



TextPower

Alert and authenticate using text messaging

A Guide To Text Messaging Regulations

Why mobile users are required to “opt-in” and other requirements, regulations and best practices for users of text messaging and alerting.

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Text Messaging Rules And Regulations

Executive Summary:

The details of various requirements and legalities are described in detail throughout this document.

If you read nothing else and remember the following 10 points it is extremely unlikely that you will have any problems with carriers or compliance issues and very likely that you will have successful text messaging campaigns and happy customers.

1. Build a compliant database.
2. Document and save program opt-ins and messaging permissions.
3. Clearly communicate what people are signing up for (content, frequency, etc.) up-front to ensure customer satisfaction.
4. Add your text marketing privacy policy to your website for easy access by program participants.
5. Utilize multimedia for better customer engagement and action.
6. Work with your legal team to ensure your program offerings are legally compliant.
7. Only send message to legally obtained opted-in numbers.
8. Follow through on your promise and send what you said you would send.
9. Follow laws for marketing based around alcohol, tobacco, & marketing directed towards children under 13.
10. If you are made aware of violations work with TextPower to quickly and completely rectify them.

We welcome your questions and look forward to assisting you in creating, building and launching a successful and compliant text messaging program.



Introduction to detailed explanation:

Many entities including utilities, municipalities and universities that explore the use of text messaging become concerned or apprehensive when the depth and extent of the rules and regulations about its allowable uses are explained to them. In fact, these rules exist to help, not hinder, the quality of text messaging experiences for mobile users. They eliminate spam and protect both the mobile user and the sender of the messages.

Supported by unprecedented mobile phone adoption and increased reliance by consumers on these devices, recent years have brought mobile marketing and alerting to the forefront of the tools for many companies. While mobile marketing encompasses many types of media and tools, from applications to mobile websites, this guide focuses on the acceptable uses, regulations and compliance requirements for text messaging services established by carriers and other legal entities that govern its use.

Text messaging is the fastest and most efficient method of alerting mass numbers of people in emergencies and also serves as a key tool in the marketing by retailers, media companies, entertainment properties, consumer packaged goods brands and more. 95% of text messages are opened within just a few minutes and virtually every phone manufactured worldwide has the capability to send and receive SMS. In short, text messaging is a quick and effective way to communicate with a mobile user to notify them of an event, stimulate a sale, advise them of available offers, promote a product and much more.

Due to the very personal nature of text messages (no other alerting mechanism is so widely viewed as person-to-person) text message communication is highly regulated. In order to keep this medium free from unsolicited messages responsible governing bodies carefully monitor all text message providers, marketers and their programs. The industry's governing bodies ([CTIA](#), [MMA](#), [FCC](#)) have implemented complex and often fluid rules and regulatory requirements about the use of text messaging and these will likely appear intimidating to the nascent user.

This guide attempts to distill many of these compliance requirements and regulations into a more digestible format but if you wish to see the original source materials that define all of these rules and regulations you can download them from the TextPower website here:

www.textpower.com/Docs/CTIA_playbook.pdf
www.textpower.com/Docs/2013-MMA-bestpractices.pdf



TextPower has “baked in” the compliance with each of these rules and requirements so that you don’t have to be concerned about violations. After reading this guide we hope you will see how painless and easy text marketing can be when we guide you through the process step by step.

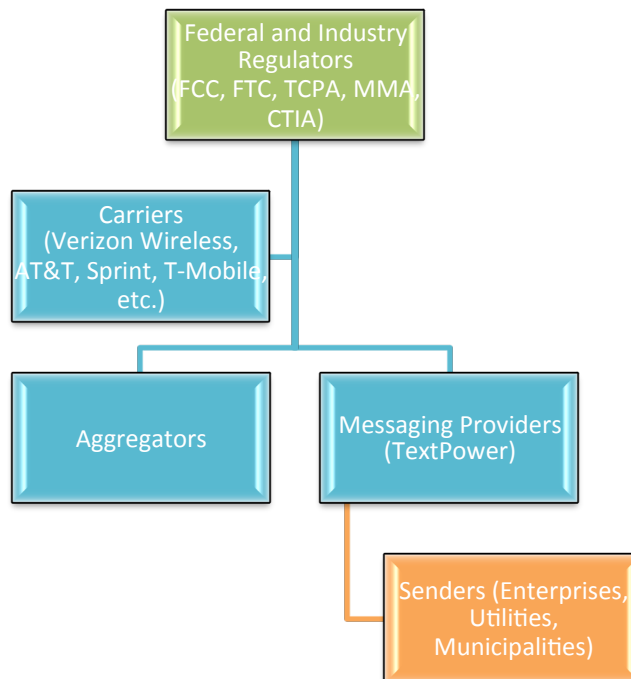
This guide provides an overview of the steps needed to build a strong, successful text marketing program including how to:

