

CHAPTER 45D**TELEMARKETING: DO NOT CALL****Authority**

N.J.S.A. 56:8-119 et seq. and P.L. 2003, c.76.

Source and Effective Date

R.2004 d.196, effective May 17, 2004.
See: 36 N.J.R. 610(a), 36 N.J.R. 2546(a).

Chapter Expiration Date

Chapter 45D, Telemarketing: Do Not Call, expires on May 17, 2009.

Chapter Historical Note

Chapter 45D, Telemarketing: Do Not Call, was adopted as R.2004 d.196, effective May 17, 2004. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**13:45D-1.1 Purpose**

The rules in this chapter implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended by P.L. 2003, c.76 (N.J.S.A. 56:8-119 et seq.) by providing procedures for the regulation of telemarketers and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's no telemarketing call list by recognizing the telephone numbers of New Jersey customers on the National Do Not Call Registry established by the Federal Trade Commission or any other successive telemarketing registry created by the Federal government or any telemarketing registry established by the Division as the Division's no telemarketing call list.

13:45D-1.2 Scope

These rules apply to telemarketers who make residential telemarketing sales calls to New Jersey customers and provide those who do not wish to receive unsolicited telemarketing sales calls a procedure to limit or eliminate such calls.

13:45D-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless their context clearly indicates otherwise:

"Act" means the Telemarketing Do Not Call law, N.J.S.A. 56:8-119 et seq.

"Applicant" means the entity which will be making telemarketing sales calls and each officer, director, principal and owner of the entity.

"Commercial mobile service" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and wireless telephones.

"Continuing services" means the performance of work, the provision of medical care or other professional services or the affording of access to a utility, typically provided to an established customer on a recurring basis.

"Customer" means an individual who is a resident of New Jersey and a prospective recipient of a telemarketing sales call to a New Jersey telephone number.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Established customer" means a customer for whom a seller has previously provided continuing services where the relationship has not been affirmatively or constructively terminated.

“Existing customer” means:

1. A person who is obligated to make payments to a seller on merchandise purchased; or
2. A person who has entered into a written contract with a seller where there is an obligation to perform, either by the customer, seller, or both.

“Isolated call” means one unsolicited telemarketing sales call made to a single customer in a 12-month period.

“Merchandise” means any object, ware, good, commodity, service or anything offered, directly or indirectly, to the public for sale, including an extension of credit.

“No telemarketing call list” means the telephone numbers of New Jersey customers who have registered for the National Do Not Call Registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule (16 CFR 310) or any other successive telemarketing registry created by the Federal government or any telemarketing registry established by the State.

“Plan, program or campaign” means any coordinated telemarketing solicitation.

“Seller” means any person who, in connection with a telemarketing transaction, provides or offers to provide merchandise to the customer in exchange for consideration.

“Simultaneous outgoing call capacity” means the number of outgoing telephone calls that a telemarketer has the technological capability to make at the same time, whether or not the telemarketer has the personnel to actually make the calls.

“Telemarketer” means any entity who makes residential telemarketing sales calls to a customer when the customer is in New Jersey, whether the entity is an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, or if not formally organized, any person who directly controls or supervises the making of residential telemarketing sales calls whether on behalf of itself or others.

“Telemarketing” means any plan, program or campaign which is conducted by telephone to encourage the purchase or rental of, or investment in, merchandise, but does not include the solicitation of sales through media other than a telephone call.

“Telemarketing sales call” means a telephone call made by a telemarketer to a customer as part of a plan, program or campaign to encourage the purchase or rental of, or investment in, merchandise, except for continuing services. A telephone call made to an existing customer for the sole purpose of collecting on accounts or following up on contractual obligations shall not be deemed a telemarketing sales call.

“Unsolicited telemarketing sales call” means any telemarketing sales call other than a call made:

1. In response to an express written request of the customer called; or
2. To an existing customer.

Amended by R.2008 d.136, effective June 2, 2008.

See: 39 N.J.R. 5057(a), 40 N.J.R. 3321(a).

Added definition “Simultaneous outgoing call capacity”.

13:45D-1.4 Fees; no telemarketing call list

(a) The Division shall charge the following telemarketer registration fees:

1. Simultaneous outgoing call capacity of one to five telemarketing sales calls \$150.00;
2. Simultaneous outgoing call capacity of six to 15 telemarketing sales calls \$500.00;
3. Simultaneous outgoing call capacity of 16 or more telemarketing sales calls..... \$2,000.

(b) If the Division does not use the Federal Do Not Call Registry and establishes its own no telemarketing call list, the list shall be distributed to registered telemarketers quarterly as part of their registration fee.

Amended by R.2008 d.136, effective June 2, 2008.

See: 39 N.J.R. 5057(a), 40 N.J.R. 3321(a).

Rewrote (a)1 through (a)3.

SUBCHAPTER 2. BIDDER QUALIFICATIONS; NO TELEMARKETING CALL LIST

13:45D-2.1 (Reserved)

13:45D-2.2 No telemarketing call list

The New Jersey no telemarketing call list is that list which contains the telephone numbers of New Jersey customers who are on the do-not-call registry created, maintained and made available by the Federal government or any telemarketing registry established by the State.

SUBCHAPTER 3. TELEMARKETER REGISTRATION

13:45D-3.1 Requirement for a telemarketer to register

A telemarketer shall not engage in telemarketing to a customer unless the telemarketer is registered with the Division pursuant to the requirements of this chapter.

13:45D-3.2 Application

(a) Each telemarketer shall annually register with the Division by submitting the following, on forms provided by the Director: