

our response to comment #8, we encourage research that would allow better quantification of the environmental benefits of composting.

### III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 13, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(416)(i)(A)(2) and (i)(B) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(416) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Rule 4566, "Organic Material Composting Operations," adopted on August 18, 2011.

(B) South Coast Air Quality Management District.

(1) Rule 1133.1, "Chipping and Grinding Activities," amended on July 8, 2011.

(2) Rule 1133.3, "Emission Reductions from Greenwaste Composting Operations," adopted on July 8, 2011.

\* \* \* \* \*

[FR Doc. 2012-28827 Filed 11-28-12; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1 and 64

[CG Docket No. 12-129; FCC 12-129]

#### Implementation of the Middle Class Tax Relief and Job Creation Act of 2012; Establishment of a Public Safety Answering Point Do-Not-Call Registry

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules to create a Do-Not-Call registry for public safety answering points (PSAPs) as required by the "Middle Class Tax Relief and Job Creation Act of 2012" (Tax Relief Act). Specifically, section 6507 of the Tax Relief Act requires the Commission, among other things, to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibit the use of automatic dialing equipment to contact those numbers. Therefore, the Commission adopts rules necessary for the creation and ongoing management of the Do-Not-Call registry, including requirements for

adding PSAP telephone numbers, granting and tracking access by operators of automatic dialing equipment, and protecting the registry from unauthorized disclosure or dissemination of registered numbers. In addition, the Commission adopts specific monetary penalties for unauthorized disclosure or contact of any numbers on the PSAP registry. These provisions are designed to address concerns about the use of automatic dialing equipment which can generate large numbers of phone calls in a short period of time, tie up public safety lines, divert critical responder resources away from emergency services, and impede access by the public to emergency lines.

**DATES:** This final rule contains new information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date of that rule section.

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

**FOR FURTHER INFORMATION CONTACT:** Richard D. Smith, Consumer and Governmental Affairs Bureau, Policy Division, at (717) 338-2797 (voice), or email [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov).

For additional information concerning the Paperwork Reduction Act (PRA) new information collection requirements contained in document FCC 12-129, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via email [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) and [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, FCC 12-129, adopted on October 17, 2012, and released on October 17, 2012, in CG Docket No. 12-129. Document FCC 12-129 and the rules adopted therein shall become effective no less than six months after publication of a Public Notice in the **Federal Register** announcing the effective date of the rules once the PSAP Do-Not-Call registry becomes operational and by which affected parties must begin compliance. The full text of document FCC 12-129 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's

duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or Internet: [www.bcpweb.com](http://www.bcpweb.com). This document can also be downloaded in Word or Portable Document Format ("PDF") at <http://www.fcc.gov/document/fcc-initiates-proceeding-create-public-safety-do-not-call-registry>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### Congressional Review Act

The Commission will send a copy of document FCC 12-129 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

### Final Paperwork Reduction of 1995 Analysis

Document FCC 12-129 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 12-129 as required by the PRA of 1995, Public Law 104-13 in a separate notice that will be published in the **Federal Register**. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In document FCC 12-129, the Commission has assessed the potential effects of the policy changes with regard to information collection burdens on small business concerns, and finds these requirements will implement the statutory mandate to create a PSAP do-not-call registry and prohibit the use of autodialers to contact those numbers in a way that minimizes regulatory compliance burdens. In addition, the Commission has described the impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

The rules adopted in document FCC 12-129 establish recordkeeping requirements for a large variety of entities, including small business entities. First, each PSAP may designate a representative who shall be required

to file a certification with the administrator of the PSAP registry that they are authorized to place numbers onto that registry. The designated PSAP representative shall provide contact information including the PSAP represented, name, title, address, telephone number and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone associated with the provision of emergency services or communications with other public safety agencies. On an annual basis, designated PSAP representatives shall access the registry, review their numbers and remove any ineligible numbers from the registry. Second, an operator of automatic dialing equipment (OADE) is prohibited from contacting any number on the PSAP registry. Each OADE must register for access to the PSAP registry by providing contact information which includes name, business address, contact person, telephone number, email, and all outbound telephone numbers used to place autodialed calls. All such contact information must be updated within 30 days of any change. In addition, the OADE must certify that it is accessing the registry solely to prevent autodialed calls to numbers on the registry. An OADE must access and employ a version of the PSAP registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and maintain record documenting this process. No person or entity may sell, rent, lease, purchase, share, or use the PSAP registry for any purpose except to comply with our rules prohibiting contact with numbers on the registry. In order to ensure that all interested parties will be provided with reasonable notice once the PSAP registry becomes operational, the rules adopted herein will not become effective until a Public Notice is published which sets an effective date of no less than six months after publication of the Public Notice.

