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Sequence Number: 10-21-09
Rule ID(s): 4507
File Date: 10/22/2010
Effective Date: 10/22/2010

A Notice of Stay of Effective Date was filed on 01/10/2010. New effective date 04/05/2010. To view copy of Stay go to <http://tn.gov/sos/pub/tar/announcements/01-10-10.pdf>.

A Notice of Withdrawal of Rules was filed on 03/29/2010. To view copy of withdrawal go to <http://tn.gov/sos/pub/tar/announcements/03-47-10.pdf>

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Regulatory Authority
Division:	
Contact Person:	J. Richard Collier, General Counsel
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1220-04-11	Telephone Solicitation Regulations
Rule Number	Rule Title
1220-04-11-.08	General ADAD Regulations
1220-04-11-.09	ADAD Registration Requirements – Issuance and revocation of Permits
1220-04-11-.10	Enforcement Provisions

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1220-04-11
Telephone Solicitation Regulations
Do Not Call Register / ADAD Registration Requirements

Table of Contents

1220-04-11-.08 General ADAD Regulations
1220-04-11-.09 ADAD Registration Requirements – Issuance and revocation of Permits
1220-04-11-.10 Enforcement Provisions

Amendment

Rule 1220-04-11-.08 is amended by deleting in its entirety and substituting the following language, so that, as amended Rule 1220-4-11-.08 shall read as follows:

1220-04-11-.08 General ADAD Regulations

- (1) No person shall use, employ or direct another person to use, or contract for the use of an ADAD for the purpose of advertising or offering for sale, lease, rental or as a gift any goods, services or property, either real or personal, primarily for personal, family or household use or for the purpose of conducting polls or soliciting information where:
 - (a) Consent is not received prior to the initiation of the calls;
 - (b) The ADAD is used at any time other than between the hours of eight o'clock a.m. (8:00 a.m.) and nine o'clock p.m. (9:00 p.m.);
 - (c) The ADAD will operate unattended, or is not designed and equipped with an automatic clock and calendar device that will not operate unattended, even in the event of a power failure;
 - (d) The use of the ADAD involves either the random or sequential dialing of telephone numbers;
 - (e) The ADAD does not automatically and immediately terminate its connection with any telephone call within ten (10) seconds after the person called fails to give consent for the recorded message or otherwise terminates the telephone call;
 - (f) The ADAD recorded message fails to state clearly the name and telephone number of the person or organization initiating the call within the first twenty-five (25) seconds of the call and at the conclusion of the call. The telephone number stated on the recorded message must be promptly and personally answered during normal business hours by someone who is willing and able to provide information concerning the automatic calls and is an agent of the person or organization on whose behalf the automatic calls are made;
 - (g) The ADAD places calls to telephone numbers which, at the request of the customer, have been omitted from the telephone directory published by the telephone company or cooperative serving the customer;
 - (h) The ADAD places calls to hospitals, nursing homes, fire protection agencies or law enforcement agencies.
- (2) A person may give consent to a call made with an ADAD when a live operator introduces the call and states intent to play a recorded message. Any such consent shall apply only to a particular call and shall not constitute prior consent to receive further calls through the use of such ADAD.

- (a) Any person wishing to receive telephone calls through the use of an ADAD shall give written consent to the person using, employing, directing another person to use, or contracting for the use of such ADAD.
- (b) Any form used for written consent by any person using, employing, directing another person to use, or contracting for the use of such ADAD shall clearly and conspicuously state its purpose and effect, and clearly and conspicuously give notice of how such consent may be withdrawn.
- (c) A record of written consent shall be maintained by the person to whom consent is given, and shall be made available to the Authority or its authorized representative during normal business hours and following reasonable notice.
- (d) Written consent, unless withdrawn, shall be valid for a period of two (2) years from the date on which it is executed and shall be maintained by the person to whom consent is given for at least the same period of time.
- (e) Any consent to receive telephone calls through the use of an ADAD shall be void and withdrawn on the fifteenth day following the receipt of a letter withdrawing consent. It is unlawful for any person to whom written consent is given to fail to maintain the record of such consent for the time required, or to prevent or hinder the Authority or its authorized representative from inspecting any such record of written consent.

Authority: Tenn. Code Ann. §§ 4-5-201 et seq., 65-4-102, 47-18-1501 et seq.

