

FEDERAL TELEMARKETING RESTRICTIONS

- Including the new National Do-Not-Call Rules -

The **Federal Communications Commission (FCC)**, which regulates both intrastate (within the state) and interstate (between states) telemarketing, and the **Federal Trade Commission (FTC)**, which regulates interstate-only telemarketing, have issued new and revised rules with which all dealerships must comply. Whereas the FTC restrictions and many of the FCC restrictions generally pertain solely to telemarketing to consumers, several FCC rules apply to telemarketing to any person or entity, including other businesses. Therefore, **both automobile and truck dealers** must be familiar with the restrictions. The National DNC list does not preempt Indiana laws. (Indiana's DNC laws are stricter than the national DNC laws.) Therefore, dealers must check both lists. If a person is on both lists, the dealer must comply with the stricter of the state or national DNC laws. If the customer is only on the national DNC list, a dealer must only comply with the national law. The same is true if a customer is only on the Indiana list. Unless Indiana merges with the national list, dealers must abide by both telemarketing rules.

With potential penalties as high as \$11,000 for each violation, dealers should make sure they take the necessary steps to protect themselves from liability under the new regulations.

Effective October 1, 2003, the new rule does the following:

- Prohibits the initiation of a telephone solicitation to consumers registered on the National Do-Not-Call Registry.

You are prohibited from initiating a telephone call or message to a consumer or company who has registered his or her phone number on the National Do-Not-Call Registry. Such do-not-call registrations must be honored for a period of 5 years. This applies to phone calls that are made "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services."

This new requirement does not apply to consumers or companies from or with whom:

1. You have received *prior, written express permission* to receive such calls;
2. You have an *established business relationship* (an inquiry within 3 months immediately preceding the call or a purchase, lease, rental or transaction within 18 months immediately preceding the date of the call); or
3. The person making the call has a *personal relationship*.

- Requires telemarketers to institute procedures to honor do-not-call requests that persons make specifically to their business.

In addition to not calling customers on the national DNC list, you are also prohibited from placing calls to consumers who have asked you not to call them. In fact, you are prohibited from making any telemarketing calls until you have instituted the following procedures:

- a) *Written Policy.*
- b) *Training.*
- c) *Recording Do-Not-Call Requests ("Customer Specific" Do-Not-Call List).*
- d) *Identifying Yourself.*

- Prohibits telephone solicitations at any time other than 8 a.m. – 9 p.m.

- Requires the transmission of Caller ID Information effective January 29, 2004.

- Prohibits sending unsolicited advertisements to fax machines.

This prohibition does not extend to fax messages that are sent as e-mail over the Internet.

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- Requires fax advertisements to include the sender's identification.
- Imposes restrictions on the use of autodialers and prerecorded messages.

DEALERS SHOULD TAKE THE FOLLOWING STEPS TO INSURE THEY ARE IN COMPLIANCE:

1. **Register with the FTC and download the appropriate do-not-call lists.** This is the single most important step you can take to avoid liability. The FTC will keep records of when dealers register and download the DNC list. You can register with the FTC online by following the instructions at <https://telemarketing.donotcall.gov/>. Go to the bottom of the page and click the button labeled "all new users must click here to create a profile." The FTC DNC list is broken down by area code. Businesses are permitted to download up to five area codes free of charge. For each area code over the first five, there is a charge of \$25. You are required to update your list every 90 days. Once you register and pay the appropriate annual fee, there is no additional charge for these updates.
2. **Establish an internal do-not-call list.** The rules require you to keep your own list of customers and contacts who have asked not to be called. You must keep a "company-specific" do-not-call list with the names, if given by the individual, and the telephone numbers of people who have asked not to be called.
3. **Establish a written, formal policy regarding the do-not-call rules, appoint a person in your organization to be responsible for it, and distribute it to your employees.** This policy should state that it is your company's policy to abide by the do-not-call rules, that you have designated an employee to enforce the policy, and that you will train your employees to comply with the rules, as well as other steps you have taken to comply.
4. **Document your compliance efforts.** The federal regulations contain a "safe harbor" provision, which state that if you take certain specific actions and document the steps you have taken to comply with the "do-not-call rule," you will not be subject to penalties in the event of calls made as a result of mistakes or inadvertence. To take advantage of this safe harbor, you must adopt written procedures setting forth how your operation complies with the rules, you must train your personnel in the rule and your procedures, you must keep a list of all numbers that you cannot contact, you must access the FTC database (the "do-not-call" registry) at least once every 90 days, and you must monitor and enforce your dealership's policies and procedures.

This is just a review of the basic rules. For complete information on the restrictions imposed by both federal agencies, including compliance dates and other responsibilities, please consult NADA Management Guide L.44, *A Dealer Guide to Federal Telemarketing Restrictions*. You can order this guide from the National Automobile Dealers Association (NADA) by calling NADA Management Education 800-252-6232, ext. 2 or 703-821-7227. Cost to NADA members is \$25.00, \$50.00 for non-members, plus shipping. Or, order an electronic version online at www.nada.org/mecatalog.