variants are possible. We seek comment on such mechanisms and alternatives. Is it reasonable to expect the sender to note the addressee's status and refrain from sending future messages to that address unless the sender has prior express authorization? Could mechanisms notifying the sender after he has sent an MSCM serve as an alternative or supplement to other mechanisms for enabling the sender to identify MSM subscriber addresses before an MSCM is sent? Would this practice be less burdensome to small businesses than alternative proposals? Would a challenge-response mechanism designed to filter out commercial electronic mail present an inappropriate impediment to non-commercial messages?

c. Commercial Message Identification. We note that, in order to make any blocking or filtering mechanisms respond only to commercial messages, rather than to all messages, commercial messages would first need to be identified. We seek comment on the best methods that could be used by an MSM provider to identify such messages as commercial, if such methods are needed to make a filtering system effective. For example, would it be useful to use characters at the start of the subject line, or other methods? We seek comment on methods for ''tagging'' such messages so that they are identifiable as commercial messages. In addition, we ask about the practicality of having an MSM provider automatically request a response from the sender's server for any MSCMs identified by unique characters in the subject line labeling. We seek comment on this and other similar approaches and their respective merits and practicality. We seek comment on specific alternative approaches.

By itself, a prohibition against anyone sending MSCMs without prior express permission would place the burden on the sender to ensure that it is not sending its messages to MSM addresses. We seek comment therefore on whether

it would be necessary or useful to consider the option of ''tagging'' commercial messages to identify them. We seek comment on this issue and on our authority to require such tagging on all commercial electronic mail. We note that the Act requires the FTC to tender a report to Congress outlining a plan to address the labeling of commercial electronic mail messages in general. We are especially interested in the comments of small businesses about this alternative. Is it less burdensome than other alternatives?

2. Express Prior Authorization

Congress directed the FCC to adopt rules to provide consumers with the ability to avoid receiving MSCMs, unless the subscriber has provided express prior authorization to the sender. We seek comment on the form and content of such ''express prior authorization.'' We seek comment on whether it should be required to be in writing, and how any such requirement could be met electronically. We note that certain other requirements of the Act do not apply if the sender has obtained the subscriber's ''affirmative consent.'' As defined in the Act, ''affirmative consent'' means: (1) That the recipient expressly consented either in response to a clear and conspicuous request for such consent, or at the recipient's own initiative; and (2) in cases when the message is from a party other than the party which received consent, that the recipient was given clear and conspicuous notice at the time of consent that the electronic mail address could be transferred for the purpose of initiating commercial e-mail messages. We seek comment on whether the definition of ''affirmative consent'' would also be suited to use in defining ''express prior authorization.''

We seek comment on whether any additional requirements are needed and the technical mechanisms that a subscriber could use to give express prior authorization. For example, should there be a notice to the recipient about the possibility that costs could be incurred in receiving any message? What technical constraints imposed by the unique limitations of wireless devices are relevant in considering the form and content of express prior authorization. We seek comment on ways to ease the burdens on both consumers and businesses, especially small businesses, of obtaining ''express prior authorization'' while maintaining the protections intended by Congress.

3. Electronically Rejecting Future MSCMs

Section 14(b)(2) specifically requires that we develop rules that ''allow recipients of MSCMs to indicate electronically a desire not to receive future MSCMs from the sender.'' We seek comment on whether there are any technical options that might be used, such as a code that could be entered by the subscriber on her wireless device to indicate her withdrawal of permission to receive messages. For example, could an interface be accessed over the Internet (not necessarily through the wireless device) so that a user would access his or her account and modify the senders' addresses for which messages would be blocked or allowed through? We seek comment on whether carriers, especially small carriers, already have systems in place to allow subscribers to block messages from a sender upon request of a subscriber. We also seek comment on whether a challenge-and-response system, as discussed above, could be used to accomplish this goal. A challenge-response mechanism sends back a challenge that requires a response verifying some aspect of the message. In addition to the challenge-response systems, could an MSM subscriber select a ''secret code'' or other personal identifier that a subscriber could distribute selectively to entities who she wanted to be able to send MSCMs to her? Could such an approach enable a carrier to filter out all commercial messages that do not include that ''secret code'' or personal identifier? We seek comment on whether there is some mechanism using the customer's wireless equipment, rather than the network, that could be used by a subscriber to screen out future MSCMs. We seek comment on these and any other methods that would allow the recipient of MSCMs to indicate electronically a desire not to receive future MSCMs from the sender. We especially seek comment from small businesses that might be affected by such a requirement. Further we seek comment on whether it would be appropriate to require or allow senders of MSCMs to give subscribers the option of going to an Internet Web site address provided by the sender to indicate their desire not to receive future MSCMs from the sender. Additionally, we seek comment on whether there are additional considerations needed for MSCMs sent to subscribers who are roaming on the network, given, for example, that different networks may have different technological capabilities.

