

eliminating federal preemption;⁸² (7) requiring companies that provide access to transmission lines connecting users to the internet to filter out and report spam to regulatory authorities;⁸³ (8) providing email recipients a private right of action to enforce CAN-SPAM Act violations;⁸⁴ and (9) permitting class-action lawsuits.⁸⁵

The first suggestion is unfeasible, because the Act expressly prohibits the Commission from designating “any specific words, characters, marks, or labels” to satisfy the requirement that initiators identify a commercial electronic mail message as an advertisement or solicitation.⁸⁶ The second suggestion also conflicts with the plain language of certain definitions under both the Act and Rule. As the Commission has previously stated, “a list owner must honor opt-out requests only if it qualifies as the ‘sender’ of a commercial email (*i.e.*, it is an initiator and its ‘product, service, or internet website’ are ‘advertised or promoted’ in the email).”⁸⁷ The Commission also declines to consider the remaining proposed modifications because each would be inconsistent with the Commission’s circumscribed authority under the Act.

6. Comments Regarding Law Enforcement Priorities and Policies

A number of comments made proposals better understood as recommendations for how the Commission should implement enforcement priorities and policies rather than modifications to the Rule. These proposals included: (1) Allowing consumers to report and/or forward spam to the FTC;⁸⁸ (2) sending violators a link to CAN-SPAM regulations and guidance documents;⁸⁹ (3) including willful violators of CAN-SPAM on a “blacklist” for circulation among email service providers;⁹⁰ (4) working with payment processors and other intermediaries to shutter accounts belonging to spammers;⁹¹ and (5) providing guidance to states regarding

the scope of preemption under the Act.⁹²

The Commission has already adopted the first recommendation, and continues to encourage consumers to report illegal spam to *ftccomplaintassistant.gov* or forward it directly to *spam@uce.gov*. Such complaints from consumers help the Commission to detect patterns of fraud and abuse, and identify potential investigative targets. The Commission also appreciates the recommendations provided by the remaining comments, and will take such information into consideration as it continues to formulate enforcement priorities that would benefit consumers and secure industrywide compliance with the CAN-SPAM Rule.

IV. Conclusion

The comments overwhelmingly: (1) Favor retention of the Rule and assert that there is a continuing need for the Rule; (2) conclude that the Rule benefits consumers; (3) assert that the Rule does not impose substantial economic burdens; and (4) conclude that the benefits outweigh the minimal costs the Rule imposes. The Commission has analyzed the proposed benefits to consumers of proposed changes to the Rule, including any evidence provided of those benefits, and balanced those proposed benefits against the cost of implementing the changes, the need for the change, and alternative means of providing these benefits for consumers, such as consumer education materials. Despite some comments recommending that the Commission adopt modifications to the Rule, there is insufficient evidence in the record to demonstrate that such modifications are necessary and would, in fact, help consumers. Additionally, none of the comments proposing modifications or clarifications that could potentially burden industry sufficiently analyzed the associated costs.

The FTC plans to review and consider revising its consumer and business education materials to address the concerns raised in the comments submitted pursuant to this Rule Review to ensure that consumers and businesses more easily understand the Rule’s protections and requirements. Furthermore, the Commission has a variety of enforcement tools available to help consumers better understand the Rule’s protections and ensure compliance. If, at a later date, the Commission concludes that the Rule, case law interpreting the Rule, and the FTC’s other enforcement tools do not provide adequate guidance and

protection for consumers in the marketplace, it can then consider, based on a further record, whether and how to amend the Rule. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9852]

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Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions

Correction

In rule document 2019-05527 appearing on pages 10976-10989 in the issue of March 25, 2019, make the following corrections:

§ 1.1471-4 [Corrected]

■ 1. On page 10981, in the third column, in paragraph (j), in the 6th and 10th lines “March 26, 2019” should read “March 25, 2019”.

§ 1.1471-5 [Corrected]

■ 2. On page 10987, in the first column, in paragraph (m), in the 6th and 11th lines “March 26, 2019” should read “March 25, 2019”.

§ 1.1472-1 [Corrected]

■ 3. On page 10989, in the third column, in paragraph (h), in the 5th and 9th lines “March 26, 2019” should read “March 25, 2019”.

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⁸² Bristol (42); St. Peters (64); Ford (99).

⁸³ Davis (78).

⁸⁴ Balsam (31) (“enable the spam recipients to file lawsuits, not just the AG, FTC, and ISPs”); Wippler (63) (expressly recommending modification of the CAN-SPAM Act); Walton (73) (“the rules should allow for recipients of spam to enforce opt-out requests”); *cf.* 15 U.S.C. 7706.

⁸⁵ Barth (66); *cf.* 15 U.S.C. 7706.

⁸⁶ 15 U.S.C. 7711(b).

⁸⁷ 79 FR at 29660.

⁸⁸ Pesterfield (30); Francis (67).

⁸⁹ Pesterfield (30).

⁹⁰ *Id.*

⁹¹ Ford (99).

⁹² *Id.*