



PTSA

Petroleum Transportation & Storage Association

COMPLIANCE BULLETIN

June 23, 2006

UNSOLICITED JUNK FAX PROHIBITION

ISSUE: The Federal Communications Commission (FCC) has issued new rules governing the sending of facsimile advertisements. These changes are important to any business or trade group that sends advertising facsimiles to customers or members.

OVERVIEW: The new FCC rule, mandated by Congress under the Junk Fax Prevention Act of 2005, prohibits the sending of unsolicited advertising facsimiles unless the sending party has an established business relationship (EBR) with the recipient. Even where an EBR exists, the fax must include specific identifying information, an opt-out notice and directions on how a recipient can opt-out of receiving future faxes, without cost, 24 hours per day.

COMPLIANCE REQUIREMENTS:

Unsolicited Facsimile Prohibition - *Unsolicited advertising facsimiles may be sent to those with which the sender has an established business relationship. Under FCC regulations, an EBR is a prior or existing relationship formed by a voluntary two-way communication between parties on the basis of an inquiry, purchase, application or transaction for product or services. Unsolicited facsimiles may be sent to a recipient who was a customer or member prior to 07/09/05. However, if the recipient became a customer or member after 07/09/05, then a facsimile be sent only if; the customer or member voluntarily provided the facsimile number to the sender; or voluntarily agreed to make the number publicly available in a directory, advertisement, or on an Internet site.*

Type of Facsimiles Covered - Facsimiles that contain unsolicited advertisements. An unsolicited advertisement is any material advertising the commercial availability or quality of any property, goods, or services. Facsimiles **not** covered included those for debt collection, transactional facsimiles that facilitate, complete, or confirm a prior transaction, and faxes involving political discussion, including requests for donations to political campaigns, PACs, or charitable organizations.

Facsimile Information Required - All facsimiles, whether unsolicited or solicited must include: date and time sent, registered name of the company sending the fax, and phone number of the company sending the facsimile or the sending fax machine's phone number. Facsimiles that contain an unsolicited advertisement must also include an opt-out notice.

Opt-out Notice Requirements - The opt-out notice must be clear and conspicuous; appear on the first page of the facsimile; be separate from the advertising copy, or other disclosures and be placed at either the top or bottom of the page. Also, the opt-out notice must clearly state that the recipient may opt-out of any future facsimiles and must provide clear instructions for doing so. In addition, the opt-out notice must include both a telephone and separate facsimile number for the recipient to transmit a cost free-opt-out request (toll free number or website address).

Processing Opt-out Requests - Opt-out requests must be processed in the shortest reasonable time, which may not be more than 30 days from the date of the request.

Penalties - The FCC can impose civil monetary penalties of up to \$11,000 for violations and state attorneys general may bring suits in federal court for actual damages or \$500 per violation, with treble damages for knowing and willful violations. Unsolicited recipients may sue for damages.

Compliance Date: The rules take effect 8/1/06.

GOT QUESTIONS? Contact Mark S. Morgan, Esq. at (202) 364-6767 or at mmorganptsa@cox.net