

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

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 45D, Telemarketing: Do Not Call, expires on November 13, 2009. See: 41 N.J.R. 2209(a).

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:

2. Documentation attesting to the date of receipt of the no telemarketing call list;

3. Sales scripts and written materials used for telemarketing purposes;

4. Name, any fictitious name used, last known home address and telephone number, and job title of all current and former individuals making telemarketing sales calls on behalf of the applicant;

5. All phone records and contracts associated with the telephone lines, channels, or other technology used for telemarketing calls;

6. Policies and procedures manuals relating to training and compliance with the Act and rules;

7. Records and evidence of employee training in the requirements of telemarketing regulation;

8. If telemarketing sales calls are recorded, the tape recordings of the telemarketing sales calls;

9. A log which includes the phone number, date, and time of each and every telemarketing sales call;

10. Requests to be placed on the telemarketer specific no telemarketing call list; and

11. The telemarketer specific no telemarketing call list.

(b) A seller that uses a registered telemarketer to make telemarketer sales calls and does not do its own telemarketing shall maintain the following information:

1. A customer's express written permission to allow telemarketing sales calls;

2. The list maintained by the seller of customers who have requested not to receive telemarketing sales calls from the seller;

3. Requests from customers who have asked not to receive telemarketing sales calls from the seller; and

4. Evidence that a customer is an existing customer or that a continuing service is being provided to the customer.

(c) A seller that makes its own telemarketing sales calls shall comply with both (a) and (b) above.

(d) The information and records required by (a) and (b) above shall be retained by the registered telemarketer or seller for a period of at least two years and shall be provided on request in a readily available format for inspection by the Director or the Director's authorized representative.

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

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

In (a)5, inserted "and contracts", "channels, or other technology" and "calls".

13:45D-3.11 Training

(a) A telemarketer shall:

1. Establish and implement written procedures to comply with the requirements of the Act and this chapter; and

2. Train employees in telemarketing rules and procedures.

SUBCHAPTER 4. PROHIBITED ACTIVITIES; PERMITTED CALLS; PENALTIES

13:45D-4.1 Prohibited activities

(a) No telemarketer shall make or cause to be made any unsolicited telemarketing sales calls to a customer:

1. After three months from the date the customer's telephone number first appears on the no telemarketing call list; or

2. Between the hours of 9:00 P.M. and 8:00 A.M., local time of the customer.

(b) No telemarketer shall make or cause to be made any telemarketing sales calls to a customer:

1. Using a blocking device or a service which intentionally blocks the customer's use of a caller identification service or device; or

2. Whose telephone number has been identified as belonging to a commercial mobile service device, except that a telemarketer that is a commercial mobile services company may call its customer using its commercial mobile services if its customer will not incur telecommunication charges or a usage allocation deduction as a result of such call and the call is directly related to the commercial mobile services of the commercial mobile services company, unless the customer has stated to the commercial mobile services company that the customer no longer desires to receive these calls.

(c) No telemarketer shall make or cause to be made any telemarketing sales calls to an existing customer on the no telemarketing call list on behalf of:

1. A seller's affiliates; or

2. A seller whose sole obligation to the customer is the extension of credit;

i. Eighteen months after the date of the customer's last credit transaction;

ii. Upon satisfaction of the credit obligation, whichever is later; or

iii. Upon cancellation or termination of the agreement to extend credit and satisfaction of the credit obligation.

13:45D-4.2 Exempt telemarketing sales calls

(a) Telemarketers may make the following telemarketing sales calls even if the customer is on the no telemarketing call list unless the customer has requested not to receive telemarketing sales calls under N.J.A.C. 13:45D-3.9:

1. Calls made to an existing customer; or
2. Calls made to an existing customer to whom a seller's sole obligation is the extension of credit which are made within 18 months of the date of the customer's last credit transaction or until the satisfaction of the credit obligation, whichever is later.

(b) Telemarketers may make telemarketing sales calls to customer numbers on the no telemarketing call list with the express agreement of the customer. Any requests for a customer's permission to make a telemarketing sales call shall be made in a clear and conspicuous manner in which the customer provides affirmative consent. A pre-checked box or other form of consent that has been completed by any person other than the customer shall not be deemed to be affirmative consent. The telemarketer shall first obtain the customer's express agreement in writing which includes the number to which telemarketing sales calls may be made and the customer's signature. If this agreement is reached online, the signature of the customer may be an electronic signature.

13:45D-4.3 Call requirements

(a) All telemarketers making any telemarketing sales call to a New Jersey customer shall, within the first 30 seconds of such call, disclose all of the following information:

1. The name of the person making the call;
2. The name of the telemarketing entity making the call;
3. The name of the person or entity on whose behalf the call is being made; and
4. The purpose of the call.

13:45D-4.4 Continuing services

A telemarketer may call an established customer on the no telemarketing call list or telemarketer specific no call list provided that the call is limited to the provision of continuing services and does not relate to expanded services, upgrades, products or other services unless directly related to the particular service or services previously provided.

13:45D-4.5 Defenses to liability

(a) A registered telemarketer shall not be held liable for violating the Act or this chapter if the telemarketer can demonstrate that:

1. The telemarketer has obtained and put into use a copy of the no telemarketing call list which is no older than three months at the time the telemarketing call in question was made and the telemarketer has established and implemented written policies and procedures related to the requirements of the Act and these rules;
2. The telemarketer has trained all personnel in making telemarketing sales calls and the requirements of the Act and these rules;
3. The telemarketer maintains records which demonstrate compliance with (a)1 and 2 above and the Act; and
4. Any unsolicited telemarketing sales call made to a customer on the no telemarketing call list is an isolated call made no more than one time in a 12-month period.

13:45D-4.6 Penalties

Any violation of the Act or this chapter shall be subject to the penalty provisions of N.J.S.A. 56:8-13 and 56:8-14.3.

SUBCHAPTER 5. CUSTOMER REGISTRATION FOR NO TELEMARKETING CALL LIST

13:45D-5.1 Customer registration

(a) A customer who wishes to be placed on the no telemarketing call list shall register by:

1. Calling the Federal toll-free registration number, 1-888-382-1222 (TTY 1-866-290-4236) from the telephone number the customer wishes to add to the no telemarketing call list;
2. Registering on-line at the National Do Not Call Registry website at <http://www.donotcall.gov/>; or
3. Registering on-line by using the Division website which link to the National Do Not Call Registry, www.njnocall.org or www.njnocall.net.

13:45D-5.2 Removal from list

A customer may be removed from the no telemarketing call list by calling the National Do Not Call Registry at 1-888-382-1222 (TTY 1-866-290-4236). In order to be removed from the list the customer must call from the telephone number that he or she wishes to be removed from the no telemarketing call list.