4. Exemption for Providers of Commercial Mobile Services

Section 14(b)(3) requires the Commission to take into consideration whether to subject providers of commercial mobile services to paragraph (1) of the Act. As a result, the Commission may exempt CMRS providers from the requirement to obtain express prior authorization from their current customers before sending them any MSCM. In making any such determination, the Commission must consider the relationship that exists between CMRS providers and their subscribers.

We seek comment on whether there is a need for such an exemption and how it would impact consumers. As discussed above, the Act already excludes certain ''transactional and relationship'' messages from the definition of unsolicited commercial electronic mail. These transactional and relationship messages include those sent regarding product safety or security information, notification to facilitate a commercial transaction, and notification about changes in terms, features, or the customer's status. We seek comment then on whether there is a need for a separate exemption for CMRS providers from the section 14 ''express prior permission'' requirement. In particular, we seek specific examples of messages, if any, that CMRS providers send to their customers that are not already excluded under the Act in general. Should any exemptions for carriers be limited to only those messages sent by CMRS carriers regarding their own service? What would be the impact of any such exemption on small businesses?

If the Commission opts to exempt CMRS carriers from obtaining prior express authorization, Congress has required that such providers, in addition to complying with other provisions of the Act, must allow subscribers to indicate a desire to receive no future MSCMs from the provider: (1) At the time of subscribing to such service and (2) in any billing mechanism. We seek comment on how we might implement those requirements, if we provide an exemption. Finally, we seek comment regarding whether small wireless service providers should be treated differently with respect to any of these issues, and if so, how.

C. Senders of MSCMs and the CAN–SPAM Act in General

Section 14(b)(4) of the Act requires the Commission to determine how a sender of an MSCM may comply with

the provisions of the CAN–SPAM Act in general, considering the ''unique technical aspects, including the functional and character limitations, of devices that receive such messages.'' If a sender is not prohibited from sending MSCMs to an address, either because the subscriber has not used his ability to stop such messages or because the sender has received ''express prior authorization,'' then the message must still comply with the Act in general. Therefore, we ask for comment on specific compliance issues that senders of MSCM might have with other sections of the Act.

We believe that a large segment of MSM subscribers who receive and send text-based messages on their wireless devices today do so on digital cellular phones that are designed principally for voice communications and that provide limited electronic mail message functionality. Currently, text messages are often limited to a maximum message length of ranging from 120 to 500 characters. Some MSM providers limit the length of messages allowed on their systems to approximately 160 characters. As a result, it might be difficult for senders to supply information required by the CAN–SPAM Act (such as header information and required identifier, material on how to request no more messages, and postal address), because that content might be limited in length or might not be readily displayable. Consequently, there might be some technical difficulties in ensuring that electronic mail content is provided to subscribers in compliance with the requirements of the Act. We seek comment on these issues, particularly as they affect small wireless providers and other small businesses. We ask for comment on whether any such issues will be mitigated in the near future with advances in technology. For example, we understand that some commercial mobile service subscribers may already supplement the limited text handling functionality with ancillary personal computer technology. We seek comment on this and any other possible technical considerations for senders of MSCMs that must comply with the Act.

II. TCPA

A. Safe Harbor for Calls to Wireless Numbers

We now seek additional comment on the ability of telemarketers, especially small businesses, to comply with the TCPA's prohibition on calls to wireless numbers since implementation of intermodal Local Number Portability (LNP). We specifically seek comment on whether the Commission should adopt a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were recently ported from a wireline service to a wireless service provider.

The Direct Marketing Association (DMA) indicates that it is in the process of creating a ported number database. It contends, however, that this solution will not allow marketers to update their call lists instantaneously when consumers port their wireline numbers. The DMA argues that, even with a direct link to Neustar's database of wireless service numbers that have recently been ported from wireline service, there will be time lags throughout the process, during which a consumer who has just ported a wireline number to wireless service could receive a call from a marketer.