- Build a compliant opt-in database
- Document and save program opt-ins and permissions
- Clearly communicate what people are signing up for (content, frequency, etc.) upon subscribing to ensure long-term customer satisfaction
- Add necessary language to messages and websites for viewing by program participants
- Utilize multimedia for better customer engagement and action
- Ensure legal compliance
- Only send message to legally obtained opted-in numbers
- Follow laws for marketing based around alcohol, tobacco, & marketing directed towards children under 13 years old. This guide is based on rules and regulations in place as of February 2013. Readers are encouraged to refer to documents published online by the CTIA, MMA, carriers, FCC and FTC for updates.



SMS Industry Hierarchy

Mobile is different than the Internet, and understanding the difference will keep you out of trouble and in the good graces of your customers. First, let's explore the parties involved in the text messaging ecosystem:



Federal Communications Commission (FCC)

The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, D.C. and U.S. territories. They're here to protect the integrity of all mobile communications, including text messaging.

Federal Trade Commission (FTC)

The Federal Trade Commission is the nation's consumer protection agency. It collects complaints about companies, business practices, identity theft, and episodes of violence in the media. Its main function is to ensure text marketers adhere to proper business rules and conduct.

Mobile Marketing Association (MMA)

The Mobile Marketing Association is the leading global non-profit trade association established to foster growth of all areas of mobile marketing. The



MMA's stated goals are to clear obstacles to market development, establish mobile media guidelines and best practices for sustainable growth, as well as evangelize the use of mobile media.

CTIA - The Wireless Association

This is the trade group that represents a wide variety of interests on behalf of telecom carriers, manufacturers, consultants, vendors and other members of the wireless industry.

Mobile Aggregators

Mobile aggregators maintain direct connections to the wireless carriers. They deliver their customers' text messages, which they aggregate through their gateways. An aggregator enables a brand's message to be delivered by you to go to one mobile service provider who then connects and sends to all of the wireless carriers.

Wireless Service Providers (Carriers)

AT&T, Verizon, Sprint and T-Mobile are the major carriers providing wireless services in the United States but there are dozens of others. Coordination must be setup with each of these carriers to be sure that your messages are delivered to the proper mobile user. TextPower handles all of this for you.

Text Messaging Platform Providers

These technology platform providers, such as TextPower, enable businesses of all types to send text messages to their customers. Top providers will "bake in" the best practices and compliance with regulations and carrier requirements.

Text Message Senders

Enterprises, utilities, municipalities, brands, entertainment properties, media outlets and companies who design and implement text marketing campaigns utilizing to alert, inform and update their mobile users.



Why are text messages (SMS) regulated?

First, to be clear, only some types of text messages are regulated. The typical exchange between two mobile users (e.g., “where r u?” answered by “I’m at the coffee shop”) is not regulated. That is referred to as peer-to-peer messaging and is not regulated. Automatic to peer (A2P) is the regulated variety and it is the type that short codes are used for – sending alerts, marketing, promotional offers, one-time information request responses, etc.

Text messages are distributed over the heavily regulated cellular phone network, so it falls under many of the rules and regulations that govern the wireless industry. This is why text message marketing is more heavily regulated than email marketing. Text messages (otherwise known as “SMS” which stands for “short message service”) are considered to be the same type of transaction as voice calls and are encompassed by the TCPA ([‘Telephone Consumer Protection Act’](#), the nation’s primary anti-telemarketing law) as well as other federal regulations.

However, text messaging regulations don’t end with the TCPA. In an effort to ensure that text marketing does not follow the footsteps of the spam-ridden email marketing channel, 5 or 6 digit phone numbers, called short codes (such as 585858 below) were created. These short codes enable brands to send commercial text messaging, whether marketing messages or alerts, to consumers and are regulated by strict guidelines from all of the wireless carriers and enforced by their trade group, the CTIA.

It is important to note that many text message programs utilize 10-digit phone numbers (such as 213-555-5555). However, these “long codes” are not universally supported by cellular networks and are not currently regulated by wireless networks, leaving this medium more susceptible to spam.