### Synopsis

#### *Establishment of a PSAP Do-Not-Call Registry*

1. *Numbers and Registration.* The Commission concludes that PSAPs should be given substantial discretion to designate the numbers to include on the PSAP Do-Not-Call registry so long as such numbers are associated with the provision of emergency services or communications with other public safety agencies. These numbers may include, for example, numbers associated with administrative lines that may be used in some cases for overflow

emergency calls. In addition, the Commission concludes that secondary PSAPs should also be permitted to place numbers on the registry, because, as the record shows, secondary PSAPs are vulnerable to autodialed calls in the same way as primary PSAPs.

2. Section 6507(b)(1) of the Tax Relief Act states that “verified [PSAP] administrators or managers” will be permitted to add numbers to the registry. The Commission concludes that PSAPs may designate a representative who shall be required to file with the Commission or the designated administrator of the registry a certification, under penalty of law, that he/she is authorized and eligible to add numbers to the registry on behalf of that PSAP. As part of that certification, the representative shall provide contact information, including the PSAP name, contact person, title, address, telephone number, and email address. The Commission or administrator of the PSAP registry may require a follow-up response from a valid PSAP email address or some other means of confirmation to be specified by the Commission or administrator of the registry. Each verified PSAP shall then be assigned a unique identification number or password which shall be required to be entered every time the PSAP requests that numbers be placed onto the registry. The Commission emphasizes that only PSAP numbers submitted by a verified PSAP shall be allowed on the registry and shall remain on the registry until such numbers are removed by the PSAP or it is determined during the statutorily-required verification process that such numbers are no longer eligible for inclusion.

3. *Verification that numbers should remain on the registry.* Section 6507(b)(2) of the Tax Relief Act requires that the Commission “provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry.” The Commission concludes that, to give PSAPs flexibility and promote accuracy of the registry, PSAPs should be permitted to remove numbers from the registry at any time. In order to minimize PSAPs’ compliance burdens while ensuring an accurate registry, we require that PSAPs access and review their registered numbers on an annual basis. To aid PSAPs in this process, the Commission directs the designated administrator of the registry to send an annual notification to each PSAP that has placed numbers on the registry reminding PSAPs of their continuing obligation to verify their registered

numbers. PSAP representatives may request removal of numbers by providing the unique identification number or password assigned to the PSAP for purposes of placing numbers onto the registry.

#### **Granting and Tracking Access to the Registry by Operators of Automatic Dialing Equipment**

4. Section 6507(b)(3) of the Tax Relief Act requires the Commission to “provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment.” Consistent with this statutory mandate, the Commission finds that registry access should be restricted to OADEs for the limited purpose of ensuring compliance with the prohibition on contacting PSAP numbers in the registry. The only information that OADEs need to comply with section 6507 of the Tax Relief Act is the list of registered telephone numbers. The Commission concludes that any person or entity who uses an “automatic telephone dialing system,” as defined in section 227(a)(1) of the Communications Act, to make calls qualifies as an operator of “automatic dialing” or “robocall” equipment for purposes of the Tax Relief Act.

5. The Commission requires that any OADE that accesses the PSAP registry provide to the Commission or the designated administrator of the registry a certification, under penalty of law, that it is accessing the registry solely to determine whether any telephone numbers to which it intends to place autodialed calls are listed on such registry for the purpose of complying with section 6507 of the Tax Relief Act. The first time an OADE accesses the registry, the OADE will be required to establish a profile and provide identifying information about its organization that will include the operator’s name and all alternative names under which the registrant operates, a business address, a contact person, the contact person’s telephone number, the OADE’s email address, and all telephone numbers used to place autodialed calls, including both originating numbers and numbers that are displayed on caller ID.

6. The Commission requires that all such contact information be updated within 30 days of the date on which any change occurs. The Commission or administrator will assign every OADE granted access to the PSAP registry a unique identification number or password, which must be submitted each time that database is accessed. The Commission or the administrator will use this unique identifier to grant and

track access to the secure database of registered PSAP numbers.

