

CHAPTER 45A
ADMINISTRATIVE RULES OF THE
DIVISION OF CONSUMER AFFAIRS

Authority

N.J.S.A. 24:6I-1 et seq. (P.L. 2009, c. 307), 45:1-45.1 (Section 11 of P.L. 2009, c. 307), 45:14-14.1, 45:14-81 and 56:8-1 et seq., specifically 56:8-4, 56:8-19.1 and 56:8-180; and P.L. 2007, c. 193 and P.L. 2009, c. 39.

Source and Effective Date

R.2006 d.141, effective March 21, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 45A, Administrative Rules of the Division of Consumer Affairs, expires on September 17, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, Subchapter 1, Deceptive Practices in Mail Order or Catalog Business, was adopted as R.1973 d.176, effective August 1, 1973. See: 5 N.J.R. 151(b), 5 N.J.R. 290(a).

Subchapter 2, Motor Vehicle Advertising Practices, was adopted as R.1973 d.183, effective July 15, 1973. See: 5 N.J.R. 191(a), 5 N.J.R. 290(d).

Subchapter 4, Banned Hazardous Products, was adopted as R.1973 d.222, effective August 15, 1973. See: 5 N.J.R. 229(d), 5 N.J.R. 317(c).

Subchapter 8, Tire Distributors and Dealers, was adopted as R.1973 d.309, effective December 1, 1973. See: 5 N.J.R. 354(a), 5 N.J.R. 390(e).

Subchapter 3, Sale of Meat at Retail, was adopted as R.1973 d.169, effective January 1, 1974. See: 5 N.J.R. 154(a), 5 N.J.R. 239(b).

Subchapter 5, Delivery of Household Furniture and Furnishings, was adopted as R.1973 d.262, effective January 1, 1974. See: 5 N.J.R. 287(a), 5 N.J.R. 357(b).

Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, was adopted as R.1973 d.307, effective January 1, 1974. See: 5 N.J.R. 351(b), 5 N.J.R. 390(b).

Subchapter 9, Retail Store Advertising and Marketing Practices, was adopted as R.1974 d.15, effective March 1, 1974. See: 5 N.J.R. 422(a), 6 N.J.R. 82(b).

Subchapter 10, Servicing and Repairing of Home Appliances, was adopted as R.1974 d.16, effective March 1, 1974. See: 5 N.J.R. 421(a), 6 N.J.R. 82(c).

Subchapter 12, Sale of Animals, was adopted as R.1975 d.351, effective November 20, 1975. See: 7 N.J.R. 231(b), 7 N.J.R. 571(c).

Subchapter 13, Powers to be Exercised by County and Municipal Officers of Consumer Affairs, was adopted as R.1976 d.245, effective August 3, 1976. See: 8 N.J.R. 233(b), 8 N.J.R. 439(b).

Subchapter 14, Unit Pricing of Consumer Commodities in Retail Establishments, was adopted as R.1976 d.265, effective August 23, 1976. See: 8 N.J.R. 304(a), 8 N.J.R. 439(e).

Subchapter 6, Automotive Sales Practices, was adopted as R.1979 d.392, effective October 1, 1979. See: 11 N.J.R. 386(a), 11 N.J.R. 580(e).

Subchapter 16, Home Improvement Practices, was adopted as R.1980 d.111, effective April 1, 1980. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b).

Subchapter 9, Retail Store Advertising and Marketing Practices, was repealed and Subchapter 9, Merchandise Advertising, was adopted as new rules by R.1980 d.200, effective May 6, 1980. See: 12 N.J.R. 45(a), 12 N.J.R. 348(b).

Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was adopted as R.1981 d.294, effective August 6, 1981. See: 13 N.J.R. 235(b), 13 N.J.R. 520(b).

Subchapter 15, Disclosure of Refund Policy in Retail Establishment, was adopted as R.1982 d.29, effective February 1, 1982. See: 13 N.J.R. 665(a), 14 N.J.R. 160(a).

Subchapter 21, Representations Concerning and Requirements for the Sale of Kosher Food, was adopted as R.1984 d.113, effective April 2, 1984. See: 16 N.J.R. 220(a), 16 N.J.R. 741(a).

Subchapter 20, Resale of Tickets of Admission to Places of Entertainment, was adopted as R.1984 d.196, effective May 21, 1984. See: 16 N.J.R. 417(a), 16 N.J.R. 1281(b).

Pursuant to Executive Order No. 66(1978), Subchapter 6, Deceptive Practices Concerning Automotive Practices, was readopted as R.1984 d.526, effective October 24, 1984. See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a).

Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, was readopted as R.1984 d.527, effective October 24, 1984. See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b).

Pursuant to Executive Order No. 66(1978), Subchapter 16, Home Improvement Practices, expired April 1, 1985.

Pursuant to Executive Order No. 66(1978), Subchapter 9, Merchandise Advertising, was readopted as R.1985 d.256, effective April 29, 1985. See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b).

Subchapter 16, Home Improvement Practices, was adopted as new rules by R.1985 d.255, effective May 20, 1985. See: 17 N.J.R. 679(a), 17 N.J.R. 1325(a).

Subchapter 23, Deceptive Practices Concerning Watercraft Repair, was adopted as R.1985 d.306, effective June 17, 1985. See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, was adopted as R.1985 d.407, effective August 5, 1985. See: 17 N.J.R. 1241(a), 17 N.J.R. 1901(b).

