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**RULE PROPOSALS**

**LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS**

*39 N.J.R. 5057(a)*

**Proposed Amendments: *N.J.A.C. 13:45D-1.3, 1.4, 3.2, and 3.10***

[Click here to view Interested Persons Statement](#)

**Telemarketing: Do Not Call**

Authorized By: New Jersey Division of Consumer Affairs, Lawrence DeMarzo, Acting Director.

Authority: *N.J.S.A. 56:8-4*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2007-357.

Submit written comments by February 1, 2008 to:

Lawrence DeMarzo, Acting Director  
Office of the Director  
New Jersey Division of Consumer Affairs  
124 Halsey Street  
P.O. Box 45027  
Newark, NJ 07101

The agency proposal follows:

**Summary**

The existing Telemarketing: Do Not Call rules, *N.J.A.C. 13:45D*, were drafted on the assumption that every telephone instrument used to make a telemarketing sales call would have a unique telephone number. Hence, registration fees were set on a sliding scale based on the number of telephone numbers used for making telemarketing sales calls. *N.J.A.C. 13:45D-1.4*. As indicated in the Response to Comment 8 in the Notice of Adoption, *36 N.J.R. 2546(a)*, this was based on the theory that the Division's administrative burden correlated to the number of telephone numbers used by the telemarketer, which, in turn, correlated to the number of telemarketing calls a telemarketer makes.

But technology has advanced so that the number of telemarketing calls a telemarketer can make - its outgoing call capacity - is not necessarily related to the number of telephone numbers assigned to its telephones. With a Private Brand Exchange (PBX), the number of telephone lines still determine the outgoing call capacity, but the lines can share one number. Integrated Services Digital Network (ISDN) technology allows a user to make two simultaneous outgoing calls over two channels using the same telephone number. A T1 line can carry 24 simultaneous outgoing calls over 24 digitized voice channels. A user can elect to have 24 telephone numbers, one for each channel, or it can use one telephone number for all channels.

The Division proposes to add a definition of "simultaneous outgoing call capacity" in *N.J.A.C. 13:45D-1.3* and substitute that phrase for "telephone numbers" in *N.J.A.C. 13:45D-1.4*. The Division proposes to amend *N.J.A.C. 13:45D-3.2* to require telemarketers to disclose their simultaneous outgoing call capacity as part of the application for registration. The proposed amendment to *N.J.A.C. 13:45D-3.10* requires telemarketers to maintain phone records, including contracts, for whatever technology they use to make telemarketing calls.

The Division has determined that the comment period for this proposal shall be 60 days. Therefore, pursuant to *N.J.A.C. 1:30-3.3(a)5*, this proposal is excepted from the rulemaking calendar requirement.

### **Social Impact**

The Division does not expect that the proposed amendments will have any social impact inasmuch as they reflect technology already in use.

### **Economic Impact**

The Division does not expect that the proposed amendments will have any economic impact inasmuch as they reflect technology already in use, except that a telemarketer who has greater outgoing call capacity than is indicated by the number of telephone numbers it uses, may have to pay a higher registration fee.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal standards or requirements.

### **Jobs Impact**

The Attorney General does not anticipate that the proposed amendments will increase or decrease jobs in the State since the technology is already in use.

### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry in the State.

### **Regulatory Flexibility Analysis**

The proposed amendments apply to telemarketers, who may be small businesses as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The proposed amendments change the nomenclature used for the record retention requirement in *N.J.A.C. 13:45D-3.10* to capture whatever technology is used for making telemarketing calls. The amendments require that telemarketers report their simultaneous outgoing call capacity as part of the annual registration, which is the basis on which the annual fee is to be calculated. The amendments impose additional recordkeeping requirements by requiring telemarketers to maintain records of contracts associated with telephone lines, channels or other technology used for telemarketing calls. Professional services are not required for compliance.

Reporting and recordkeeping requirements must be consistent for all registered telemarketers, regardless of business size, in order to ensure uniform enforcement of the law and rules.

**Smart Growth Impact**

The Director does not believe that the proposed amendments will have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

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:

...

**"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.**

...

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

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

- 1. [One] **Simultaneous outgoing call capacity of one** to five  
[telephone numbers in use for] telemarketing sales calls  
..... \$ 150.00;
- 2. [Six] **Simultaneous outgoing call capacity of six** to 15  
[telephone numbers in use for] telemarketing sales calls  
..... \$ 500.00;
- 3. [Sixteen and] **Simultaneous outgoing call capacity of 16 or**  
more [telephone numbers in use for] telemarketing sales calls  
..... \$ 2,000.

(b) (No change.)

SUBCHAPTER 3. TELEMARKETER REGISTRATION

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.-5. (No change.)

**6. The telemarketer's simultaneous outgoing call capacity;**

Recodify existing 6.-8. as **7.-9.** (No change in text.)

13:45D-3.10 Recordkeeping requirements

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

1.-4. (No change.)

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

6.-11. (No change.)

(b)-(d) (No change.)