Below are the best practices for creating and managing text message marketing or alerting program and a simple guide of Dos and Don’ts to help get you started with your text message (SMS/MMS) marketing program. This guide incorporates what we’ve discussed regarding text marketing regulations. It also includes how to begin a campaign by building your subscriber database and how to properly advertise your program to drive mobile subscribers (opt-ins).

Successful text marketing programs begin with building a loyal subscriber list in the most legal and ethical manner. The acquisition process is easy (promote and engage customers) but there are a few guidelines and rules you must follow.



The Dos and Don'ts of Text Message (SMS/MMS) Marketing

There are some very specific requirements in regards to how you can and cannot accept “opt-in” (permission to send messages) from mobile users:

- ***Verbal confirmation to join a mobile database is not acceptable. Consider promoting the program and how to join with in-store and register signage, allowing the customer to join at the time they are most engaged.***
- ***You cannot use the word “Free” in describing standard messaging rate campaigns. The carriers prohibit the use of the word, in this context, because the message send or receipt may cost the end user if they do not have a messaging plan.***
- ***You cannot require a consumer's consent as a condition of purchasing anything.***

In addition to these specific requirements there are others that you must comply with as well:

Proper Acquisition of Mobile Phone Numbers

The best part of text message (SMS/MMS) marketing, besides the high ROI, is that it is **permission based**. The recipient *must* be the one to take the action to enter into your text message program before you ever send them a text. This can be done via a web-based opt-in or by the mobile user sending a text to a short code with a specific “keyword” in it that indicates permission to receive messages.

No old, rented, or purchased lists!

You cannot use an existing list of phone numbers, even if provided to you by your customer, unless they specifically gave explicit permission to join the text message program. This means lists gathered for any reason other than to specifically join your text marketing program, may not be texted at all. Some companies have already been penalized for this violation and have incurred significant legal damages from not following the guidelines. For example, if you have conduct a vote via SMS you cannot under any circumstances harvest those numbers and use them for any other purpose unless the voting instructions specifically stated that by sending a vote the user also gives permission to receive future messages from you.

Be clear!

You must be clear, concise, and upfront about the text message marketing and alerting program. The fastest way to see your database dwindle and to put yourself at risk for legal action, is to pull a bait and switch with your audience,



and have them opt-in to receive one type of messages and then you start sending messages unrelated to what they opted-in for.

Consider clearly defining your text messaging program strategies in the body of your first text message to make sure the customer clearly understands what they will receive and you will have a fan for life.

Disclose!

Any advertising (print, TV, online, and radio) or signup forms that solicits mobile numbers must include 'clear and conspicuous' disclosure of:

- The program's name, description, and frequency of text messaging (the maximum number of messages you will receive in a specified period such as per day, week or month)
- URL to full terms and conditions containing privacy policy and stop/help information
- How a user can opt-out of a program, otherwise called STOP instructions (the word stop must be in bold, for recurring campaigns only, if you are only sending one message it's not required)
- HELP instructions (in bold text)
- Additional carrier costs disclosures
- For "standard rate" campaigns, campaigns in which you are not charging a premium fee (i.e., \$3.99/month) to join, the following copy must be included in every message, in one of these two versions:
 - Message and data rates may apply
 - Msg&data rates may apply

Get it in writing!

Mobile marketers must obtain explicit 'written' not verbal consent from all recipients to add them to a text message subscriber list. In this case, "written" doesn't mean "on paper," but it does mean, "documented and saved".

The following is a list of acceptable ways for a consumer to join your mobile database.

- The customer joins your text message database by texting a keyword from their mobile phone. This message is considered an "MO", or mobile-originated message. Like most text message providers, TextPower records these types of opt-ins under the respective client as proof of "written" consent.
- The customer can join a subscriber list by filling out an online form. This form must explicitly explain what the person will receive when providing



his/her mobile number. Depending on who is hosting the website where the form resides, you may be responsible for storing these mobile numbers.

- People can also join a database by filling out a paper form. This form must clearly explain what the person will receive when providing his/her mobile number, as well as include all legal copy shown in the sample ad above. You are responsible for maintaining these records.

Confirming the Subscribers' Opt-in and Initial Messaging

Since text marketing is permission based, each text messaging platform provider must have processes in place to verify that the person signing up for mobile alerts is actually the owner of the mobile number that opted into the program. This ensures that no one is entered into a program without his/her permission. In these cases, you should use a “double opt-in” process, which is required when the opt-in comes from somewhere other than from the mobile device itself, such as a web or paper registration page.