Pursuant to Executive Order No. 66(1978), Subchapter 14, Unit Pricing of Consumer Commodities in Retail Establishments, expired on October 9, 1985.

Subchapter 14, Unit Pricing of Consumer Commodities in Retail Establishments, was adopted as new rules by R.1985 d.643, effective December 16, 1985. See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

Subchapter 2, Motor Vehicle Advertising Practices, was repealed and Subchapter 2, Motor Vehicle Advertising Practices, was adopted as new rules by R.1987 d.341, effective August 17, 1987. See: 19 N.J.R. 1056(a), 19 N.J.R. 1562(c).

Subchapter 21, Representations Concerning and Requirements for the Sale of Kosher Food, and Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, were repealed and Subchapter 21, Sale of Kosher Products, and Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, were adopted as new rules by R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d).

Subchapter 25, Sellers of Health Club Services, was adopted as R.1988 d.23, effective January 4, 1988. See: 19 N.J.R. 1967(a), 20 N.J.R. 103(a).

Subchapter 12, Sale of Animals, was repealed and Subchapter 12, Sale of Animals, was adopted as new rules by R.1988 d.271, effective June 20, 1988. See: 19 N.J.R. 853(a), 20 N.J.R. 501(b), 20 N.J.R. 1463(a).

Subchapter 25, Sellers of Health Club Services, was repealed and Subchapter 25, Sellers of Health Club Services, was adopted as new rules by R.1988 d.520, effective November 7, 1988. See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

Subchapter 26, Automotive Dispute Resolutions, was adopted as R.1989 d.65, effective February 6, 1989. See: 20 N.J.R. 2681(b), 21 N.J.R. 339(b).

Subchapter 2, Motor Vehicle Advertising Practices, was repealed and Subchapter 2, Motor Vehicle Advertising Practices, was adopted as new rules by R.1989 d.253, effective May 15, 1989. See: 21 N.J.R. 115(a), 21 N.J.R. 1368(a).

Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was repealed by R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Subchapter 19, Petition for Rulemaking, was adopted as R.1990 d.371, effective August 6, 1990. See: 22 N.J.R. 786(a), 22 N.J.R. 2331(c).

Petition for Rulemaking. See: 22 N.J.R. 3166(b).

Pursuant to Executive Order No. 66(1978), Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.1990 d.606, effective November 9, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Subchapter 24, Toy and Bicycle Safety, was adopted as R.1993 d.372, effective July 19, 1993. See: 24 N.J.R. 3019(b), 24 N.J.R. 3666(a), 25 N.J.R. 3235(a).

Subchapter 21, Sale of Kosher Products, and Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, were repealed and Subchapter 21, Regulations Concerning the Sale of Food Represented as Kosher, was adopted as new rules by R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Pursuant to Executive Order No. 66(1978), Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.1995 d.618, effective November 6, 1995, and Subchapter 2, Motor Vehicle Advertising Practices, Subchapter 6, Deceptive Practices Concerning Automotive Sales Practices, Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, and Subchapter 8, Tire Distributors and Dealers, were recodified as Subchapter 26A, Motor Vehicle Advertising Practices, Subchapter 26B, Automotive Sales Practices, Subchapter 26C, Automotive Repairs, and Subchapter 26D, Tire Distributors and Dealers, by R.1995 d.618, effective December 4, 1995. See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Subchapter 28, Motor Vehicle Leasing, was adopted as R.1996 d.129, effective March 4, 1996. See: 27 N.J.R. 4130(a), 28 N.J.R. 1394(b).

Subchapter 26E, Motorized Wheelchair Dispute Resolution, was adopted as R.1996 d.407, effective August 19, 1996. See: 28 N.J.R. 2320(a), 28 N.J.R. 3965(a).

Subchapter 26F, Unfair Trade Practices—Used Motor Vehicles—Sale and Warranty, was adopted as R.1999 d.45, effective February 1, 1999. See: 30 N.J.R. 518(a), 31 N.J.R. 446(a).

Pursuant to Executive Order No. 66(1978), Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.2000 d.460, effective October 20, 2000. See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

Subchapter 29, Property Condition Disclosure, was adopted as new rules by R.2004 d.193, effective May 17, 2004. See: 35 N.J.R. 1644(a), 36 N.J.R. 2534(a).

Subchapter 27, New Jersey Uniform Prescription Blanks Program, was adopted as new rules by R.2004 d.238, effective June 21, 2004. See: 35 N.J.R. 4172(a), 36 N.J.R. 3059(a).

Subchapter 22, Halal Food, adopted as new rules by R.2004 d.337, effective September 7, 2004. See: 35 N.J.R. 3754(a), 36 N.J.R. 4152(b).

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.2006 d.141, effective March 21, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Banned Hazardous Products, was renamed Rules Concerning Hazardous Products by R.2007 d.342, effective November 5, 2007. See: 39 N.J.R. 2321(a), 39 N.J.R. 4850(a).

Subchapter 24A, Flame Resistance Standards for Tents and Sleeping Bags, was adopted as new rules by R.2008 d.111, effective May 5, 2008. See: 39 N.J.R. 5056(a), 40 N.J.R. 2287(a).

Subchapter 30, Vehicle Protection Product Warranties, was adopted as new rules by R.2009 d.192, effective June 15, 2009. See: 40 N.J.R. 6404(a), 41 N.J.R. 2493(a).

Subchapter 6, Internet Dating Services, was adopted as new rules by R.2009 d.240, effective August 3, 2009. See: 40 N.J.R. 3957(a), 41 N.J.R. 2977(a).

Subchapter 8, Prepaid Calling Cards, was adopted as new rules by R.2010 d.016, effective January 19, 2010. See: 41 N.J.R. 1970(a), 42 N.J.R. 497(a).

Subchapter 31, Private Property and Non-consensual Towing Companies, was adopted as new rules by R.2010 d.017, effective January 19, 2010. See: 41 N.J.R. 2206(a), 42 N.J.R. 502(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was scheduled to expire on September 17, 2011. See: 43 N.J.R. 1130(a).

Subchapter 32, Prescription Drug Retail Price List, was adopted as new rules by R.2011 d.168, effective June 20, 2011. See: 42 N.J.R. 1327(a), 43 N.J.R. 1424(b).

Subchapter 33, Compassionate Use Medical Marijuana, was adopted as new rules by R.2011 d.293, effective December 5, 2011. See: 42 N.J.R. 2743(a), 43 N.J.R. 3194(a).

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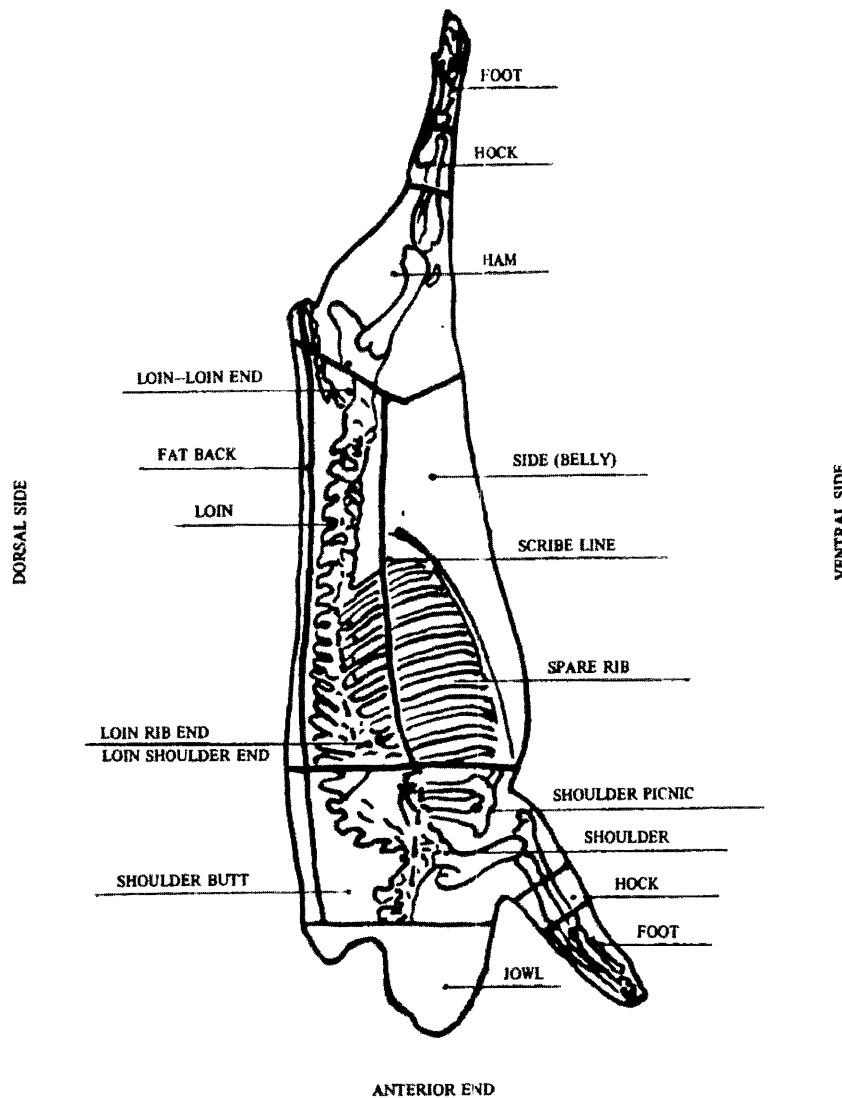
- 13:45A-33.1 Purpose and scope
- 13:45A-33.2 Physician reporting requirements
- 13:45A-33.3 Alternative treatment center reporting requirements
- 13:45A-33.4 Electronic format required for the transmission of information; exemption
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SUBCHAPTER 1. DECEPTIVE MAIL ORDER PRACTICES

13:45A-1.1 General provisions

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., this rule makes unlawful thereunder some specific practices in the mail order or catalog business.

(d) Chart 4: Pork Carcass
POSTERIOR END



SUBCHAPTER 4. RULES CONCERNING HAZARDOUS PRODUCTS

Case Notes

U.S. v. One Hazardous Product Consisting of a Refuse Bin, D.C., 487 F.Supp. 581 (1980).

