

## FTC Launches Review of Its Email Marketing Rule

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Today the FTC announced that it is undertaking a review of its CAN-SPAM Rule, which sets out the requirements for sending commercial e-mail messages. Among other things, the CAN-SPAM Rule requires that senders of commercial e-mails provide recipients a mechanism to opt out of receiving commercial e-mails, honor opt-out requests within 10 business days, and include specific disclosures in the body of the commercial messages.

The review is part of the FTC's standard process of reviewing its rules and industry guides on a 10-year schedule to ensure that they remain relevant and are not unduly burdensome. The goal of these reviews typically is to determine whether rule modifications are needed to address public concerns or changed conditions, or to reduce undue regulatory burden.

Consistent with these goals, the FTC specifically is asking for comments on the following topics:

- The economic impact and benefits of the CAN-SPAM Rule;
- Possible conflict between the CAN-SPAM Rule and state, local, or other federal laws or regulations (note that the CAN-SPAM statute preempts state commercial e-mail laws, except to the extent they prohibit "falsity or deception"); and
- The effect any technological, economic, or other industry changes have had on the CAN-SPAM Rule.

Unlike some other FTC rules and guides that are grounded in the FTC's general authority to prohibit unfair and deceptive practices under Section 5 of the FTC Act, the CAN-SPAM Rule implements requirements contained in the CAN-SPAM statute. Consequently, while there are certain aspects of the CAN-SPAM Rule that the FTC can modify, the statutory requirements cannot be changed without congressional amendment.

Written comments are due on **August 31, 2017**.

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