New Rule

Proposed New Rule 1220-04-11-.09 ADAD Registration Requirements – Issuance and Revocation of Permits shall read:

1220-04-11-.09 ADAD Registration Requirements – Issuance and Revocation of Permits

- (1) It is a violation of Tenn. Code Ann. § 47-18-1503 to connect any ADAD to any telephone line in Tennessee for the purpose of making telephone calls in this state through the use of such ADAD unless a permit has been issued for such ADAD by the Authority. Prior to the utilization of an ADAD to call telephone numbers located in Tennessee, any company or individual utilizing such equipment shall register with the Authority to receive a permit.
- (2) Any person or company desiring to use an ADAD in Tennessee shall make application for a permit to the Authority on forms prescribed by the Authority, and shall pay a fee of one hundred dollars (\$100.00). Permits shall be renewed every two (2) years upon payment of a renewal fee in the amount of one hundred dollars (\$100.00).
- (3) Each application must be accompanied by a surety bond executed by the ADAD operator from a surety company authorized to conduct business in Tennessee for the sum of ten thousand dollars (\$10,000) to be maintained continuously in full force and effect. This bond requirement may be waived for any operator demonstrating financial responsibility by the submission of a letter of credit from an accredited financial institution.
- (4) Failure to obtain a permit from the Authority prior to the utilization of an ADAD to call numbers located in Tennessee and failure to abide by the Authority rules governing ADAD operations is a violation of Tenn. Code Ann. § 47-18-1501 et seq.
- (5) Permits shall be subject to suspension or revocation by the Authority for any violation of Tenn. Code Ann. § 47-18-1501 et seq. or this Chapter. Revoked permits are not renewable. Reinstatement of revoked or expired permits requires a new application accompanied by a one hundred dollar (\$100.00) application fee.

Authority: Tenn. Code Ann. §§ 4-5-201 et seq., 65-2-102, 47-18-1501 et seq.

New Rule

Proposed New Rule 1220-04-11-.10 Enforcement Provisions shall read:

1220-04-11-.10 Enforcement Provisions

- (1) The Authority may, on its own motion, or the recommendation of the Division, or the motion of the Consumer Advocate Division, or any other interested person, order the investigation of the practices of any telephone solicitor conducting business in Tennessee. Such investigation shall determine if such telephone solicitor has violated Tenn. Code Ann. § 65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to Tenn. Code Ann. § 65-2-106.
- (2) Local exchange companies and interexchange carriers are required to fully cooperate with the Division in any investigation of an alleged violation of this Chapter.
- (3) If one or more of the term(s) or provision(s) of this Chapter or the applications thereof, to any extent, are held to be invalid or unenforceable, then the remainder of this Chapter shall not be affected thereby.

Authority: Tenn. Code Ann. §§ 65-2-102 and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Eddie Roberson	X				
Sara Kyle	X				
Mary W. Freeman	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority (board/commission/ other authority) on 02/23/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/25/2008

Notice published in the Tennessee Administrative Register on: 10/15/2008

Rulemaking Hearing(s) Conducted on: (add more dates). 11/24/2008

Date: 06-16-09

Signature: Eddie Roberson

Name of Officer: Eddie Roberson

Title of Officer: Chairman



My Commission Expires MAR 20, 2010

Subscribed and sworn to before me on: June 16, 2009

Notary Public Signature: L.L. Perrin

My commission expires on: March 20, 2010

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
10-13-09
Date

RECEIVED
2009 OCT 22 PM 5:53
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Filed with the Department of State on: 10/22/09

Effective on: ~~1/29/10~~

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

There were no comments made at the public hearing or written comments filed in this matter.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

These rules substantially codify existing state law, specifically Tenn. Code Ann §§ 47-18-1501 *et. seq.*

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

New rules 1220-04-11-.08 & .09 govern the issuance of and revocation or suspension of permits for automatic dial and announcing device (ADAD) operators utilizing equipment to call telephone numbers located in Tennessee. Rule 1220-04-11-.10 Enforcement Provisions was renumbered from .08 to .10 for uniformity.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

In 1990, the Tennessee Legislature passed the "Consumer Telemarketing Protection Act of 1990" which is codified at Tenn. Code Ann. § 47-18-1501 *et seq.* This legislation was designed to regulate the use of automated "robo-calls" for commercial solicitation. Tenn. Code Ann. § 47-18-1503(b) directs the Authority to "promulgate rules governing the issuance of and revocation or suspension of permits for ADAD operators utilizing equipment to call telephone numbers located in Tennessee."

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Any one that uses an automatic dial and announcing device to complete calls in Tennessee (e.g. Doctor's offices, political campaigns, telemarketers, bill collectors).

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Fiscal impact is minimal.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Gary Hotvedt, Assistant General Counsel

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Gary Hotvedt, Assistant General Counsel

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None