As the Commission stated in the *2003 TCPA Order,* the TCPA rules prohibiting telemarketers from placing autodialed and prerecorded message calls to wireless numbers have been in place for 12 years and the Commission's porting requirements have been in place for over five years. Telemarketers have received sufficient notice of these requirements in order to develop business practices that will allow them to continue to comply with the TCPA. The record continues to demonstrate that information is currently available to assist telemarketers in determining which numbers are assigned to wireless carriers. Nevertheless, we recognize that once a number is ported to a wireless service, a telemarketer may not have access to that information immediately in order to avoid calling the new wireless number.

We seek comment on the narrow issue of whether the Commission should adopt a limited safe harbor during which a telemarketer will not be liable for violating the rule prohibiting autodialed and prerecorded message calls to wireless numbers once a number is ported from wireline to wireless service. If so, we seek comment on the appropriate safe harbor period given both the technical limitations on telemarketers and the significant privacy and safety concerns regarding calls to wireless subscribers. For example, would a period of up to seven days be a reasonable amount of time for telemarketers to obtain data on recently ported numbers and to scrub their call lists of those numbers? Or, as the DMA has requested, should any safe harbor the Commission adopt provide telemarketers with up to 30 days to do so? Are there other options in the marketplace available to telemarketers that should affect whether we adopt a limited safe harbor as well as the duration of any such safe harbor? We also seek comment on whether any safe harbor period adopted should sunset in the future and, if so, when. In addition, we seek comments from small businesses which engage in telemarketing about the appropriateness of such a limited safe harbor and its parameters.

B. National Do-Not-Call Registry and Monthly Updates by Telemarketers

We seek comment on whether we should amend our safe harbor provision to mirror any amendment made by the FTC to its safe harbor. The Appropriations Act does not require the FCC to amend its rules. However, in the Do-Not-Call Implementation Act (Do-Not-Call Act), Congress directed the FCC to consult and coordinate with the FTC to ''maximize consistency'' with the rules promulgated by the FTC. In addition, we note that, absent action to amend our safe harbor, many telemarketers will face inconsistent standards because the FTC's jurisdiction extends only to certain entities, while our jurisdiction extends to all telemarketers.

Therefore, in an effort to remain consistent with the FTC's rules, we propose amending our safe harbor to require sellers and telemarketers acting on behalf of sellers to use a version of the national do-not-call registry obtained from the administrator of the registry no more than 30 days prior to the date any call is made. We seek comment on how amending our safe harbor provision, or failing to do so, would affect telemarketers' ability to comply with the Commission's do-not-call rules. What problems will telemarketers, including small businesses, face in ''scrubbing'' their call lists every 30 days that they do not experience under the current rules? Are there any reasons the Commission should not amend its rules to be consistent with the FTC?

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM. See* 5 U.S.C. 603. A substantial number of small entities might be affected by our action. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* or *FNPRM*, as applicable. The

Commission will send a copy of the *NPRM* and *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

On December 8, 2003, Congress passed the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act) to address the growing number of unwanted commercial electronic mail messages, which Congress determined to be costly, inconvenient, and often fraudulent or deceptive. Congress found that recipients ''who cannot refuse to accept such mail'' may incur costs for storage, and ''time spent accessing, reviewing, and discarding such mail.'' The CAN–SPAM Act prohibits any person from transmitting such messages that are false or misleading and gives recipients the right to decline to receive additional messages from the same source. Certain agencies, including the Commission, are charged with enforcement of the CAN–SPAM Act.

Section 14 of the CAN–SPAM Act requires the Commission to (1) promulgate rules to protect consumers from unwanted mobile service commercial messages, and (2) in doing so consider the ability of senders to determine whether a message is a mobile commercial electronic mail message. In addition, the Commission shall consider the ability of senders of mobile service commercial messages to comply with the CAN–SPAM Act in general. Furthermore, the CAN–SPAM Act requires the Commission to consider the relationship that exists between providers of such services and their subscribers.

The Telephone Consumer Protection Act (TCPA) was enacted to address certain telemarketing practices, including calls to wireless telephone numbers, which Congress found to be an invasion of consumer privacy and even a risk to public safety. The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message ''to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged.'' In addition, the TCPA required the Commission to ''initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights'' and to consider several methods to accommodate telephone subscribers who do not wish to receive unsolicited advertisements.

In 2003, the Commission released a Report and Order (*2003 TCPA Order*) revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, we 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. In addition, we determined that the TCPA prohibits any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. We concluded that this encompasses both voice calls and text calls to wireless numbers including, for example, Short Message Service calls. We acknowledged that, beginning in November of 2003, numbers previously used for wireline service could be ported to wireless service providers and that telemarketers will need to take the steps necessary to identify these numbers. Intermodal local number portability (LNP) went into effect November, 2003.

The 2003 TCPA Order required that telemarketers use the national do-not-call registry maintained by the FTC to identify consumers who have requested not to receive telemarketing calls. Currently, in order to avail themselves of the safe harbor for telemarketers, a telemarketer is required to update or ''scrub'' its call list against the national do-not-call registry every 90 days. Recently the FTC released a Notice of Proposed Rulemaking proposing to amend its safe-harbor provision and require telemarketers to update their call lists every 30 days. This Notice proposes to modify the Commission's rules to parallel any changes to the FTC's rules. With this amendment, all telemarketers would be required to scrub their lists against the national do-not-call registry every 30 days in order to avail themselves of that safe harbor.

Issues Raised in Notice

This Notice addresses three policy and rule modifications. First, it initiates a proceeding to implement the CAN-SPAM Act by enacting regulations to protect consumers from unwanted mobile service commercial messages. Second, under the TCPA we are exploring the need for a safe harbor for telemarketers who call telephone numbers that have been recently ported from wireline to wireless service. Third, we propose a change to the existing telemarketing safe-harbor provision which would require telemarketers to access the do-not-call registry every 30 days.

Legal Basis

The proposed action is authorized under Sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law Number 108–187, 117 Statute 2699; 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 Rule 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 and policies, 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 regulations and policies proposed in this item on telephone solicitation and the prohibitions of sending electronic commercial mail messages apply to a wide range of entities, including all entities that use the telephone or electronic messaging to advertise. That is, our actions affect the myriad of businesses throughout the nation that use telemarketing or electronic messaging to advertise. We have attempted to identify, with as much specificity as possible, all business entities that potentially may be affected by the policies and rules proposed herein, but are not expanding in this analysis the scope of entities possibly subject to requirements adopted in this proceeding beyond the scope described in the Notice itself. In order to assure that we have covered all possible entities we have included general categories, such as Wireless Service Providers and Wireless Communications Equipment Manufacturers, while also including more specific categories, such as Cellular Licensees and Common Carrier Paging. Similarly, for completeness, we have also included descriptions of small entities in various categories, such as 700 MHz Guard Band Licenses, who

may potentially be affected by this proceeding but who would not be subject to regulation simply because of their membership in that category.

Sometimes when identifying small entities we provide information describing auctions' results, including the number of small entities that were winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, nor does the Commission track subsequent business size, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we request that commenters estimate the number of small entities that may be affected by any changes.

Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

Telemarketers. SBA has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses. For 1997, there were 1,727 firms in the ''telemarketing bureau'' category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than $5 million, and an additional 77 reported receipts of $5 million to $9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities.

Wireless Communications Equipment Manufacturers. The Commission has not developed special small business size standards for entities that manufacture radio, television, and wireless communications equipment. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' Examples of products that fall under this category include ''transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment'' and may include other devices that transmit and receive Internet Protocol enabled services, such as personal digital assistants. Under that standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

Radio Frequency Equipment Manufacturers. The Commission has not developed a special small business size standard applicable to Radio Frequency Equipment Manufacturers. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' Under that standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. Thus, under this size standard, the majority of establishments can be considered small entities.

Paging Equipment Manufacturers. The Commission has not developed a special small business size standard applicable to Paging Equipment Manufacturers. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' Under that standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. Thus, under this size standard, the majority of establishments can be considered small entities.

Telephone Equipment Manufacturers. The Commission has not developed a special small business size standard applicable to Telephone Equipment Manufacturers. Therefore, the applicable small business size standard is the definition under the SBA rules applicable to ''Telephone Apparatus Manufacturing.'' Under that standard, firms are considered small if they have 1,000 or fewer employees. Census Bureau data indicates that for 1997 there were 598 establishments that manufacture telephone equipment. Of those, there were 574 that had fewer than 1,000 employees, and an additional 17 that had employment of 1,000 to 2,499. Thus, under this size standard, the majority of establishments can be considered small.

As noted in paragraph 10, we believe that all small entities affected by the policies and proposed rules contained

in this Notice will fall into one of the large SBA categories described above. In an attempt to provide as specific information as possible, however, we are providing the following more specific categories.

Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 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. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

Common Carrier Paging. The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

In the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 294 of these are small under the SBA small business size standard.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the

Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

Specialized Mobile Radio. The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

I. CAN–SPAM

It is difficult to assess the cost of compliance for this item given the multiple avenues and the varied, layered approaches to protecting consumers from the unwanted commercial electronic mail messages under consideration. The umbrella analysis is that if a small business which currently engages in sending commercial electronic mail messages as part of its advertising campaign ceases sending such commercial messages, then there is no cost to comply with any prohibition being considered. Congress noted that the CAN–SPAM Act only addresses unwanted messages, so the

loss of business for senders that may result from the decrease in advertising in this manner should be nominal.

Proposed in this item is the development of a small list of electronic mail addressing domains. The development of specific domain names might require providers to change addressing systems if domain names are not already distinguishable, and to register such names. If the Commission then prohibited the sending of commercial messages to such domains, businesses, including small businesses, that send commercial electronic mail would be required to check such a list before sending such messages. Because the list would be small, only containing the list of relevant providers of such domains, we do not anticipate the compliance burden of checking such a list to be great.

The alternative considered that creates the greatest compliance burden on small entities appears to be the use of a registry of individual electronic addresses. This alternative would not require providers to register names, but would instead require subscribers, including small businesses, to register their addresses on a list similar to the telemarketing do-not-call registry. Small businesses sending commercial electronic mail messages would then be required to prescreen or check this list. It is unclear how many listings there would be, but given consumer frustration over the number of unwanted electronic commercial messages, we expect a large number of individuals and businesses to register. The costs to small businesses sending commercial electronic mail messages associated with this requirement would be the cost of acquiring the ''Do-Not-E-Mail'' list and the cost of ''scrubbing'' the small business's solicitation list against the ''Do-Not-E-Mail'' list. We know the cost of obtaining the FTC's do-not-call registry is a maximum of $7,375 per year and for many small businesses it is free. We estimate that the cost of scrubbing against a Do-Not-E-Mail registry to be approximately $300—400 per month for a small telemarketing business. Who would pay for such a list to be compiled and maintained has not been determined; however, we expect this burden on small businesses to be significant.

II. TCPA

The proposed change in the safe-harbor rules, which would require telemarketers to update their lists monthly instead of quarterly, has no additional compliance cost for accessing the national do-not-call registry, because once a telemarketer has paid its fee to the FTC the telemarketer may access the list as often as it wants, up to once a day. There may, however, be an increase in costs associated with scrubbing the telemarketer's call list more frequently. These increased costs might include an increase in staff time to scrub the call list or payments to a third party for ''scrubbing'' services. Many small businesses perform these ''scrubbing'' operations internally and therefore the cost is in staff time and data processing resources. Other small businesses chose to hire outside parties to scrub their lists. We estimate the cost of scrubbing such a list to be $300–400 per month for a small telemarketing business.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such 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 such small entities.''

I. CAN–SPAM

Initially, we note that the rules are intended to protect subscribers, including small businesses, from unwanted mobile service commercial messages. Congress found these unwanted messages to be costly and time-consuming. Therefore, these measures should benefit small businesses by reducing cost and time burdens on small businesses that receive such messages.

There are two alternatives, which might be used in combination, considered in the Notice to minimize the burden on some small businesses that send mobile commercial electronic mail messages. These alternatives are (1) the use of a domain name to indicate those entities to which sending a mobile service commercial message is not acceptable; and (2) the use of a challenge-response mechanism to reject electronic commercial messages. The burden of each alternative on small businesses as senders is minimal. We expect that the burden of alternative one on small carriers to be minimal as well.

Alternative one allows senders to recognize mobile service messaging by the recipient's electronic mail message address. The Commission is considering the requirement that domain names be used to identify carriers' mobile service messaging clients. We expect that if domain name changes are required, the burden will rest on carriers, including small carriers, to change the domain names of their clients. We anticipate that this burden on carriers will be minimal. We also expect there to be a slight burden on those small businesses that chose to use the special domain names to limit incoming commercial messages. These small businesses might need to reprint or alter letterhead, business cards, or advertising material to reflect the name change. We note, however, that for businesses choosing this option, those burdens would be offset by the savings they would realize from a reduction in unwanted mobile service commercial messages. We consider this burden on small businesses receiving commercial messages to be a less burdensome alternative than the alternative described in paragraph 37 above that would require the establishment of an individual ''Do-Not-E-Mail'' registry and would result in a significant burden on small businesses sending commercial messages.