7. In the PSAP Do-Not-Call NPRM, the Commission sought comment on how often OADEs should be required to access the registry of PSAP numbers and update their calling lists to avoid calling registered PSAP numbers. The Commission noted that the TCPA rules require telemarketers to “employ a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintain records documenting this process.” The Commission adopts this proposed timeframe for accessing the PSAP registry. The Commission retains the flexibility to revisit this finding and delegate authority to the Consumer and Governmental Affairs Bureau to modify this requirement as necessary.

#### **Protecting the Registry From Unauthorized Disclosure or Dissemination**

8. Section 6507(b)(4) of the Tax Relief Act requires the Commission to “protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry.” The Commission adopts a rule that prohibits parties from selling, renting, leasing, purchasing, sharing, or using the PSAP registry, or any part thereof, for any purpose except compliance with this section and any state or Federal law enacted to prevent autodialed calls to telephone numbers in the registry. The Commission limits access to the registry to OADEs and requires that each OADE certify, under penalty of law, that it will access the registry solely to prevent autodialed calls to numbers on the registry.

9. *Limiting registry access to OADEs.* Some OADEs are marketers that make autodialed calls on behalf of other entities, e.g., the sellers of products, goods, or services. Section 6507(b)(3) of the Tax Relief Act requires the Commission to “provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment,” but does not contemplate access by such third parties who are not OADEs. In light of the statute’s goal of protecting registered PSAP numbers, the Commission finds that access to the registered numbers should be limited to OADEs that have complied with the authorized process to obtain access to that information.

#### **Prohibiting the Use of Automatic Dialing or “Robocall” Equipment To Contact Registered PSAP Numbers**

10. Section 6507(b)(5) of the Tax Relief Act directs the Commission to

issue regulations prohibiting “the use of automatic dialing or ‘robocall’ equipment to establish contact with registered numbers.” The Commission prohibits OADEs from contacting any PSAP number on the PSAP Do-Not-Call registry other than for an emergency purpose. Further, the Commission agrees with commenters who support its proposal that the prohibition should include the use of an autodialer to make text message calls in addition to voice calls to numbers on the PSAP registry.

11. *Use of autodialers for emergency calls.* Commenters note that government-operated emergency notification systems and specialized personal emergency response services use automated dialing systems to route calls to the appropriate PSAP when a need for public safety services has been verified. These systems are used by government and personal emergency response entities to convey emergency information, for example, the location of an automobile accident. The record confirms that these emergency calls have contributed to significant improvements in public safety as well as in emergency response efforts, and the Commission therefore believes they should be exempted from the prohibition on autodialer-initiated calls to PSAP numbers.

12. The Commission agrees with commenters that these emergency calls should not be prohibited under our new rules and note that no commenter opposes this conclusion. Section 6507(b)(5) of the Tax Relief Act requires the Commission to establish rules prohibiting autodialed calls to registered PSAP numbers. In contrast to analogous sections of the TCPA, however, the Tax Relief Act does not prohibit such autodialed calls directly. Instead, the Tax Relief Act gives the Commission discretion to define the precise scope of the prohibition. In defining the scope, the Commission is informed by public safety objectives underlying section 6507 of the Tax Relief Act. In addition, section 6003 of the Tax Relief Act directs the Commission to implement and enforce section 6507 of the Tax Relief Act as though it were part of the Communications Act. Therefore, the Commission interpretation is also informed by the principles of the Communications Act, which includes promoting “the safety of life and property through the use of wire and radio communication services.” Moreover, the Commission believes it is consistent with the intent of section 6507 of the Tax Relief Act and in the public interest to recognize an exception for autodialed emergency purpose calls which promote public safety. Stated

differently, the Commission believes that banning autodialed emergency calls to PSAPs would be inconsistent with section 6507 of the Tax Relief Act’s goal of improving PSAPs’ ability to respond to emergencies.

13. For purposes of the PSAP registry, the Commission adopts the existing definition in its rules, as set forth in the TCPA context, and defines an “emergency purpose” as a “call made necessary in any situation affecting the health or safety of consumers.”