The double opt-in requirement is satisfied by sending an initial text message to the mobile number asking the subscriber to reply Y or Yes to the received message, to verify they are in possession of the mobile phone and give permission to join the mobile database and receive text alerts from the known sender.

- If the opt-in occurred via MO (i.e. the subscriber texts in the keyword from their mobile phone), no additional validation is required and the person is opted in to your database.
- If the opt-in was not from a mobile phone but rather via web or paper, you must complete the double opt-in process. Here is an example of a double opt-in message flow:
 - MobileNumber: Weather forecast mobile alerts sent out **5** days/wk. Reply **HELP** for help. Reply **STOP** to cancel. **Msg&data rates may apply**. Terms/Privacy: <http://www.mycompany.com/terms>
 - Initial Message to opting in customer: Channel123 weather alerts. 5msgs/week. Reply Help for help. Msg&data rates may apply. Reply Y to confirm your sign up.
 - Response (MO) from customer (double opt-in): Y
 - Welcome Message: Thanks for signing up for channel 123's weather alerts. Msgs go out each weekday at 7am. Reply HELP for help, STOP to cancel. Msg&data rates may apply



Opt-ins expire in 18 Months!

Opted-in text message subscriptions automatically expire after a certain period of inactivity. If you have not sent a message to your mobile database in that time frame, the campaign is considered inactive and subscribers can no longer be contacted and ported from one messaging provider to another.

For standard rate campaigns (campaigns that do not charge a fee other than standard data and message rates, such as TextPower's alerting services), opt-ins expire after eighteen (18) months.

How often can I message my clients?

It's important to comply with the frequency you promised your customers. If you promise weekly messaging, you cannot send daily texts. If you go over and above the message count agreed upon by the customer during the initial consent phase, your messaging will be considered "unsolicited" because the consumer did not give you permission to send it. Sending fewer messages than anticipated is generally a more accepted practice.

Here are some additional frequency examples by industry:

- Retailers often send weekly specials
- TV shows send weekly tune-in reminders or previews
- Horoscopes, news, and weather alerts are typically sent daily, or Monday-Friday
- Breaking news, school closings, severe weather warnings are based on urgency
- Sports alerts are sent more frequently during the season than in the off-season and can depend on the sport. Alerts for leagues with more games (Baseball) tend to send more alerts than alerts for leagues with fewer games (Football).

As a marketer, it's important to set reasonable expectations about how often you are going to message your mobile audience. To ensure the best results, make sure you follow through on this brand promise.

What time of day can I send messages?

The most effective programs take into account the times of day that the mobile audience is most frequently on the phone and the time periods most appropriate and relevant within their daily routine. Always have a clear purpose and relevance to the time and date sending.



In many cases it's impossible to plan when messages are sent; alerts for emergencies, weather updates, power outages, etc., have to be sent as they occur. If, however, you are planning on sending messages for purposes that are not time-sensitive TextPower recommends following the best practices in determining when to send your messages:

- **No one likes Mondays:** Unless your message is related to that specific date (or a reminder), Mondays have the lowest response most likely due to the overwhelming content that people receive after weekend via email, television, and mail.
- **Avoid rush hour:** Since it is text messaging, people cannot read or engage with a text message during common rush hours, typically 6:30am–8:30 am and 4:00pm-7:00pm local time.
- **Be respectful:** Not too early in the morning and not too late at night. Think about when users would want to accept a phone call. A text message has a similar alert method and people typically don't want to be bothered at those times.
- **Go local:** Always keep local time zones in mind. Send messaging out at the times most impactful to those in each local market. Particularly effective for TV/radio shows, retail sales, and time sensitive offers.
- **Breaking news trumps all:** The bigger the news, the more lenient you can be with messaging outside of “mobile business hours.”
- **Appointment reminders:** Reminders should be sent at least 24 hours before the appointment and contain all necessary information.
- **Ongoing reminder messages:** Daily/monthly reminders on any subject are popular in this increasingly busy world. Send at the time that best fits your goals: horoscopes in the morning and high school football score alerts on Friday evening.
- **Drive midday foot traffic:** Trying to drive people into your establishment during lunch hours? Send messages at 11:30 AM local time to catch those who are making lunch plans. Include a coupon for higher redemption rates
- **Drive in-store weekend foot traffic:** Thursdays are popular dates to send text messages with strong response rates and Fridays between 2-5 PM have shown great success for driving retail traffic on Saturday mornings.
- **Support upcoming events:** Send reminders to increase RSVPs and attendance. Include specific event information to assist attendees with planning and logistics.



- **Seasonal and holiday messaging:** Send holiday messages with valuable content up to a week before the event to allow customers time to plan (upcoming sales, in-store events etc.).

What content can't I send?

Text message marketing, like any form of marketing, requires consideration of the audience and consumers receiving the message. Here is a list of content prohibited by various rules, regulations, and laws – none of this should be surprising.

- Copyrighted or trademarked content that is not owned by you or your business (unless licensed)
- Sexually explicit material of any type
- Nudity
- Anything promoting illegal drugs/tobacco/controlled substance abuse
- Non-age verified alcohol messages (can send messages with age verification)
- Profanity
- Hate/discriminatory speech
- Threats of violence
- Graphic violence
- Confidential information
- Anything involving misleading or confusing others via impersonation
- Anything promoting or involving dangerous, unlawful, or illegal activities.

Always Check with Your Legal Department or Representative

If you plan to send the following types of messages, there are additional state and federal laws you must follow. Contests and sweepstakes are perfect for engaging consumers through text message marketing. But before you implement a program, you must be aware of individual state laws. Here are the most common types of program content that should be reviewed by legal teams:

- Contests, lotteries and sweepstakes conducted via text messaging are governed by individual state laws. Carriers are extremely reluctant to allow these via SMS and you must obtain specific permission to do so.
- Messages targeting children under the age of 13 must follow Federal COPPA legislation. While messaging this audience is possible, it requires a combination of “age gating” (the process in which a company confirms the person entering the program meets the minimum age required by the program) and parental consent. Other laws may apply as well.



- Alcohol-related text message campaigns also require age verification, and can only be promoted in places where the audience is over 21, such as bars and nightclubs. You cannot promote the use or consumption of hard alcohol.
- Tobacco promotions require age gating and you cannot directly promote its consumption.

Interactive programs work very well in text marketing but we strongly recommend that you work closely with your internal legal team to ensure that any offerings meet local, state and federal legal requirements.

What Are The Risks/Consequences If I Do Something Wrong?

If you follow the guidelines and templates provided by TextPower it is highly unlikely that you will be in violation of any compliance or regulatory requirements. TextPower goes to great lengths to “bake in” all of the appropriate compliance requirements so that you can go about your business or alerting, advertising or authenticating via text messages without concern about violations.

That said, the wireless carriers and CTIA audit all text messaging marketing programs on a regular basis. If your program is found to be non-compliant, we will contact you by phone and/or email to work jointly to rectify the violation.

If you are contacted about an infraction you must complete the steps needed to correct the issue as quickly as possible. Typically infractions are related to improper language included in the program’s promotional materials, or improper use of the word “FREE”.

If the violation is considered severe, or repeated at a frequency deemed by the carriers or CTIA to be excessive, we reserve the right to suspend your account (to protect both you and us) or a carrier or aggregator may suspend your short code access, bringing any of your programs running on that short code to an immediate stop.

The more serious consequences to violating the terms of your text program include:

- Financial penalties imposed by carriers (evidence shows they are absolutely legal and are almost always collected by the carriers – and they can be significant)
- Your customers will opt out of your program
- Unhappy consumers lead to bad publicity, social media sharing, etc.



- You earn a reputation by your customers as a spammer or disrespectful
- You have a class action lawsuit filed against you for violating the TCPA

Marketing via text messages can have amazing results for big and small companies alike. It is a mechanism that many consumers prefer and is a remarkably easy tool for building long-term relationships. By following a few simple rules, you can build a database that drives incredibly high ROI and longer-term customer loyalty.

For more information about TextPower's services or to simply discuss details about these regulations contact us at:

www.TextPower.com
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Conclusion

To recap, here are the best practices for running a successful text messaging or alerting program, whether for marketing or alerting:

- Build a compliant database
- Document and save program opt-ins and messaging permissions
- Clearly communicate what people are signing up for (content, frequency, etc.) up-front to ensure customer satisfaction
- Add your text marketing privacy policy to your website for easy access by program participants
- Utilize multimedia for better customer engagement and action
- Work with your legal team to ensure your program offerings are legally compliant
- Only send message to legally obtained opted-in numbers
- Follow through on your promise and send what you said you would send
- Follow laws for marketing based around alcohol, tobacco, & marketing directed towards children under 13
- If you are made aware of violations work with TextPower to quickly and completely rectify them.

Thanks for using TextPower's services. If you have any questions about these regulations and requirements you should contact us directly via email (Support@TextPower.com) or at 888.818.1808.