13:45A-4.1 Unconscionable commercial practice

(a) It shall be an unconscionable commercial practice for any person, including any business entity, to manufacture, distribute, sell or offer for sale any consumer product contrary to any order of the Consumer Product Safety Commission, pursuant to 15 U.S.C. §§2051 et seq. or to advertise a con-

sumer product that has been the subject of a safety advisory, warning, or recall issued by any governmental agency or the manufacturer of the product, without clearly and conspicuously disclosing in the advertisement, at the place in the store where the product is or, if the product is no longer sold, where it was displayed, and at the customer service area, that the product is the subject of a safety advisory, warning, or recall and the general nature of the safety hazard that prompted the advisory, warning, or recall.

(b) It shall be an unconscionable practice for any person, including any business entity, to advertise or market to, or otherwise solicit the sale from, a resident of this State, a consumer product that is illegal to possess or use in this State or a

consumer product that is illegal to possess or use in this State without a valid permit or license, where the possession or use, or the possession or use without a valid permit or license, would subject the person possessing or using the product to criminal prosecution, without clearly and conspicuously disclosing that the product is illegal to possess or use in this State, or to possess or use in this State without a valid permit or license, as the case may be.

(c) It shall be an unconscionable practice for any person, including any business entity, to advertise or market to, or otherwise solicit the sale from, a resident of this State or to expose for sale, offer for sale, or sell in this State, a consumer product consisting of a motor vehicle that is not required to be registered with any state or Federal agency, whose possession or use in this State is subject to restrictions or limitations, including mandated safety devices, specific to such product imposed by State law or rule, without clearly and conspicuously disclosing that the product is subject to restrictions or limitations imposed by State law or rule and the general nature of such restrictions or limitations.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2007 d.342, effective November 5, 2007.

See: 39 N.J.R. 2321(a), 39 N.J.R. 4850(a).

Inserted designation (a); rewrote (a); and added (b) and (c).

13:45A-4.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly requires otherwise:

“Consumer product” means any article or component part thereof, produced or distributed:

1. For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise; or

2. For the personal use, consumption or enjoyment by a consumer in or around a permanent or temporary household or residence, a school, in recreation or otherwise.

“Motor vehicle” means a vehicle propelled otherwise than by muscular power, in, upon or by which a person or property is or may be transported upon land.

Amended by R.2007 d.342, effective November 5, 2007.

See: 39 N.J.R. 2321(a), 39 N.J.R. 4850(a).

Section was “Consumer product defined”. Rewrote the section.

13:45A-4.3 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 5. DELIVERY OF HOUSEHOLD FURNITURE AND FURNISHINGS

13:45A-5.1 Delivery practices; generally

(a) Any person who is engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for future delivery shall:

1. Deliver all of the ordered merchandise by or on the promised delivery date; or

2. Provide written notice to the consumer of the impossibility of meeting the promised delivery date. The notice shall offer the consumer the option to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified later time. Said written notice shall be mailed on or prior to the delivery date.

(b) In the event a seller fails to deliver all of the ordered merchandise on the promised delivery date and makes only a partial delivery, the seller shall comply with the notice requirement of (a) above. Said notice shall offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.

(c) Failure to comply with (a) above shall constitute a deceptive practice under the Consumer Fraud Act.

(d) For purposes of this rule, “household furniture” includes, but is not limited to, furniture, major electrical appliances, and such items as carpets and draperies.

(e) For the purposes of this section, delivery of furniture or furnishings that are damaged or that are not the exact size, style, color or condition indicated on the sales contract, shall not constitute delivery as required by (a)1 above.

1. Upon receipt of such non-conforming merchandise, the consumer shall have the option of either accepting the furniture or of exercising any of the options set forth in (a)2 above.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2000 d.460, effective November 20, 2000.

See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

Inserted (e).

Case Notes

Validity. *State v. Hudson Furniture Co.*, 165 N.J.Super. 516, 398 A.2d 900 (App.Div.1979).

Consumer Fraud Act regulation applies when furniture is delivered untimely. *DiNicola v. Watchung Furniture's Country Manor*, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

Consumer Fraud Act regulations do not apply to breach of warranty. *DiNicola v. Watchung Furniture's Country Manor*, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

In Consumer Fraud Act, "promised merchandise" relates to quantity and description, not to quality of merchandise. DiNicola v. Watchung Furniture's Country Manor, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

13:45A-5.2 Contract forms; date of order

(a) The contract forms or sales documents shall show the date of the order and shall contain the following sentence in ten-point bold face type:

The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).

(b) The blank for the delivery date referred to in (a) above shall be filled in by the seller at the time the contract of sale is entered into by the parties or when the sales documents are issued, either as a specific day of a specific month or as a length of time agreed upon by the buyer and seller (for example, "six weeks from date of order").

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), added "for the" "referred to in (a) above" and "at the time the contract of sale is entered into by the parties or when the sales documents are issued,".

13:45A-5.3 Contract form; delayed delivery

(a) The contract forms or sales documents shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with N.J.A.C. 13:45A-5.1 and shall contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

(b) The provisions of this subchapter shall apply to any person who sells household furniture in or from the State of New Jersey or to any person located outside of the State of New Jersey who sells household furniture into this State.