14. *Definitions.* As noted above, the Tax Relief Act does not define “automatic dialing” or “robocall” equipment. The Commission believes, however, that these terms are equivalent to “automatic telephone dialing system” as defined in the TCPA and commonly referred to as “robocalling” equipment. Specifically, the TCPA defines “automatic telephone dialing system” as equipment “which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.” The Commission has emphasized that this definition covers any equipment that has the specified capacity to generate numbers and dial them without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from a calling list. The Commission adopts the TCPA’s definition of automatic telephone dialing system and the Commission’s relevant interpretations of that term, for purposes of defining “automatic dialing” and “robocall” equipment as used in the Tax Relief Act.

#### Enforcement

15. *Monetary penalties.* Section 6507(c) of the Tax Relief Act directs the Commission to establish specific monetary penalties for disclosure or dissemination of registered numbers by parties granted access to the registry and for the use of automatic dialing or “robocall” equipment to establish contact with registered numbers. For disclosure or dissemination of registered numbers, section 6507(c)(1) of the Tax Relief Act requires the Commission to establish monetary penalties that are “not less than \$100,000 per incident nor more than \$1,000,000 per incident.” For use of automatic dialing equipment to contact numbers on the registry, section 6507(c)(2) of the Tax Relief Act requires the Commission to establish monetary penalties that are “not less than \$10,000 per call nor more than \$100,000 per call.” Because Congress has specifically prescribed the monetary penalties associated with violations of section 6507 of the Tax Relief Act and related

regulations, the Commission codifies these penalties in its rules. Therefore, the Commission amends § 1.80 of the Commission’s rules governing forfeiture proceedings and forfeiture amounts to incorporate these prescribed amounts.

16. Section 6507(c)(3) of the Tax Relief Act requires the Commission to set amounts within these ranges depending “upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence.” Because the Tax Relief Act does not define these terms, the Commission finds it reasonable, to the extent that the it has defined such terms in an enforcement context, to use those definitions for purposes of the Tax Relief Act. For example, section 503(b)(1) of the Communications Act authorizes the Commission to impose forfeitures for “willful” violations. Section 312(f)(1) of the Communications Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. The legislative history to section 312(f)(1) of the Communications Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Communications Act, and the Commission has so interpreted the term in the section 503(b) context. In addition, section 503(b)(2)(E) of the Communications Act and § 1.80(b)(6) of the Commission’s rules set forth the factors to be considered when determining the amount of forfeiture penalties. Specifically, these provisions require that the Commission “take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” The Commission believes these provisions are broad enough to encompass the factors necessary to distinguish between negligent, grossly negligent, reckless or willful conduct, as used in the Tax Relief Act, without the need for further clarification on this point in its rules. The Commission will determine the nature of the violation on a case-by-case basis, consistent with Commission precedent.

17. *Process for imposing monetary penalties.* The Commission concludes that section 6507(c) of the Tax Relief Act is ambiguous on the question of whether the Commission must issue a citation to a non-regulatee violator before it may impose a monetary forfeiture for violation of section 6507 of the Tax Relief Act. On one hand, section

6003 of the Tax Relief Act indicates that the enforcement provisions in Title V of the Communications Act, which include a citation requirement in some instances, should generally be applied in addressing violations of section 6507. At the same time, though, section 6507 of the Tax Relief Act addresses the appropriate monetary penalty for a first offence, which does not appear to contemplate the issuance of a citation. In light of this ambiguity, the Commission look to the legislative history and policies underlying the citation requirement and conclude that the most reasonable construction of these statutory provisions is to interpret section 6507(c)(3)'s "first offence" language to apply only where section 503 of the Communications Act permits a monetary penalty for a first offence (*i.e.*, where the violator is a Commission regulatee). As the Commission previously has concluded, "the legislative history indicates that the initial warning approach of section 503(b)(5) of the Communications Act was included in the amendments to protect those persons who might not reasonably know they were engaging in an activity regulated by the Commission." The Commission note that entities subject to enforcement for violations of the PSAP Do-Not-Call requirements include not only those entities governed by comparable Do-Not-Call requirements under the TCPA (which is also enforced subject to section 503(b)(5) of the Communications Act's citation requirement), but also other entities not subject to those regulations. In the case of violations of the PSAP Do-Not-Call requirements by a non-regulatee, the Commission therefore concludes that the section 503 of the Communications Act citation requirement applies. The Commission note, however, that the prior issuance of such a citation can be used as a basis both for imposing a higher penalty for subsequent offences and for imposing a forfeiture for the earlier violation at the same time. The Commission base the latter conclusion on the legislative history of section 503 of the Communications Act, which indicates that once an entity has received a citation, "if he or she thereafter engaged in the conduct for which the citation of violation was sent [] a notice of liability [could] be issued. In such an event, forfeiture liability would attach not only for the conduct occurring subsequently but also for the conduct for which the citation of violation was originally sent." Thus, although there may be some instances, such as when the statute of limitations on the first

