



**Property Casualty Insurers
Association of America**

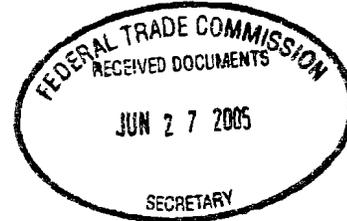
Shaping the Future of American Insurance

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June 27, 2005

Federal Trade Commission
Office of the Secretary
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580



RE: CAN-SPAM Act Rulemaking
Project No. R411008

Property Casualty Insurers Association of America Comments

The Property Casualty Insurers Association of America (PCI) offers the following comments to the proposed FACT Act Affiliate Marketing Rule (Matter R411006.) PCI, a leading property and casualty trade association, represents over 1,000 companies that write 38 percent of the US property/casualty insurance market. PCI member companies write all lines of coverage, including automobile, homeowners, workers' compensation, surplus lines and reinsurance, in all 50 states and the District of Columbia. The membership is comprised of every type of insurance company – stock, mutual, reciprocal and Lloyds.

On behalf of our member companies, PCI respectfully submits the following comments and asks that they be made part of the official record.

After reviewing the proposed CAN-SPAM Rule, PCI noticed that a major inconsistency between the proposed rule and the CAN-SPAM Act. PCI believes that the FTC's rules should be consistent with the Act and therefore, respectfully requests that the FTC change the proposed rules to be consistent with the Act. Proposed Rule §316.4 – Prohibition against failure to honor an opt-out request within three business days of receipt. The Act in §7704(a)(4)(i) states that a sender has 10 business days to make the necessary system changes to prohibit any further commercial electronic mail messages. The Rule must be changed to reflect the 10-business day period. We noted that some commentaries indicated that a number of companies could effectuate an opt-out in a more immediate time frame. While that may be true for some companies, particularly for a .com company, that is not true for many brick and mortar companies with older systems, or a companies with multiple locations. The problem encountered by these companies is when an "opt-out" is received in one area, there may have to be human intervention to communicate the "opt-out" to the area that will then need to make the appropriate system changes. Such communication between departments, divisions or even countrywide locations frequently takes longer than 3 days, and necessitates the need for the 10 business days. To assure that a company who is able to effectuate an opt-out in 3 business, does so, and that a company does not take any longer than necessary to put the opt-out in place the rule should indicate the following. A company must effectuate an opt out request in the most expedient time possible and without unreasonable delay,

not to exceed 10 business days. PCI believes such language will allow those companies who require more time, that time to comply with the rule while not allowing those companies who can comply sooner to bombard a consumer with e-mail during the 10 day period.

While the above issue is of highest importance to our members, the FTC has requested comments on a number of other areas. PCI is pleased to offer comments in response to those areas that affect the property casualty insurance industry.

1. Section 316.2-Definitions

- d. The commission should adopt a "safe harbor" with respect to opt-out and other obligations for companies whose products or services are advertised by affiliates or other third parties. The criteria for allowing the "safe harbor" should apply if the company whose product or service is advertised by an affiliate or other third party, but that company has no control over the distribution list used by the affiliate or other third party. If the third party or affiliate is in essence providing a service by using the companies own "mailing list," then the safe harbor should not apply. If the third party or affiliate is using their own "mailing list," then the company would fall within a safe harbor because they would not have control over who the e-mail is being sent to.
- f. CAN-SPAM should NOT apply to e-mail messages sent to members of an online group. Within in the insurance world, if a "group" policy is in effect, and a solicitation is made to the entire group, it would be impossible to exclude an individual from the "group" particularly if the company utilizes the e-mail group to send informational messages.

2. Section 316.2(o)

- a. If an e-mail contains a legally mandated notice, such notice should not have to fall into an existing category. Such a legally mandated notice should be exempt from the regulation under the CAN-SPAM Act. If a category is necessary, then perhaps a "legally mandated" category should be developed, and everything in that category would be exempt.
- b. Debt collection e-mails ARE a transactional or relationship message. Collecting the monies due as a result of providing a product or service, is part of the transaction. A debt collection e-mail does not fall into the definition of the definition of commercial electronic mail messages that have a primary purpose of commercial advertisement or promotion of a commercial product or service.
- d. The definition in the CAN-SPAM Act, a commercial transaction can only be such where there is an exchange of consideration. The FTC rule should not take upon itself the re-writing of the Act itself. Since the Act specifies that there must be an exchange of consideration, the FTC can not go beyond that.
- e. PCI believes that if a third party or an affiliate is providing a service or acting on behalf of a company then a safe harbor should apply to that third party or affiliate. It should not be necessary for an affiliate or third party to verify if any of the prospective recipients of the e-mail have opted out.
- f. Sending a confirming e-mail of a service or product being provided should fall within the definition of a "transactional or relationship" message. The CAN-SPAM Act is very clear that a "transactional or relationship message" is to confirm a commercial transaction. The FTC can not re-write or re-define the definitions of terms of the CAN-SPAM Act.

- g. If an employer is sending an employee a message through an “employer-provided e-mail address” in essence the employer is sending it to itself. Generally an employee has no expectation of personal ownership in the information sent or received via an “employer-provided e-mail address.” An employer should not be expected to restrict their own commercial transactions they direct to their own employee.
 - h. If the employer permits third parties to send messages to their employees via the “employer-provided e-mail address,” the employee would not be able to opt-out of such messages. Employers should not be permitted under the Rule to allow third parties to send messages to their employees via the employee’s personal e-mail address.
 - j. Where a recipient has entered into a transaction with a sender that entitles the recipient to receive newsletters or other electronically delivered content, the primary purpose of these messages is transactional or relationship messages. It is through these e-mails and newsletters that the sender maintains a relationship with the recipient and should not be restricted through the FTC Rules.
 - l. An e-mail message to a *lapsed* member should be considered a “transactional or relationship message” for 90 days after the membership has lapsed. This is consistent with the Do-Not-Call rules.
3. Section 316.4 – Prohibition Against Failure to Honor Opt-Out Requests Within Three Business Days of Receipt
- a. As already identified above, three business days may be an insufficient time for a business to put an opt-out in place. PCI suggests that the FTC require companies to effectuate the opt-out requests in the most expedient time possible and without unreasonable delay, not to exceed 10 business days.
 - c. When Congress passed the CAN-SPAM Act they did not contemplate that companies would need to purchase a separate system explicitly to put an opt-out indicator in place. Not only would there be the expense of purchasing such a system, but there would be the staff time to try to retrofit their existing systems to a system they purchased for this only reason. The FTC should not require such an expense to merely comply with these rules.

PCI appreciates the opportunity to comment on the proposed rule. If you would like to discuss any of these comments, please do not hesitate to contact me via telephone at 847-553-3718 or via e-mail at kathleen.jensen@pciaa.net.

Respectfully submitted,

Kathleen N. Jensen