(c) It shall be unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations", which violate or are contrary to the rights and responsibilities provided for by this rule. Any contract or sales agreement which contains such a provision shall be null and void and unenforceable.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-5.4 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 6. INTERNET DATING SERVICES

13:45A-6.1 Purpose and scope

(a) The purpose of this subchapter is to require Internet dating services to make disclosures in addition to those required by P.L. 2007, c. 272, N.J.S.A. 56:8-168 et seq. (Act), in order to effectuate the purposes of the Act.

(b) The subchapter applies to Internet dating services that offer dating services over the Internet to residents of the State and accept membership applications from residents of the State.

13:45A-6.2 Definitions

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

“Criminal background screening” means a name search for a person’s criminal convictions initiated by an on-line dating service provider and conducted by one of the following means:

1. By searching available and regularly updated government public record databases for criminal convictions, so long as such databases, in the aggregate, provide substantial national coverage; or
2. By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.

“Internet dating service” means a person or entity directly or indirectly in the business of offering, promoting or providing access to dating, relationship, compatibility, matrimonial or social referral services principally on or through the Internet for profit, where the profit is derived from fees from members, advertising, or any other source.

“Member” means a customer, client or participant who submits to an Internet dating service information required to access the service for the purpose of engaging in dating, relationship, compatibility, matrimonial or social referral.

“New Jersey member” means a member who provides a New Jersey address or zip code when registering with the service.

13:45A-6.3 Criminal background information

(a) An Internet dating service that conducts criminal background screenings on its members shall, in addition to the disclosures required by P.L. 2007, c. 272 (N.J.S.A. 56:8-171(d)), disclose, clearly and conspicuously, to all New Jersey members:

1. The means that it uses to conduct the criminal background screenings;
2. A description of how the criminal background screening is conducted, including how the means disclosed pursuant to (a)1 above are utilized, whether it updates criminal background screening information, and if so, how often the update is performed;
3. Whether it allows a member who has been identified as having a conviction for any crime, including, but not limited to, any sex offense, that would qualify the offender for registration pursuant to section 2 of P.L. 1994, c. 133 (N.J.S.A. 2C:7-2) or under another jurisdiction’s equivalent statute to have access to its service to communicate with any New Jersey member; and
4. What crimes, if any, disqualify a member from having access to its service to communicate with any New Jersey member.

(b) The disclosures required by (a) above shall be provided in bold letters in at least 12-point type on the website pages on which a New Jersey member is requested to provide personal information. The disclosures may be provided on a single webpage, such as the home page, provided that a link to the disclosures is conspicuously displayed on all the webpages on which a New Jersey member is requested to provide personal information.

13:45A-6.4 Date of criminal background information

An Internet dating service that discloses that it conducts a criminal background screening on members shall conspicuously display on the webpage containing a member’s profile the service’s policy, or a link to the policy, regarding the updating of criminal background screening information.

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. PREPAID CALLING CARDS

13:45A-8.1 Scope

(a) The provisions of this subchapter apply to providers offering or selling prepaid calling service or prepaid calling cards to persons in the State and distributors of such cards for resale to persons in the State.

(b) The provisions of this subchapter shall not apply to prepaid calling cards printed prior to August 1, 2008 and point-of-sale material relating to such cards printed prior to that date.

(c) All prepaid calling cards printed after August 1, 2008 and all sales material and voice prompts created, printed, distributed or aired after that date shall be subject to this subchapter.

13:45A-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Advertisement” means the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way, to induce directly or indirectly any person to purchase any prepaid calling card or calling services, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

“Government fees” means any and all fees, taxes and charges assessed pursuant to State or Federal law, regulation or other mandate or requirement, including universal service fees and charges.

“Pay phone surcharge” means the surcharge that a provider may charge a customer when that consumer places a call with a card from a pay phone using a toll-free access number. The pay phone surcharge shall be deducted from a card’s balance.

“Permitted fee” means the fees and surcharges that a provider may charge to, or deduct from, a card’s balance for the use of that card, in addition to the rate per minute to the particular destination called, which includes and is limited to any pay phone surcharge, any recharge convenience fee, any directory assistance fee and any government fees.

“Person” means a natural person, partnership, corporation, limited liability company, or any other entity.

“Prepaid calling card” or “card” means any right of use purchased for a sum certain that contains an access number and authorization code that enables a consumer to use a prepaid calling service. Such rights of use may be embodied on a card or other physical object or may be purchased by an electronic or telephonic means through which the purchaser obtains access numbers and authorization codes that are not physically located on a card or other object. “Prepaid calling card” shall not be construed to include cards or other rights of use that provide access to:

1. Telecommunications service if the card or other rights of use and telecommunications service are provided:

i. For free or at no additional charge as a promotional item accompanying a product or service purchased by a consumer; or

ii. Pursuant to an awards, loyalty, rebate or promotional program without any separate monetary consideration being given by the consumer solely in exchange therefor; or

2. A wireless telecommunications service account if the purchaser has a pre-existing relationship with the wireless service provider or establishes a carrier-consumer relationship via the purchase of a device.

“Prepaid calling card distributor” or “distributor” means and includes: any person who purchases or receives prepaid calling cards or service from a prepaid calling service provider, a telecommunications carrier or other distributor and sells or distributes those cards or service to one or more distributors of prepaid calling cards, or to one or more prepaid calling card retailers; and any person who otherwise actively engages in the promotion, advertising or dissemination of prepaid calling cards or service and who is not a provider. “Prepaid calling card distributor” shall not include any prepaid calling card retailers engaged exclusively in point-of-sale transactions with consumers.

