

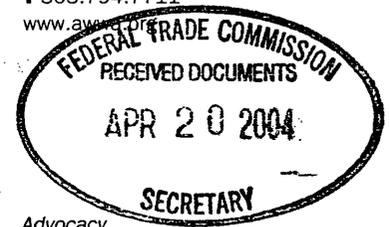


American Water Works Association

The Authoritative Resource for Safe Drinking WaterSM

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April 19, 2004

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Advocacy
Communications
Conferences
Education and Training
Science and Technology
Sections

Re: American Water Works Association/CAN-SPAM Act Rulemaking, Project No. R411008 addressing the definition and implementation of the Act as set forth in sections 3(2)c and 3(17)(B)

American Water Works Association. The American Water Works Association (AWWA) is an international nonprofit scientific and educational society dedicated to the improvement of drinking water quality and supply. Founded in 1881, AWWA is the largest organization of water supply professionals in the world. Its more than 57,000 members represent the full spectrum of the drinking water community: treatment plant operators and managers, scientists, environmentalists, manufacturers, academicians, regulators, and others who hold genuine interest in water supply and public health. Membership includes more than 4,000 utilities that supply water to roughly 180 million people in North America.

AWWA is defined by six core competencies, through which we communicate and interact with all of our audiences. Together, the competencies distinguish AWWA as the authoritative resource for knowledge, information, and advocacy to improve the quality and supply of drinking water in North America and beyond.

Introduction. AWWA believes that the Federal Trade Commission (FTC) needs to clarify the applicability of the commercial electronic mail message definition as it relates to tax exempt non-profit organizations. In particular, AWWA requests the FTC's rule-making expressly provide that e-mail transmitted by a tax exempt nonprofit organization primarily related to one or more of the organization's duly authorized tax exempt nonprofit purposes not be considered commercial electronic mail under the Act and, therefore, be specifically exempt from regulation under the Act.

The language of the Act defines "commercial electronic mail messages" as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service...." This definition is clearly directed only at regulating activity undertaken primarily to further the commercial endeavors of for-profit business. Interpreting the commercial electronic mail message definition to include e-mail communications of organizations operating consistent with their tax exempt nonprofit purposes would be inconsistent with the plain language of the statute, as well as the intention of the Act.

In addition, AWWA would like the Commission to specifically provide in the regulations that any e-mail transmitted by a tax exempt nonprofit association organization to a current member, donor or customer, regardless of its commercial content, is not subject to the Act because such a member, donor and customer communications are "transactional or relationship" messages as defined in Section 3(17)(A) and (B) of the Act.

AWWA, like all tax exempt nonprofit organizations have established legitimate constituencies with whom we routinely communicate through e-mail. These constituents might be dues-paying members, present or former customers, or others who have voluntarily associated themselves with the special tax exempt nonprofit mission and desire to receive communications from AWWA. The primary purpose of AWWA's e-mail communication is to provide information and resources to our members, donors, customers and other constituencies consistent with our tax exempt nonprofit purposes. AWWA's e-mail communications are not to carry on a trade or business, which is the chief objective of for-profit taxable entities. AWWA's resources and products are provided for a reasonable fee that covers our costs of development, marketing and distribution. As a nonprofit organization, however, all monies earned from activities undertaken consistent with our tax exempt nonprofit purposes must be used to further the organization's tax exempt nonprofit work. Therefore, such e-mail communications should not be considered "commercial" even if they involve the marketing, promotion or sale of goods and services as long as the underlying communication is consistent with the organization's tax exempt nonprofit purposes.

For example, such e-mail communications from AWWA could include:

- Utility or security advisories presented to our utility members;
- Notices regarding our annual conference;
- Notifications on publications;
- E-newsletters

Clarification of the Term "Commercial Electronic Mail Message". The regulations implementing the Act need to specifically address the special role and circumstances of tax exempt nonprofit organizations. If the FTC were to apply the "commercial electronic mail message" definition to tax exempt nonprofit organizations in the same manner it applies the term to taxable for-profit entities, it will profoundly confuse, damage, and obstruct the good work of tax exempt nonprofit organizations of every kind – including the American Water Works Association.

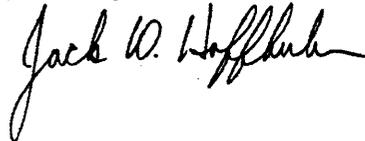
AWWA urges the FTC to recognize the regulations implementing the Act should distinguish between the activities of tax exempt nonprofit organizations and the work of for-profit, commercial organizations. The regulations should emphasize that only truly commercial e-mail transmissions, the "primary purpose of which is the commercial advertisement or promotion of a commercial product or service..." (emphasis added) are regulated under the Act.

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Conclusion. AWWA urges the FTC to clarify that the definition of “commercial electronic mail messages” is directed at regulating activity that primarily furthers the commercial endeavors of taxable for-profit business. Specifically, the regulations implementing the Act should provide that e-mail communications of tax exempt nonprofit organizations that are consistent with their tax exempt nonprofit purpose are by definition not primarily commercial and, therefore, do not fall within the definition of regulated commercial electronic mail messages.

Additionally, the regulations should clarify that even where e-mail communications from tax exempt nonprofit organizations sent to current members, donors and/or customers are primarily commercial and not related to the organization’s tax exempt nonprofit purposes, they should be excluded from the commercial electronic mail message definition as transactional or relationship because such communications are primarily intended to provide information in connection with an organization or association membership and/or deliver goods and services under the terms of an existing member, donor or customer relationship.

Sincerely,

A handwritten signature in black ink, reading "Jack W. Hoffbuhr". The signature is written in a cursive style with a large, prominent initial "J".

Jack W. Hoffbuhr, P.E., DEE
Executive Director