

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

FTC REVIEWS RULES, INCLUDING CAN-SPAM, TO KEEP PACE WITH CHANGING TIMES

The Federal Trade Commission (FTC) is taking steps to review certain existing rules and guides to ensure that it is keeping pace with technological developments in the marketplace without unduly burdening businesses.

WHAT RULES ARE CHANGING

The FTC announced that it would be examining the following four rules: the Picture Tube Rule, the Textile Rules, the Energy Labeling Rule, and most importantly, the CAN-SPAM Rule.

CAN-SPAM RULE

The FTC is taking another look at the CAN-SPAM Rule, which requires, among other things, that a commercial email contains an accurate header and subject line, includes a valid physical address and offers the recipient a way to opt out of future messages.

Enacted in 2003, the CAN-SPAM Rule prohibited certain commercial email practices and established requirements for commercial email content. In 2005, the FTC issued new provisions under the Rule that defined whether the primary purpose of email content was commercial and/or “transactional or relationship.” Further, in 2008, the FTC issued additional provisions that defined the term “person,” modified the definition of “sender,” clarified that a sender could comply with the Rule by including in a commercial email message a post office box or private

THE BOTTOM LINE

The FTC has announced its plans to review the Picture Tube Rule, the Textile Rules, the Energy Labeling Rule and the CAN-SPAM Rule. These rules aim to protect consumers while promoting healthy competition between businesses. The FTC’s regulatory review is part of its ongoing effort to stay current with technology without burdening businesses with outdated and unnecessary regulations. The FTC is seeking public comment regarding the costs and benefits of each rule to identify where they should make modifications or rescissions.

mailbox established pursuant to U.S. Postal Service regulations, and clarified that a valid opt-out request cannot request payment, cannot require any steps other than sending a reply email or visiting a single website and cannot prompt the recipient for more information other than their email address.

Now, the FTC is seeking public comment on whether consumers have benefitted from the CAN-SPAM Rule, whether it should be modified or amended for technological/economic changes, the overall cost of compliance on businesses and consumers and whether the Rule overlaps or conflicts with other federal, state or local laws and regulations.

The FTC is also requesting comment on a number of specific issues regarding the CAN-SPAM Rule. Particularly, the FTC would like to know, should the Commission modify the Rule to:

- 1) expand or contract the categories of messages that are treated as transactional or relationship messages?
- 2) reduce the time-period for processing opt-out requests to less than 10 business days?
- 3) specify additional activities or practices that constitute aggravated violations?

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Comments can be filed online or on paper, and the FTC must receive them by August 31, 2017 to be considered. Please do not hesitate to contact us if you have any questions or would like Davis & Gilbert's assistance in filing public comments with the FTC.

PICTURE TUBE RULE

The Picture Tube Rule requires television manufacturers to use the horizontal measurement of a screen's viewable area, unless an alternative method of measurement is clearly disclosed. The goal of this rule is to provide consumers with a uniform measurement to make product comparisons. Last reviewed in 2004, the FTC is now seeking public comment to determine if this rule is still relevant, beneficial and cost effective in conjunction with changing television technology, such as the incorporation of plasma, LED and OLED (*the FTC must receive comments by August 31, 2017*).

TEXTILE RULES

The Textile Rules require marketers to attach a label to a textile product disclosing the manufacturer or the marketer name, the country where

the product was made and the generic names and percentages by weight of the fibers in the product. Additionally, the Textile Rules allow marketers to disclose their company trademark on the tag in lieu of their name, as long as the trademark is registered with the FTC. The FTC is seeking public comment to determine whether the trademark registering requirement is no longer necessary because consumers can now identify trademarks by searching online or via the U.S. Patent and Trademark Office website (*the FTC must receive comments by July 31, 2017*).

ENERGY LABELING RULE

The Energy Labeling Rule requires yellow EnergyGuide labels to be placed on certain appliances to help consumers compare the energy cost of competing models. In September 2016, the FTC sought public comments on changes to the Rule that would eliminate label requirements for plumbing products and certain ceiling fans, and update the labels to cover electric instantaneous water heaters.

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