“Prepaid calling card retailer” means any person who sells or offers to sell prepaid calling cards directly to consumers.

“Prepaid calling service” or “service” means any prepaid telecommunications service that allows consumers to originate calls through a local, long distance or toll-free access number and authorization code, whether manually or electronically dialed. Prepaid calling service shall not be construed to include any service that provides access to a wireless telecommunications service account through which the purchaser has a pre-existing relationship with the wireless service provider or establishes a carrier-customer relationship via the purchase of a device.

“Provider” means any person providing prepaid calling service to the public using its own, or a resold, telecommunications network or voice over Internet technology.

“Telecommunications network” means the combination of network elements that are required to transmit information in the form of voice, data or video between or among points specified by the user in local or long distance applications without change in the form or content of the information sent and received.

“Toll-free number” means an 800 number, or other telephone number widely understood to be toll-free, which, when called as the destination number or as an access number, shall not result in the calling party being assessed, by virtue of completing the call, any fee, charge or higher rate for the call unless such fee, charge or higher rate is disclosed pursuant to N.J.A.C. 13:45A-8.3(c).

minutes remaining on the prepaid calling services account or prepaid calling card for a call to the number entered and offering the caller the opportunity to cancel the call, followed by a pause giving the caller reasonable time to terminate the call without incurring any charge for the call.

(b) The voice prompt shall state only the number of minutes available for that call to the dialed destination. The caller must be able to receive 100 percent of the minutes of prepaid calling service that have been announced on the voice prompt for such call. The provider or distributor may not disclaim liability under this section by providing notice that the announced minutes are subject to, or before the application of, fees or charges or by utilizing other disclaimers or limitations. Other than information about the number of minutes available to the destination dialed by the consumer on the particular call, providers shall not advertise or promote minutes or rates available for calls to other destinations through voice prompts after the entry of the destination number dialed by the caller.

(c) The consumer shall not be charged for any busy signal or unanswered call.

(d) When, during a call, the prepaid account or card balance is about to be completely depleted, the provider shall provide a voice prompt or other audible signal at least one minute or billing increment before the time expires.

1. If the voice prompt or other audible signal occurs more than one minute before the call time expires, then the voice prompt or audible signal shall indicate the minutes of call time remaining.

13:45A-8.7 Availability of minutes advertised or promoted

All minutes or rates, or both, promoted or advertised on any prepaid calling card, any point-of-sale material relating to that card or otherwise relating to any prepaid calling service, shall be available and achievable by the consumer and there shall be no limitations on the period of time for which the promoted or advertised minutes or rates, or both, will be available to the consumer unless those limitations are clearly and conspicuously disclosed in the same location on the card, advertising or point-of-sale material where the minutes or rates, or both, are promoted or advertised.

13:45A-8.8 Billing decrement rounding and monetary rounding

(a) The billing decrement required to be disclosed under N.J.A.C. 13:45A-8.3(a)3xii shall be the policy that applies to the use of the prepaid calling card or calling service for calls from New Jersey to the advertised destination no matter where the caller is when the call is placed. The disclosure shall also give notice, if applicable, that additional or different billing decrement policies may apply to usage of the prepaid calling card or prepaid calling service to or from other destinations.

(b) A provider or distributor shall not be required to print a billing decrement rounding policy when calls are rounded no higher than to the nearest minute.

(c) A provider or distributor shall not be required to print a monetary rounding policy when rates are rounded no higher than the nearest cent.

13:45A-8.9 Call detail information; records

(a) In the event of a dispute between a customer and a provider concerning the duration or occurrence of a call, which cannot otherwise be resolved, the provider shall provide the customer with the following information about the disputed call or calls:

1. The area code or country code of the originating telephone number;
2. The area code or country code of the terminating telephone number; and
3. The date, time and call duration.

(b) A provider shall maintain for at least two years records of all consumer complaints received by live customer service representatives.

(c) A provider shall maintain for at least two years a sample of all prepaid calling cards, card packaging and advertisements, including point-of-sale advertisements; copies of all detailed rate decks for all of provider's cards, including detailed breakdowns of all rates, charges and fees applicable for calls to all destinations on the rate deck and all records showing all modifications made to the rate decks during such period; records of provider's calling card platform settings showing whether voice prompts announcing call duration have been set to correspond with actual call duration; recordings of voice prompts announcing rates, fees or charges; and the following call detail information: the dialing and signaling information that identifies the inbound access telephone number called, the number of the originating telephone, the date and time the call originated, the date and time the call terminated, the called telephone number and the PIN and/or account number associated with the call and the PIN decrement records.

13:45A-8.10 Activation and recharging

(a) If a card is not available for use until activated by a point-of-sale terminal or comparable means, notice shall be provided on the card or on the front of the card's packaging in language that reasonably explains that the card has no value until activated.

(b) If a customer contacts the provider to recharge the card, the provider shall inform the customer, upon request, of the per minute rate and all charges and/or fees that apply to the use of the card for calls within the continental United States made from New Jersey, including, but not limited to, maintenance fees, pay phone surcharge and connection fees.

