

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.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 13:45D-1.1 Purpose
- 13:45D-1.2 Scope
- 13:45D-1.3 Definitions
- 13:45D-1.4 Fees; no telemarketing call list

SUBCHAPTER 2. BIDDER QUALIFICATIONS; NO TELEMARKETING CALL LIST

- 13:45D-2.1 (Reserved)
- 13:45D-2.2 No telemarketing call list

SUBCHAPTER 3. TELEMARKETER REGISTRATION

- 13:45D-3.1 Requirement for a telemarketer to register
- 13:45D-3.2 Application
- 13:45D-3.3 Disclosure statement
- 13:45D-3.4 Duty to update information
- 13:45D-3.5 Registration fee
- 13:45D-3.6 Requirement to cooperate
- 13:45D-3.7 Refusal to issue, suspension or revocation of registration; hearing; other sanctions
- 13:45D-3.8 Registration number property of State
- 13:45D-3.9 Telemarketer specific no telemarketing call list
- 13:45D-3.10 Recordkeeping requirements
- 13:45D-3.11 Training

SUBCHAPTER 4. PROHIBITED ACTIVITIES; PERMITTED CALLS; PENALTIES

- 13:45D-4.1 Prohibited activities
- 13:45D-4.2 Exempt telemarketing sales calls
- 13:45D-4.3 Call requirements
- 13:45D-4.4 Continuing services
- 13:45D-4.5 Defenses to liability
- 13:45D-4.6 Penalties

SUBCHAPTER 5. CUSTOMER REGISTRATION FOR NO TELEMARKETING CALL LIST

- 13:45D-5.1 Customer registration
- 13:45D-5.2 Removal from list

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:

1. The name and street address of each location at which telemarketing is to be conducted from and any fictitious or trade name to be used by the telemarketer;
2. The type of business organization;
3. The name and residence and business street address of each officer, director, and principal;
4. The name, residence and business street address, and business telephone number of each person with an ownership interest of 10 percent or more in the telemarketing business and the percentage of ownership held;
5. The telephone number or numbers that the telemarketer will be using to make telemarketing sales calls and the name of its telephone service provider;
6. The telemarketer's simultaneous outgoing call capacity;
7. Whether the entity, each officer, director, principal or owner of a telemarketing business has been adjudged liable in an administrative or civil action involving theft, fraud or deceptive business practices. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or owner of a telemarketing business engaged in an unlawful practice or practices related to fraud, deceptive trade practices, relating to the license to do business or practice an occupation or trade regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency;
8. The name and address of an agent in the State of New Jersey for service of process; and
9. The name and address of any seller(s) with whom or on whose behalf the telemarketer has contracted to make any telemarketing calls.

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

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

Added (a)6; and recodified former (a)6 through (a)8 as (a)7 through (a)9.

13:45D-3.3 Disclosure statement

(a) Each applicant shall file a disclosure statement with the Director stating whether the applicant has been convicted of any violations of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, or the equivalent under the laws of any other jurisdiction:

1. Any crime of the first degree;
2. Any crime which is a second or third degree crime and is a violation of Chapter 20 or 21 of Title 2C of the New Jersey Statutes; or

3. Any other crime which is a violation of N.J.S.A. 2C:5-1 and 2C:5-2 (conspiracy), N.J.S.A. 2C:12-3 (terroristic threats), N.J.S.A. 2C:15-1 (robbery), N.J.S.A. 2C:18-2 (burglary), N.J.S.A. 2C:20-4 (theft by deception), N.J.S.A. 2C:20-5 (theft by extortion), N.J.S.A. 2C:20-7 (receiving stolen property), N.J.S.A. 2C:20-9 (theft by failure to make required disposition of property received), N.J.S.A. 2C:21-1 (forgery and other related offenses), N.J.S.A. 2C:21-2 (criminal simulation), N.J.S.A. 2C:21-2.1 (fraud relating to driver's license or other document issued by governmental agency to verify identity or age; simulation), N.J.S.A. 2C:21-2.3 (fraud relating to motor vehicle insurance identification card; production or sale), N.J.S.A. 2C:21-3 (frauds relating to public records and recordable instruments), N.J.S.A. 2C:21-4 (falsifying or tampering with records), N.J.S.A. 2C:21-5 (bad checks), N.J.S.A. 2C:21-6 (fraud relating to credit cards), N.J.S.A. 2C:21-7 (deceptive business practices), N.J.S.A. 2C:21-9 (misconduct by corporate official), N.J.S.A. 2C:21-10 (commercial bribery and breach of duty to act disinterestedly), N.J.S.A. 2C:21-11 (rigging publicly exhibited contest), N.J.S.A. 2C:21-12 (defrauding secured creditors), N.J.S.A. 2C:21-13 (fraud in insolvency), N.J.S.A. 2C:21-14 (receiving deposits in a failing financial institution), N.J.S.A. 2C:21-15 (misapplication of entrusted property and property of government of financial institution), N.J.S.A. 2C:21-16 (securing execution of documents by deception), N.J.S.A. 2C:21-17 (impersonation; theft of identity), N.J.S.A. 2C:21-19 (wrongful credit practices and related offenses), N.J.S.A. 2C:21-25 (money laundering and illegal investment), N.J.S.A. 2C:27-2 (bribery in official and political matters), N.J.S.A. 2C:27-3 (threats and other improper influence in official and political matters), N.J.S.A. 2C:27-4 (compensation for past official action), N.J.S.A. 2C:27-5 (retaliation for past official action), N.J.S.A. 2C:27-6 (gifts to public servants), N.J.S.A. 2C:27-9 (public servant transacting business with certain persons), N.J.S.A. 2C:28-1 (perjury), N.J.S.A. 2C:28-2 (false swearing), N.J.S.A. 2C:28-3 (unsworn falsification to authorities), N.J.S.A. 2C:28-4 (false reports to law enforcement officials), N.J.S.A. 2C:28-5 (tampering with witnesses and informants; retaliation against them), N.J.S.A. 2C:28-6 (tampering with or fabricating physical evidence), N.J.S.A. 2C:28-7 (tampering with public records or information), N.J.S.A. 2C:28-8 (impersonating a public servant or law enforcement officer), N.J.S.A. 2C:30-2 (official misconduct), or N.J.S.A. 2C:30-3 (speculating or wagering on official action or information).