violation has run, where the forfeiture may only be issued as to the subsequent violations, that will not always be the case. In those cases where the statute of limitations has expired, the Commission may nevertheless consider the first offence to support imposition of a higher monetary penalty for subsequent offences by a non-regulatee. As commenters suggest, the Commission believes that this interpretation will provide non-regulatees that may be less familiar with its rules with an opportunity to take corrective action before imposition of substantial monetary penalties required under section 6507(c) of the Tax Relief Act, while still taking first offences into consideration in imposing monetary penalties for subsequent violations.

18. *Safe Harbor.* The Commission concludes that numbers on the PSAP registry require a higher level of protection from unlawful automated calls than the residential telephone numbers on the National DNC registry. In addition, section 6507(c)(3) of the Tax Relief Act contemplates monetary penalties even for negligent conduct. Therefore, the Commission declines to adopt a safe harbor from our prohibition on using autodialers to contact registered PSAP numbers. As discussed above, OADEs are required to access the registry of PSAP numbers and update their calling lists to delete registered PSAP numbers no later than every 31 days. Therefore, any numbers added to the registry in the 31 day period following such a required update will not be subject to a violation of these rules because they will not be reflected in the OADE's download of the PSAP registry until the next required update.

#### **Final Regulatory Flexibility Analysis**

19. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (PSAP Do-Not-Call NPRM) released by the Commission on May 22, 2012. The Commission sought written public comments on the proposals contained in the PSAP Do-Not-Call NPRM, including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### *A. Need for, and Objectives of, the Order*

20. The "Middle Class Tax Relief and Job Creation Act of 2012" requires the Commission to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibits the use of automatic dialing or "robocall" equipment to contact those numbers. This requirement is designed to address concerns about the use of autodialers, which can generate large numbers of phone calls, tie up public safety lines, and divert critical responder resources away from emergency services. Document FCC 12-129 adopts rules to implement this statutory requirement as set forth in section 6507 of Tax Relief Act.

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

21. No comments were raised directly in response to the IRFA. Some commenters, however, raised issues concerning the impact of the proposed rules on small entities.

22. *PSAPs.* Commenters representing public safety and PSAPs request that the Commission design flexible requirements to minimize compliance burdens on such entities when compiling and submitting numbers onto the PSAP registry. The Commission has complied with this request by formulating flexible requirements which allow the PSAP to designate a person of their own choosing to submit numbers onto the registry. This designated representative will be required to provide certain basic contact information and be subject to verification by the Commission or the administrator of the registry. The Commission believes this requirement imposes minimal burdens while taking measures to ensure that only verified PSAP numbers are downloaded onto the PSAP registry. In addition, some commenters request that PSAPs only be required to access and verify the numbers contained on the registry each seven years. However, the Commission believes that it is necessary for a more frequent review to occur to ensure the ongoing accuracy of the registry. Therefore, the Commission requires that this review take place on an annual basis. To aid PSAPs in the process, they will be sent an annual reminder.

23. *Autodialer Operators.* Several commenters suggest that the Commission formulate its rules relating to the PSAP registry along the same lines as those applicable to the National Do-Not-Call registry. These commenters note that such regulatory consistency

will build upon existing knowledge and systems designed for compliance with the National DNC registry and, therefore, result in minimizing burdens that would result if such rules differ. To the extent possible, the Commission has followed the existing National DNC model and adopted requirements that are consistent with those requirements. A few commenters suggested that the Commission require a citation before issuing a monetary fine for violations of section 6507 of the Tax Relief Act by non-regulatees and/or adopt a safe harbor to protect against inadvertent violations. These commenters suggest that many entities subject to the rules contained herein may not be as familiar as Commission regulatees which necessitate some form of protection from substantial monetary penalties. The Commission adopts this statutory interpretation as it relates to the provision of a citation to non-regulatees. As discussed at length in document FCC 12–129, the statutory requirements are ambiguous on this issue. However, the Commission believes the most reasonable statutory construction is to require citations for first offences by non-regulatees and take such first offences into consideration when determining monetary penalties for subsequent violations.

