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**RULE ADOPTIONS**

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**SEPTEMBER 8, 2009**

**LAW AND PUBLIC SAFETY**

**DIVISION OF CONSUMER AFFAIRS**

**Readoption with Amendments: N.J.A.C. 13:45D**

**Telemarketing: Do Not Call Rules**

Proposed: June 1, 2009 at 41 N.J.R. 2209(a).

Adopted: August 6, 2009 by the **Division of Consumer Affairs**, David Szuchman, Director.

Filed: August 13, 2009 as R.2009 d.274, **without change**.

Authority: N.J.S.A. 56:8-119 et seq., specifically 56:8-134.

Effective Dates: August 13, 2009 , Readoption;  
September 8, 2009 , Amendments.

Expiration Date: August 13, 2014 .

**Summary of Public Comment and Agency Response:**

The comment period closed July 31, 2009 . **The Division did not receive any comments.**

**Federal Standards Statement**

A Federal standards analysis is not required because the readopted rules are not under the authority of, or in order to implement, comply with or participate in any program under Federal law. The readoption of these rules is under the authority of New Jersey law, P.L. 2003, c. 76, which does not incorporate or refer to Federal law, standards or requirements, although the rules use the National Do-Not-Call registry.

However, to the extent that the rules promulgated by the Federal Trade Commission (FTC) at 16 CFR §310 and the rules promulgated by the FCC at 47 CFR §§64 and 68 may be considered Federal standards, the Division believes that the readopted rules impose some requirements on telemarketers that supplement the standards imposed by the Federal regulations. For instance, New Jersey 's do-not-call law provides for a different approach for identifying the type of relationship that will enable a business to call customers. Rather than using the Federal "established business relationship," the Division has effectuated the Legislature's intent to look at the nature of the relationship between the telemarketer and customer by establishing the definitions of "continuing services" and "existing customer." The intent of the Act and the readopted rules is to provide the broadest protections to New Jersey residents from unsolicited telemarketing sales calls.

Telemarketers and businesses that represent telemarketers may disagree that the New Jersey rules supplement the Federal rules. As set forth in the Social Impact statement of the notice of proposal, telemarketers and businesses that use telemarketers that have challenged N.J.A.C. 13:45D and the Act have suggested that portions of the rules and the Act, including the definitions set forth above, should be pre-empted.

Some of the Federal rules are more restrictive than those in N.J.A.C. 13:45D. For example, the FTC rules make it a violation for a telemarketer to allow more than two seconds to pass from the time a customer answers the telephone to the time when a sales representative connects to the call. No specific State provision relates to this issue, but the Division is authorized by 16 CFR §310.7 to enforce the Federal rules.

Whether any additional costs beyond the registration fee have been encountered by telemarketers is speculative. Even if there are additional costs, those costs are outweighed by the benefit received by New Jersey residents who no longer are bombarded with unsolicited telemarketing calls.

Current technology allows customers and telemarketers to meet the standards set forth in the readopted rules. Customers may register or remove their numbers from the do-not-call list by telephone or the Internet. Telemarketers will continue to use the National Do-Not-Call Registry database for New Jersey numbers. The need for professional services, if any, and the cost of compliance will vary among telemarketers.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:45D.

**Full text** of the adopted amendments follows:

#### SUBCHAPTER 1. GENERAL PROVISIONS

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

(a) (No change.)

(b) If, in the future, 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.

#### SUBCHAPTER 2. NO TELEMARKETING CALL LIST

##### 13:45D-2.1 (No change in text.)

#### SUBCHAPTER 5. CUSTOMER REGISTRATION FOR NO TELEMARKETING CALL LIST

##### 13:45 D-5.1 Customer registration

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

1.-2. (No change.)

3. Registering on-line by using the Division website, [www.njconsumeraffairs.gov/](http://www.njconsumeraffairs.gov/), A-Z list, "Do Not Call" information, which links to the National Do Not Call Registry.