(b) The disclosure statement required to be filed pursuant to this section may be used by the Director as grounds for denying, suspending or revoking registration. An applicant whose registration is denied or a telemarketer whose registration is suspended or revoked pursuant to this section shall be afforded an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon written request to the Director within 30 days of the notice of denial, suspension or revocation. In any matter in

which the provisions of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., apply, the Director shall comply with the requirements of that Act.

13:45D-3.4 Duty to update information

Whenever any information required to be included in the disclosure statement changes, or if additional information should be added after the filing of the statement, the applicant shall provide that information to the Director, in writing, within 30 calendar days of the change or addition. Whenever any other information filed with the Director pursuant to the Act or this chapter has changed, the applicant shall provide that information to the Director, in writing, within 30 business days of the change or addition.

13:45D-3.5 Registration fee

A telemarketer shall submit with its annual registration application the fee specified in N.J.A.C. 13:45D-1.4(a).

13:45D-3.6 Requirement to cooperate

A telemarketer applicant seeking to register with the Division shall have the continuing duty to provide any assistance or information, and to produce any records requested by the Director, and to cooperate in any inquiry, investigation or hearing conducted by the Director.

13:45D-3.7 Refusal to issue, suspension or revocation of registration; hearing; other sanctions

(a) The Director may refuse to issue or renew, or suspend or revoke any registration issued by the Division for:

1. Failure to comply with, or for a violation of, N.J.S.A. 56:8-119 et seq. or any provision of this chapter; or

2. Any entity, officer, director, principal or owner of a telemarketing business having been adjudged liable in an administrative or civil action involving theft, fraud or deceptive business practices. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or owner engaged in an unlawful practice or practices related to fraud, deceptive trade practices, relating to the license to do business or practice an occupation or trade regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency.

(b) Prior to refusing to issue or renew or suspending or revoking a telemarketing registration or assessing a penalty, the Director shall notify the applicant or registrant and provide an opportunity to be heard.

(c) The Director may, in lieu of revoking a registration, suspend the registration for a reasonable period of time dependent upon the seriousness of the violation, or assess a penalty in lieu of suspension, or both.

(d) Notwithstanding the revocation of a registration, the Director may issue a new registration upon submission of a new application and compliance with this chapter.

13:45D-3.8 Registration number property of State

Each registration number issued by the Director to a telemarketer remains the property of the State of New Jersey. If the Director suspends, fails to renew, or revokes a registration, the telemarketer shall immediately return the registration number to the Director.

13:45D-3.9 Telemarketer specific no telemarketing call list

(a) Each telemarketer shall maintain a list of the names and telephone numbers of existing customers who have requested not to receive telemarketing sales calls from that telemarketer which notes the date the customer made the request.

(b) A telemarketer that receives a request from an existing customer not to receive telemarketing sales calls shall remove the customer from its calling list and take other necessary affirmative steps to cease telemarketing sales calls to the customer within 30 days of the customer's request.

(c) A telemarketer shall maintain a list of a specific seller's existing customers who have requested not to receive calls from the seller and provide this list to the seller at least once every quarter.

(d) Sellers shall maintain a list of names and telephone numbers of customers who have requested not to receive telemarketing sales calls. A seller that receives, either directly from the customer or indirectly from a telemarketer or other source, a request from an existing customer not to receive telemarketing sales calls from that seller, shall remove the customer from its calling list and take other necessary affirmative steps to cease telemarketing sales calls to the customer by or on behalf of the seller within 30 days of the customer's request.

(e) A seller who contracts with a telemarketer to make telemarketing sales calls on its behalf shall provide the telemarketer with the list of existing customers who have requested not to receive telemarketing sales calls from the seller.

13:45D-3.10 Recordkeeping requirements

(a) Each registered telemarketer shall maintain the following information:

1. The no telemarketing call list;

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.