#### *C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

24. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

25. In general, the Commission’s rule prohibiting the use of automatic dialing equipment to contact numbers on the PSAP Do-Not-Call registry apply to a wide range of entities. The rules, in particular, would apply to all operators of automatic dialing equipment. Therefore, the Commission expects that the requirements adopted in this proceeding could have a significant economic impact on a substantial

number of small entities. Determining the precise number of small entities that would be subject to the requirements in the document FCC 12–129, however, is not readily feasible. Below, the Commission has described some current data that are helpful in describing the number of small entities that might be affected by its action.

26. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1.6 million small organizations.

27. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission’s action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the rules adopted in document FCC 12–129. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

28. *Telemarketing Bureaus and Other Contact Centers.* According to the Census Bureau, this economic census category “comprises establishments primarily engaged in operating call centers that initiate or receive communications for others—via telephone, facsimile, email, or other communication modes—for purposes such as (1) promoting clients’ products or services, (2) taking orders for clients, (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client’s products or services.” The SBA has developed a

small business size standard for this category, which is: all such entities having \$7 million or less in annual receipts. According to Census Bureau data for 2007, there were 2,100 firms in this category that operated for the entire year. Of this total, 1,885 firms had annual sales of under \$5 million, and an additional 145 had sales of \$5 million to \$9,999,999. Thus, the majority of firms in this category can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

29. The Tax Relief Act requires the Commission to establish a Do-Not-Call registry for PSAPs. The Act specifies that PSAPs will be permitted to register telephone numbers on this registry. This allows PSAPs or their designated representatives to review their current telephone numbers and then provide those numbers to the administrator of the registry for inclusion on the PSAP Do-Not-Call registry. This will necessitate some administrative functions such as designating a representative to provide contact information on behalf of the PSAP and to obtain a unique number or password used to upload numbers onto the registry. In addition, the PSAP must develop a process to verify on an annual basis that the registered numbers should continue to appear on the registry. This will require PSAPs to check and verify at least once a year which numbers should continue to be included on the registry.

30. The Tax Relief Act also prohibits the use of automatic dialing or “robocall” equipment to contact numbers listed on the Do-Not-Call registry. As a result, operators of automatic dialing equipment will be required to check the registry and update their calling systems no later than each 31 days to ensure that they do not contact any telephone number listed on the PSAP Do-Not-Call registry. In order to access the registry, operators of automatic dialing equipment will be required to provide contact information and certify that they will not use the telephone numbers for any purpose other than compliance with this Act. In addition, OADEs will need to develop a process to ensure that the list of registered numbers obtained from the PSAP Do-Not-Call registry is not disclosed or disseminated for any purpose other than compliance with the Tax Relief Act. Such a process may entail training personnel, recording access to such information in a secure manner, and updating automatic dialing systems to ensure that such equipment

is not used to contact numbers on the PSAP registry.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

31. Many operators of automatic dialing equipment subject to the Commission's rules are familiar with the rules adopted for compliance with the TCPAs analogous prohibitions on use the autodialers and the National Do-Not-Call registry. Therefore, the Commission has adopted similar requirements herein to reduce compliance burdens and confusion. For example, the Commission has adopted the TCPA's definition of an autodialer and "emergency purpose" for use in this context of the PSAP registry. In addition, the Commission has adopted the same requirement that callers update and scrub any numbers listed on the PSAP registry no later than every 31 days; the same time frame which is required for the National Do-Not-Call registry. As part of the process to access the PSAP registry, the Commission has required OADEs to provide certain information including all telephone numbers used to place autodialed calls. A few commenters indicated that the provision of this information might be burdensome. The Commission concluded, however, that this information is necessary to trace the calling party in investigating any potential violation of its rules. In addition, the Commission provides substantial flexibility to PSAPs to determine which numbers they wish to upload onto the registry. The Commission requires PSAPs to check the registry on an annual basis to ensure that the numbers they have registered should remain on that registry. A few commenters suggested an alternative approach which would have required PSAPs to check the registry once only every seven years. The Commission concluded, however, that an annual review better ensures the accuracy of the database while imposing minimal burdens on the PSAP.

**Ordering Clauses**

32. Pursuant to sections 1, 2, 4(i), 227, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 227, 503, and sections 6003 and 6507 of the Middle Class Tax Relief and Job Creation Act of 2012, that document FCC 12-129 is adopted.

33. The Consumer and Governmental Affairs Bureau and Office of the Managing Director are delegated authority to take actions necessary to resolve any operational or administrative details relating to the

Public Safety Answering Point Do-Not-Call registry including an announcement of the effective compliance date once the PSAP Do-Not-Call registry has become operational.

34. The Consumer and Governmental Affairs Bureau set an effective date of no less than six months after publication of a Public Notice announcing the date by which interested parties must begin compliance with the requirements adopted herein.

35. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 12-129, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedure.

*47 CFR Part 64*

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

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

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 1 and 64 as follows:

**PART 1—PRACTICE AND PROCEDURE**

■ 1. The authority citation for part 1 is revised to read as follows:

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96.

**Subpart A—General Rules of Practice and Procedure**

■ 2. Amend § 1.80 by adding paragraph (a)(6), redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(7) and (b)(8), and add new paragraphs (b)(5) and (b)(6) to read as follows:

**§ 1.80 Forfeiture proceedings.**

(a) \* \* \*

(6) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

(b) \* \* \*

(5) If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone

number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$100,000 per incident nor more than \$1,000,000 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(6) If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for contacting such a telephone number shall be not less than \$10,000 per call nor more than \$100,000 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

\* \* \* \* \*

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

■ 3. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

**Subpart L—Restrictions on Telemarketing and Telephone Solicitation**

■ 4. Amend Subpart L by adding § 64.1202 to read as follows:

**§ 64.1202 Public safety answering point do-not-call registry.**

(a) As used in this section, the following terms are defined as:

(1) *Operators of automatic dialing or robocall equipment.* Any person or entity who uses an automatic telephone dialing system, as defined in section 227(a)(1) of the Communications Act of 1934, as amended, to make telephone calls with such equipment.

(2) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive emergency calls and route them to emergency service personnel pursuant to section 222(h)(4)

of the Communications Act of 1934, as amended. As used in this section, this term includes both primary and secondary PSAPs.

(3) *Emergency Purpose.* A call made necessary in any situation affecting the health and safety of any person.

(b) *PSAP Numbers and Registration.* Each PSAP may designate a representative who shall be required to file a certification with the administrator of the PSAP registry, under penalty of law, that they are authorized and eligible to place numbers onto the PSAP Do-Not-Call registry on behalf of that PSAP. The designated PSAP representative shall provide contact information, including the PSAP represented, contact name, title, address, telephone number, and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone numbers associated with the provision of emergency services or communications with other public safety agencies. On an annual basis designated PSAP representatives shall access the registry, review their numbers placed on the registry to ensure that they remain eligible for inclusion on the registry, and remove ineligible numbers.

(c) *Prohibiting the use of Autodialers to Contact Registered PSAP Numbers.*

An operator of automatic dialing or robocall equipment is prohibited from using such equipment to contact any telephone number registered on the PSAP Do-Not-Call registry other than for an emergency purpose. This prohibition encompasses both voice and text calls.

(d) *Granting and Tracking Access to the PSAP Registry.* An operator of automatic dialing or robocall equipment may not obtain access or use the PSAP Do-Not-Call registry until it provides to the designated registry administrator contact information that includes the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number, the operator's email address, and all outbound telephone numbers used to place autodialed calls, including both actual originating numbers and numbers that are displayed on caller identification services, and thereafter obtains a unique identification number or password from the designated registry administrator. All such contact information provided to the designated registry administrator must be updated within 30 days of any change to such information. In addition, an operator of automatic dialing equipment must certify when it accesses the registry,

under penalty of law, that it is accessing the registry solely to prevent autodialed calls to numbers on the registry.

(e) *Accessing the Registry.* An operator of automatic dialing equipment or robocall equipment shall, to prevent such calls to any telephone number on the registry, access and employ a version of the PSAP Do-Not-Call registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and shall maintain records documenting this process. It shall not be a violation of paragraph (c) of this section to contact a number added to the registry subsequent to the last required access to the registry by operators of automatic dialing or robocall equipment.

(f) *Restrictions on Disclosing or Dissemination of the PSAP Registry.* No person or entity, including an operator of automatic dialing equipment or robocall equipment, may sell, rent, lease, purchase, share, or use the PSAP Do-Not-Call registry, or any part thereof, for any purpose except to comply with this section and any such state or Federal law enacted to prevent autodialed calls to telephone numbers in the PSAP registry.

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