

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 12211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–224 to read as follows:

#### § 165.T05–224 Safety zone; Delaware River

(a) *Location.* The following area is a temporary safety zone: All waters of the Delaware River from the Tacony-Palmyra Bridge to the Bellevue/Marcus Hook ship ranges at Buoy 2M, shoreline to shoreline.

(b) *Regulations.* All persons are required to comply with the general

regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessel traffic is prohibited in the safety zone.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (215) 271–4807 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Philadelphia, PA or designated representative.

(4) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz).

(5) Mariners granted permission to transit the safety zone must maintain the minimum safe speed necessary to maintain navigation as per 33 CFR Chapter I, Subchapters D and E.

(c) *Definitions.*

*Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from December 15, 2004 until January 15, 2005.

Dated: December 14, 2004.

**Jonathan D. Sarubbi,**

*Captain, U.S. Coast Guard, Captain of the Port Philadelphia.*

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**BILLING CODE 4910–15–P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 64

[CG Docket No. 04–53; DA 04–3944; FCC 04–194]

#### Rules and Regulations Implementing the Controlling of 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:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office

of Management and Budget (OMB) has approved for three years the information collections contained in the Commission's rules at § 64.3100(a)(4), (d), (e), and (f). We also announce that now that OMB has approved the rules, Commercial Mobile Radio Service (CMRS) carriers will have until January 21, 2004 to submit all of their electronic mail domain names for wireless messaging to the Commission for inclusion in a wireless domain names database.

**DATES:** 47 CFR 64.3100(a)(4), (d), (e), and (f) published at 69 FR 55765, September 16, 2004, are effective December 27, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC, 20554.

**FOR FURTHER INFORMATION CONTACT:** Ruth Yodaiken at 202-418-2512, Consumer & Governmental Affairs Bureau, [Ruth.Yodaiken@fcc.gov](mailto:Ruth.Yodaiken@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On August 12, 2004, the Commission released an *Order, In the Matter of Rules and Regulations Implementing the Controlling of the Assault of Non-Solicited Pornography and Marketing Act of 2003*, published at 69 FR 55765 (September 16, 2004). 47 CFR 64.3100 (a)(4), (d), (e) and (f) of the Commission's rules implementing the Controlling of the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), which contain information collections, were approved by OMB for three years on December 15, 2004. OMB Control No. 3060-1078. The Commission publishes this notice of the effective date of the rules. If you have any comments on the burden estimates, or how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1078, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collections via the Internet, if you send them to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov) or call (202) 418-0217.

### Synopsis

On August 12, 2004, the Commission released an *Order* to implement the Controlling of the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN-SPAM Act (69 FR 55765, September 16, 2004). The *Order* adopts rules to protect wireless subscribers from unwanted commercial electronic mail messages. Specifically,

the rules prohibit the transmission of commercial messages to any address referencing an Internet domain name associated with a wireless subscriber messaging service; unless the individual addressee has given the sender express prior authorization. To assist the senders of such messages in identifying wireless subscribers, the Commission's rules require that Commercial Mobile Radio Service (CMRS) providers file with the Commission the names of all electronic domain names used to offer electronic mail messages that are transmitted directly to a wireless device utilized by a subscriber of a commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) in connection with such service.

On December 15, 2004, the Office of Management and Budget (OMB) approved the information collections associated with the Commission's CAN-SPAM rules. Therefore, we announce that CMRS carriers will have until January 21, 2004 to submit to the Commission all of their electronic mail domain names used for wireless messaging.

CMRS carriers may begin the submission process by accessing the following Web site address: <http://www.fcc.gov/cgb/policy> and clicking on "Domain Name Data Entry for Wireless Providers Only." Each CMRS carrier must enter their submissions directly into the fields provided on the Domain Name Data Entry. The first section of fields asks the filing party to indicate the type of submission: (1) Submission of a new mailing domain name, (2) updated contact information, or (3) deletion of a mailing domain name already on the wireless domain names list. The next section consists of contact information fields, including the name of the filing party and the organization's address, phone number, and an e-mail address. The Commission will only make public the mailing domain name provided in the submission, not the contact information. The final section allows the CMRS carrier to enter the mailing domain name(s) pursuant to the rules in the *Order*. Prior to submitting the information, the CMRS carrier must read and agree to a legal notice, which certifies that the domain name(s) submitted is used for mobile service messaging as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)). The CMRS carrier completes the transaction by clicking "Submit." Any filing party who cannot file electronically should contact the Commission's Consumer & Governmental Affairs Bureau at (202)

418-2512 to make alternate arrangements to submit domain names.

As stated in the *Order*, the Commission will compile the domain name submissions into the Commission's wireless domain names list. A paper version will also be available at the Commission's headquarters in Washington, DC. This list will be updated regularly as the Commission receives additional submissions. Furthermore, CMRS carriers are responsible for the continuing accuracy and completeness of information furnished for the wireless domain names list. Therefore, CMRS carriers must:

(1) File any future updates to listings with the Commission not less than thirty (30) days before issuing subscribers any new or modified domain name.

(2) Remove any domain name that has not been issued to subscribers or is no longer in use within six (6) months of placing it on the list or last date of use.

The Commission will issue a second public notice announcing the date on which the senders of commercial electronic mail, and the general public, will have access to the list from the Commission's Web site. Senders of mobile service commercial messages (MSCMs) will then have an additional thirty (30) days from the date the list becomes publicly available to comply with the rules to avoid sending MSCMs to wireless subscribers absent express prior authorization. We emphasize that the fact that a domain name was not on the list or not on the list for a full 30 days shall not excuse any willful violation of the rules on sending unwanted messages to wireless subscribers. Any person or entity will be considered in violation of the rules if a message is initiated knowingly to a subscriber of the applicable wireless service without the subscriber's express prior authorization, even if it is sent within 30 days of the domain name appearing on the list.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval for three years from OMB on December 15, 2004 for the collection(s) of information contained in the Commission's CAN-SPAM rules at 47 CFR 64.3100. The OMB Control Number is 3060-1078. The annual reporting burden for this collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 11,027,600 respondents, a total annual hour burden of 115,645,100 hours, and \$37,105,000 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork

Reduction Act (PRA) that does not display a valid OMB Control Number. The OMB Control Number is 3060–1078.

The Foregoing notice is required by the Paperwork Reduction Act of 1995,

Pub. L. 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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