The second alternative considered is the challenge-response alternative, which might also require electronic mail messages to be identified as commercial. The identification process, known as ''tagging,'' would then allow recipients to use software that would reject or hold such electronic mail. This challenge-response process requires a software trigger that would require confirmation from the sender before forwarding the message to the intended recipient or would return the first message from a sender with a standard response noting that the intended recipient is a mobile service messaging subscriber. Although there might be a burden imposed on senders to mark their commercial messages, this alternative would free all businesses, including small businesses, from having to pre-screen their mailing lists before sending messages. The burden on small business senders would be to note the addressee's status and refrain from sending to that address unless the recipient provided prior express authorization. This alternative would place a slight burden on small businesses that use electronic mail messaging for commercial purposes. We expect that it would impose a significant burden on the software design companies and the

manufacturers of wireless message receiving devices.

In regard to rejecting future messages, we note that two alternatives are discussed. One involves a filtering mechanism. A filtering mechanism would burden senders in that they might need to obtain and retain a secret code from particular subscribers. This code would be required to get their commercial messages past the filter. We expect that obtaining and retaining a code from particular subscribers would be a minimal burden on the small business that chooses to filter its messages to keep out unwanted ones. Depending on how the system is set up, there might be a small burden on the carriers for enabling such a filtering mechanism. In order for the system to work, there might be a requirement that small businesses sending these messages mark or tag them as commercial. We anticipate that any burden of marking or tagging messages would be very small.

The other alternative we discuss is whether there should be an option to use a website interface for subscribers, including small businesses, to change their filtering options. The alternative might require businesses, including small businesses, to develop a website for collecting addresses of subscribers that want to reject future messages. We also discuss the possibility of using a webpage for subscribers to notify senders that they do not want such messages. As far as we can determine at this time, this alternative would be the most difficult for small businesses to implement in terms of staff resources, cost, software development and use, and Internet access and website development. We would appreciate hearing from small businesses if this is an accurate assessment.

II. TCPA

The Commission is also considering modifications to the TCPA safe-harbor provision. This modification would require that telemarketers scrub their lists on a monthly, rather than quarterly, basis. An alternative to this proposed rule change is to leave the rule the way it currently stands. An advantage to not changing the rule is that there would be no increased burden on small businesses. Businesses would continue to scrub their own call lists every three months. The disadvantage to not changing the rule is that the FTC and Commission rules might be inconsistent with one another. Small businesses subject to the jurisdiction of both agencies would be faced with this inconsistency. Congress has directed us to maximize consistency with the FTC's rules. In addition, we believe that it is easier and less burdensome for small businesses if the two agencies have consistent requirements.

The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message to any wireless telephone number. With the advent of intermodal number portability it became important for companies engaged in telemarketing to track recently ported numbers in order to ensure continued compliance with the TCPA. The Commission is now considering the adoption of a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were recently ported from a wireline service to a wireless service provider. It is our belief that such an alternative will not have a significant economic impact on any small businesses, only a benefit. The alternative would be to not adopt a safe harbor for calls to recently ported wireless numbers which, according to telemarketers, could make compliance with the TCPA's prohibition difficult for callers using autodialers and prerecorded messages. Small businesses, which disagree with the Commission's determination and believe the creation of a safe harbor 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 Rules

No federal rules conflict with the rules discussed in this item; however, there are areas in which the CAN–SPAM Act and the TCPA may overlap as indicated in the primary item. In addition, the Commission is required to consult with the FTC on its rulemaking. The FTC is charged with implementing and enforcing most of the CAN–SPAM Act, including criteria that further defines items that the Commission rules will reference. The FTC is conducting its own rulemaking concurrently, although most of the FTC's deadlines occur after the Commission's rules must be promulgated. The TCPA and the Telemarketing Sales Rule (enforced by the FTC) are duplicative in part.

Ordering Clauses

Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 227 and 303(r) of the Communications Act of 1934, as amended; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187, 117 Statute 2699; and the Do-Not-Call Implementation Act, Public Law 108–10, 117 Statute 557; 47 U.S.C. 151–154, 227 and 303(r); the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking are Adopted.

It is further ordered that the commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841

RIN 2700–AC86

Re-Issuance of NASA FAR Supplement Subchapter F

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before June 1, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN