

Q&A FOR TELEMARKETERS AND SELLERS ABOUT THE DO NOT CALL PROVISIONS OF THE FTC'S TELEMARKETING SALES RULE

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

BACKGROUND

- 1. If I'm a telemarketer or seller, will these questions and answers tell me what I need to know about complying with the Federal Trade Commission (FTC) and Federal Communications Commission (FCC) do not call regulations?**

It is important that sellers and others involved in telemarketing recognize that both the FTC and the FCC regulate telemarketing practices. This site deals with the do not call provisions of the Telemarketing Sales Rule (TSR) enforced by the FTC. You can review the FCC's regulations at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf.

- 2. What is the National Do Not Call Registry?**

The National Do Not Call Registry is a list of phone numbers from consumers who have indicated their preference to limit the telemarketing calls they receive. The registry is managed by the FTC, the nation's consumer protection agency. It will be enforced by the FTC, the FCC, and state officials.

- 3. Why was the National Do Not Call Registry created?**

The registry was created to offer consumers a choice regarding telemarketing calls. The FTC's decision to create the National Do Not Call Registry was the culmination of a comprehensive, three-year review of the Telemarketing Sales Rule, as well as the FTC's extensive experience enforcing the Rule in the previous seven years. The FTC also held numerous workshops, meetings and briefings to solicit feedback from interested parties, and considered more than 64,000 public comments, most of which favored creating the registry. You can review the entire record of the Rule review at www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm.

COVERAGE UNDER THE TSR

- 4. What calls are covered?**

The do not call provisions of the TSR cover any plan, program or campaign to sell goods or services through interstate phone calls. This includes calls by telemarketers who solicit consumers, often on behalf of third party sellers. It also includes sellers who are paid to provide, offer to provide, or arrange to provide goods or services to consumers.

- 5. What types of calls are not covered by the National Do Not Call Registry?**

The do not call provisions do not cover calls from political organizations, charities, telephone surveyors, or companies with which a consumer has an existing business relationship.

6. Do the do not call provisions of the TSR cover calls soliciting money for charities?

Charities are not covered by the requirements of the national registry. However, if a third-party telemarketer is calling on behalf of a charity, a consumer may ask not to receive any more calls from or on behalf of that specific charity. If a third-party telemarketer calls again on behalf of that charity, the telemarketer may be subject to a fine of up to \$11,000.

7. Do the do not call provisions of the TSR cover political solicitations?

No. Political solicitations are not covered by the TSR at all, since they are not included in its definition of “telemarketing.”

8. If a call includes a telephone survey and a sales pitch, is it covered?

Yes. Callers purporting to take a survey, but also offering to sell goods or services, must comply with the do not call provisions. But if the call is for the sole purpose of conducting a survey, it is exempt.

9. How does the established business relationship provision work for a consumer whose number is on the registry?

For a consumer whose number is on the registry: A company with which a consumer has an established business relationship may call for up to 18 months after the consumer’s last purchase or last delivery, or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call. If the company calls again, it may be subject to a fine of up to \$11,000.

If a consumer makes an inquiry or submits an application to a company, the company can call for three months. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an established business relationship with the consumer.

A consumer whose number is not on the national registry can still prohibit individual telemarketers from calling by asking to be put on the company’s own do not call list.

ACCESSING THE REGISTRY

10. Who can access the national registry?

Access to the national registry is limited to sellers, telemarketers and other service providers. Sellers are companies that provide, offer to provide, or arrange for others to provide goods or services to a customer in return for some type of payment as part of a telemarketing transaction. Telemarketers are companies that make telephone calls to consumers on behalf of sellers. Service providers are companies that offer services to sellers engaged in telemarketing transactions, such as providing lists of telephone numbers to call, or removing telephone numbers from the sellers’ lists.

Some sellers are exempt from the FTC’s Rules, but are required to access the registry under the FCC’s Rules. Other sellers (charities and political organizations) are exempt from accessing the national registry under both agencies’ rules. These exempt sellers still may access the registry voluntarily, and do not have to pay a fee for that access. They must, however, submit appropriate certification information to gain access to the registry.

11. Can I use numbers on the registry for any purpose other than preventing telemarketing calls?

No. The registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers on the registry. Any entity that accesses the national registry will be required to certify, under penalty of law, that it is accessing the registry solely to comply with the TSR or to prevent calls to numbers on the registry.

12. How can I access the registry?

The FTC is preparing a fully-automated and secure Web site at www.telemarketing.donotcall.gov to provide members of the telemarketing industry with access to the registry's database of telephone numbers, sorted by area code. [That Web site is NOT yet available.] The first time you access the registry, you must provide identifying information about you and your company. If you are a telemarketer or service provider accessing the registry on behalf of your seller-clients, you will be required to identify your seller-clients and provide their unique account numbers. The only consumer information available from the registry is telephone numbers. After you (or the company telemarketing on your behalf) have accessed the registry the first time, you'll have the option of downloading only changes in the data that have occurred since the last time you accessed the registry.

13. When can I access the National Do Not Call Registry?

The National Do Not Call Registry will be available to the telemarketing industry September 1, 2003. Enforcement of the National Do Not Call Registry begins October 1, 2003. Companies required to access the registry and remove the numbers on the registry from their calling lists must do so by October 1, 2003, to be in compliance.

14. What information must I provide to access the registry?

The first time you access the system, you will be asked to provide certain limited identifying information, such as your company name and address, contact person, and the contact person's telephone number and email address. If you are accessing the registry on behalf of a seller-client, you also will have to identify that seller-client.

15. How often will I have to access the registry and remove numbers from my calling list?

After October 1, 2003, you will have to synchronize your lists with an updated version of the registry every three months.

16. How often may I download data from the national registry?

You will be able to access data as often as you like during the course of your annual period for those area codes for which they have paid. However, to protect system integrity, you may download data files from the national registry only once in any 24-hour period.

17. What information can I access from the national registry?

The only consumer information that companies will receive from the national registry is registrants' telephone numbers. The numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired (and paid for), by selecting, for example, all

area codes within a certain state. Of course, companies also will be able to access the entire national registry.

18. May I check just a few numbers at a time to see if they are registered?

Companies that have provided the required identification information and certification, and paid the appropriate fee (if they want to access more than five area codes) will be allowed to check a small number of telephone numbers (10 or less) at a time via interactive Internet pages. This will permit small volume callers to comply with the do not call requirements of the TSR without having to download a potentially large list of all registered telephone numbers within a particular area.

19. What format will the registry use?

Data will be available from the national registry using Internet-based formats and download methods that serve both small and large businesses. Data also will be available in three different sets: full lists, change lists, and small list look-ups. Full lists and change lists will be available as flat files or XML tagged data files. You will indicate your preference for flat files or XML tagged data files as part of your profile.

With a Web browser, you will access a secure Web page that will allow you to select the download set that you prefer. For the small list lookup, you will be asked to enter from one to 10 telephone numbers on an online form. After entering the numbers and clicking a button, the national registry will display the list of numbers you entered and whether each number is in the national registry.

You will be limited to the numbers in the area code(s) to which you have subscribed. The full list will contain just 10-digit telephone numbers, with a single number on each line. For the change list in flat file format, each line of the file will contain a telephone number, the date of the change, and an "A" (for Added) or "D" (for Deleted). The change list data will be fixed-width fields.

For those who select XML tagged data, the XML tags will include: a login and encrypted password; the name and email address of the company contact person; certification that access to the registry is solely to comply with the provisions of the TSR; the account number(s) for which the download is being performed; and whether a full list or change list is to be downloaded.

For both flat files and XML tagged data, if you select a change list, you will be provided all telephone numbers that have been added to, or deleted from, the registry since the date of your previous access. Change lists, for both flat files and XML tagged data, will be available to provide changes on a daily basis (representing the additions and deletions from the day before).

To assist in automating the download process, the national registry will offer the option to set up Web services for requesting change lists in XML tagged data format.

PAYING FOR ACCESS

20. How much does it cost to access the registry?

Data for up to five area codes will be available for free. Beyond that, there is an annual fee of \$25 per area code of data, with a maximum annual fee of \$7,375 for the entire U.S. database.

21. How often will I have to pay a fee?

The fee must be paid annually. Payment of the fee provides access to the data for an “annual period,” which is defined as the twelve months following the first day of the month in which the seller paid the fee. For example, a seller who pays its annual fee on September 15, 2003, has an “annual period” that runs from September 1, 2003 through August 31, 2004.

22. Who must pay the fee?

All sellers covered by the TSR must pay the appropriate fee for an area code of data before they call, or cause a telemarketer to call, any consumer within that area code, even those consumers whose telephone numbers are not on the registry. The only exceptions are for sellers that call only consumers with which they have an existing business relationship or written agreement to call, and do not access the national registry for any other purpose. Charities and political organizations that voluntarily want to access the national registry to prevent calling consumers whose numbers are on the registry may access the registry at no cost.

Telemarketers and service providers may access the registry, at no cost, through the use of their seller-client’s unique account number. Even though they are not required by law to do so, telemarketers and service providers may gain access to the national registry on their own behalf, but they must pay a separate fee for that ability. But before placing calls on behalf of a seller-client, telemarketers are required to ensure that their seller-client has paid the appropriate annual fee.

23. How can I pay the fee?

Fees will be payable via credit card (which will permit the transfer of data in the same session, if the payment is approved) or electronic funds transfer (EFT). EFT will require you to wait approximately three days for the funds to clear before data access will be provided. You must pay the fee prior to gaining access to the registry. Sellers and exempt entities can pay the fee directly or through their telemarketers or service providers (to which the seller or exempt entity has provided the necessary authority).

24. What if I pay for a small number of area codes, and then later in the year expand my business to call more area codes? Will I have to pay twice?

If you need to access data from more area codes than you initially selected, you may do so, but you will have to pay for access to those additional area codes. Obtaining additional data from the registry during the first six months of your annual period will require a payment of \$25 for each new area code. During the second six month period, the charge to obtain data from each new area code is \$15. Payment for additional data provides you with access to the additional data for the remainder of your annual period.

25. What happens after I pay for access?

After payment is processed, you will be given a unique account number and permitted access to the appropriate portions of the registry. Using that account number in future visits to the Web site will speed the time needed for access. On subsequent visits to the Web site, you will be able to download either a full updated list of numbers from your selected area codes, or a more limited list, consisting of changes to the registry (both additions and deletions) that have occurred since the day of your last download. This limits the amount of data that you need to download during each

visit. The change file will consist of each telephone number that has changed, whether it was added or deleted, and the date of the change.

26. If I'm a telemarketer or service provider working for a seller, can I use the seller's account number to access the registry?

A telemarketer or other service provider working on behalf of a seller may access the registry directly or through the use of its seller-client's unique account number. If access is gained through its seller-client's account number, the telemarketer or service provider will not have to pay a separate fee for that access. The extent of its access will be limited to the area codes requested and paid for by its seller-client. The telemarketer or service provider also will be permitted to access the registry at no additional cost, once the annual fee has been paid by its seller-client. Of course, sellers or telemarketers must use a version of the registry that's no more than three months old before they make any telemarketing calls.

If a telemarketer or service provider is accessing the registry directly, that is, if a telemarketer or service provider decides to obtain the information on its own behalf, it will have to pay a separate fee and comply with all requirements placed on sellers accessing the registry. Such a telemarketer or service provider will be provided an account number that can be used only by that company. In other words, that account number is not transferrable.

27. What if a seller uses one telemarketer at the beginning of the year and switches to another later in the year? Will the seller have to pay twice?

No. Each seller will have a unique account number that it can give to the telemarketers and service providers who may access the registry on the seller's behalf.

COMPLIANCE

28. What happens to companies that don't pay for access the registry?

A company that is a seller or telemarketer could be liable for placing any telemarketing calls (even to numbers NOT on the registry) unless the seller has paid the required fee for access to the registry. Violators may be subject to fines of up to \$11,000 per violation. Each call may be considered a separate violation.

29. What if I call a number that's not on the registry without checking the registry first?

It's against the law to call (or cause a telemarketer to call) any number on the registry (unless the seller has an established business relationship with the consumer whose number is being called, or the consumer has given written agreement to be called). But it's also against the law for a seller to call (or cause a telemarketer to call) any person whose number is within a given area code unless the seller first has paid the annual fee for access to the portion of the registry that includes numbers within that area code.

In addition, it's against the law for a telemarketer, calling on behalf of a seller, to call any person whose number is within a given area code unless the seller has first paid the annual fee for access to the portion of the registry that includes numbers within that area code. Telemarketers must make sure that their seller-clients have paid for access to the registry before placing any telemarketing calls on their behalf.

30. What's my liability if my company inadvertently calls a number on the registry?

The TSR has a "safe harbor" for inadvertent mistakes. If a seller or telemarketer can show that, as part of its routine business practice, it meets all the requirements of the safe harbor, it will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls, or for calling a person on the registry. To meet the safe harbor requirements, the seller or telemarketer must demonstrate that:

1. it has written procedures to comply with the do not call requirements
2. it trains its personnel in those procedures
3. it monitors and enforces compliance with these procedures
4. it maintains a company-specific list of telephone numbers that it may not call
5. it accesses the national registry no more than three months before calling any consumer, and maintains records documenting this process
6. any call made in violation of the do not call rules was the result of an error.

31. How do the registries operated by the FTC, the FCC and the various States fit together?

On June 26, 2003, the FCC announced that it was joining the FTC in creating and enforcing one national registry. Together, the FTC and the FCC have jurisdiction over nearly all sales calls placed to U.S. consumers.

Over half the States currently administer their own do not call lists. Most of these states will add the numbers on their registries to the National Do Not Call Registry. However, the TSR does NOT preempt state law, so sellers, telemarketers, and others who do telemarketing will have to check with various states to determine what is required for compliance at the state level. For information about the FCC's telemarketing regulations, visit the FCC's Web site at www.fcc.gov. A full copy of the FCC's regulations can be found at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf.

The FTC and FCC are working to harmonize state and federal do not call laws. The goal is to achieve a single national registry for the convenience and efficiency of consumers as well as businesses.

TROUBLESHOOTING

32. What if I have problems when I try to access the national registry?

The Web site at www.telemarketing.donotcall.gov will have help available online during regular business hours via a secure electronic form.

33. Where can I get more information about compliance?

The best source of information about complying with the do not call provisions of the TSR is the FTC's Web site at www.ftc.gov/donotcall. It includes business information about the registry. You can view the entire TSR at that site.

It's important that sellers and others involved in telemarketing recognize that both the FTC and the FCC regulate telemarketing practices. Those involved in telemarketing should review regulations put in place by both agencies. The FCC's regulations may be found at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf.



NATIONAL DO NOT CALL REGISTRY

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. The FTC manages the National Do Not Call Registry, which gives consumers a choice about getting telemarketing calls at home. To register a number, log on to DONOTCALL.GOV, or call toll-free, 1-888-382-1222; TTY 1-866-290-4236.