13:45A-8.11 Minimum active period; maintenance fees

(a) A card shall expire at the earlier of the expiration date or the end of the expiration period stated on the card. Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of sale, or if recharged, from the date of the last recharge.

(b) No maintenance or dormancy fee shall be charged against a card for any period prior to the time it is first used to dial a destination number.

13:45A-8.12 Required refunds

A provider that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card and shall be provided to the consumer within 60 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

13:45A-8.13 Surcharges

(a) A provider shall not charge any fee or surcharge that is not disclosed as required by this subchapter or that exceeds the amount disclosed by the provider.

(b) A provider shall not charge a consumer for, or impose a fee or surcharge on, any call if the consumer is not connected to the number called. For this purpose, a call shall not be considered connected to the number called if the consumer receives a busy signal or the call is unanswered.

(c) In the case of prepaid calling cards or services utilized at a pay phone, the provider shall provide voice prompt notification of any applicable pay phone surcharges, in addition to the notice required by N.J.A.C. 13:45A-8.3(a)3vii, so long as the provider affords users of prepaid calling cards or services reasonable time to terminate the call after notification of applicable pay phone surcharges without incurring any charge for the call.

13:45A-8.14 Access number

A provider shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

13:45A-8.15 Violations

Without limiting the prosecution of any other practices, which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

SUBCHAPTER 9. GENERAL ADVERTISING**13:45A-9.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Advertisement” means any attempt by an advertiser, other than by use of a price tag, catalog or any offering for the sale of a motor vehicle subject to the requirements of N.J.A.C. 13:45A-26A, to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

“Advertiser” means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale or rental of merchandise at retail and who placed, either directly or through an advertising agency, an advertisement before the public.

“Catalog” means a multi-page solicitation in which a seller offers goods for sale or rental for a seasonal or specified period of time, from which consumers can order goods directly without going to the seller’s place of business. An advertising circular, distributed through inclusion in a newspaper, representing a seller’s partial offering of goods for sale or rental for a period of time not to exceed two weeks, shall not be considered a catalog.

“Closeout sale” means a sale in which an advertiser offers for sale at a reduced price items of merchandise remaining at one or more specified locations which the advertiser will not have available for sale within a reasonable period of time after all such items have been sold.

“Division” means the Division of Consumer Affairs.

“Factory outlet” means an establishment owned by a manufacturer that is used primarily to offer, at retail, the manufacturer’s products directly to the consumer for his or her own use and not for resale.

“Fictitious former price” means an artificially inflated price for an item or items of merchandise established for the purpose of enabling the advertiser to subsequently offer the item or items at a large reduction.

“Former price or price range” in a price reduction advertisement means an advertised price or price range for an item of merchandise that has been offered or sold by the advertiser in his or her trade area or competitors in their trade area.

“Home appliance” means any electrical, mechanical or thermal article produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence including, but not limited to, air conditioners, cameras,

computers, dehumidifiers, dishwashers, dryers, electric blankets, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereo equipment, televisions and washers.

“Merchandise” means any objects, wares, goods, commodities, services or anything offered directly or indirectly to the public for sale or rental at retail.

“Multi-tiered pricing” means a form of offer where the price of merchandise or the extent of a discount is contingent upon the consumer’s merchandise selections, such as the number of units purchased, the purchase of other merchandise pursuant to the terms of the advertiser’s offer, or the total dollar amount of the consumer’s order, for example, “Buy two cans of soda, get a third can at half price.”

“Percentage-off discount” means an offer to sell merchandise expressed in terms of a percentage reduction or range of percentage reductions in price, such as “10% off” or “25% to 50% off.”

“Point of display” means a location within a retail establishment where an item of merchandise is displayed for the purpose of selection by the consumer with the intention of purchase.

“Point of sale” means any location in a retail establishment where purchases of merchandise are totaled by a scanner and payment is made by a consumer.

“Point of sale discount” means a price reduction which, although it is advertised or posted at the point of display, is automatically applied to reduce the retail price of the merchandise at the time it is scanned for consumer purchase, or a price reduction manually entered through a cash reduction or similar device, then scanned for consumer purchase.

“Price advertisement” means any advertisement in which a specific dollar price is stated with regard to specific advertised merchandise.

“Price reduction advertisement” means an advertisement which in any way states or suggests directly or indirectly that merchandise is being offered or made available for sale at a price less than that at which it has been routinely sold or offered for sale in the past or at which it will be sold or offered for sale in the future. The following words and terms or their substantial equivalent, when used in any advertisement except when used exclusively as part of the advertiser’s corporate, partnership or trade name, shall be deemed to indicate a price reduction advertisement: sale, discount, special savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, warehouse or factory clearance, buy one get one free, at cost, below cost, wholesale.

“Rain check” means a written statement issued by an advertiser allowing the purchase of designated merchandise at a previously advertised price.

“Scanner” means an electronic system that employs a laser bar code reader to retrieve product identity, price and other information stored in computer memory.

“Targeted discount” means a price reduction on merchandise which reduction is restricted to customers designated by the advertiser, such as those who possess a card or other device bearing a scanner-readable code issued by the advertiser, a particular type of credit card, or some other device which, when read by the scanner, shall apply the discount at the time of purchase.

“Trade area” means that geographical area in which an advertiser solicits or makes a substantial number of sales.

Amended by R.1996, d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Added “Factory outlet”, “Fictitious former price” and “Former price or price range”; deleted “Reference price”; and amended “Advertisement” and “Home appliance”.

Amended by R.1998 d.489, effective October 5, 1998.

See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).

Rewrote the section.

Amended by R.2000 d.460, effective November 20, 2000.

See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

In the definition of “Advertisement”, amended the N.J.A.C. reference.

Case Notes

Advertisements allegedly in violation of the Consumer Fraud Act, but not the subject of a specific regulation implementing the Act, are best left for a jury determination. *Leon v. Rite Aid Corporation*, 774 A.2d 674 (2001).

An advertisement violating regulations implementing the Consumer Fraud Act is per se a violation of the Act. *Leon v. Rite Aid Corporation*, 774 A.2d 674 (2001).

Held that a franchise or business opportunity venture is “merchandise” within intentment of the Consumer Fraud Act; failure of franchiser to provide franchisee with a rule disclosure statement was a per se unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation in violation of the Consumer Fraud Act. *Morgan v. Air Brook Limousine, Inc.*, 211 N.J.Super 84, 510 A.2d 1197 (Law Div.1986).

13:45A-9.2 General advertising practices

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet reasonably anticipated consumer demand therefor. When an advertisement states a specific period of time during which merchandise will be available for sale, a sufficient quantity of such merchandise shall be made available to meet reasonably anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet reasonably anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. The requirement of this subsection shall not be applicable to merchandise which is advertised:

- i. On an in-store sign only with no corresponding out-of-store sign;
- ii. As being available in a specific quantity; or
- iii. As being available in a “limited supply,” pursuant to a “closeout sale” or pursuant to a “clearance sale” if such offering meets the definition of a closeout sale; or if represented to be permanently reduced.

2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability. By way of illustration, and not by limitation, the following shall be deemed violative of this subparagraph:

- i. The failure to specifically designate which merchandise items are below cost, if any amount less than all advertised items are below cost, when a statement of below cost sales is set forth in an advertisement;
- ii. The failure to specifically designate which merchandise items, if any, are damaged or in any way less than first quality condition;
- iii. The failure to specifically designate merchandise as floor models, discontinued models or one of a kind, when applicable;
- iv. The failure to clearly designate or describe the retail outlets at which advertised merchandise will or will not be available. Such information need not be disclosed on any in-store advertisement.

3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as “sale,” “as advertised,” “20% off.”

4. In any price advertisement in which a home appliance is offered for sale, the failure of an advertiser to disclose the following information relating to the advertised merchandise: the manufacturer’s name or the merchandise trade name, the model or series number and such other information as may be necessary to clearly delineate the advertised item from other similar merchandise produced by the same manufacturer.

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

6. The use of the terms “Public Notice,” “Public Sale” or words or terms of similar meaning in any advertisement offering merchandise for sale, where such sale is not required by court order or by operation of law, other than a sale conducted by an auctioneer on behalf of a non-business entity.

7. Describing the advertiser through the use of the terms “warehouse,” “factory outlet,” “discount,” “bargain,” “clearance,” “liquidators,” “unclaimed freight,” or other words or terms of similar meaning, whether in the advertiser’s corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described.

8. Whenever an advertiser provides a raincheck for an advertised item which is not available for immediate purchase, the failure to:

i. Honor or satisfy such raincheck within 60 days of issuance unless an extension of such time period is agreed to by the holder thereof or, if after a good faith effort an advertiser cannot procure for the holder of the raincheck the advertised merchandise within the 60-day period, failure to offer the holder of the raincheck a different item of merchandise of substantially the same kind, quality and price as the original advertised merchandise; and

ii. Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for not less than 10 days after giving such notice or to the end of the 60-day period for which the raincheck is valid, whichever is longer, for all merchandise with an advertised unit price greater than \$15.00;

iii. Offer a raincheck to all customers who are unable, due to the unavailability thereof, to purchase the advertised merchandise during the period of time during which the merchandise has been advertised as available for sale; and

iv. Conspicuously post its raincheck policy on a sign in at least one of the following locations:

- (1) Affixed to a cash register or location of the point of sale;
- (2) So situated as to be clearly visible to the buyer;
- (3) Posted at each store entrance used by the public;
- (4) At the location where the merchandise was offered for sale;
- (5) In an advertisement for merchandise; or
- (6) Printed on the receipt of sale.

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

10. The failure of an advertiser to substantiate through documents, records or other written proof any claim made regarding the safety, performance, availability, efficiency, quality or price of the advertised merchandise, nature of the offering or quantity of advertised merchandise available for sale. Such records shall be made available upon request for inspection by the Division or its designee at the advertiser's regular place of business or central office in New Jersey, or, at the advertiser's option, the Division's designated offices, for a period of 90 days following the effective date of the advertisement.

11. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest the comparison between the cost of supply and the price at retail for the advertised merchandise.

12. Use of the term "cost," "wholesale" or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit paid by the advertiser to the manufacturer or distributor of the merchandise. In the computation of the price per unit of the advertised merchandise, freight may be included if the advertiser pays for same and is not reimbursed therefore, but handling and all overhead or operating expenses shall be excluded.

13. (Reserved)

Amended by R.1993 d.6, effective January 4, 1993.

See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Added new (a)11.

Amended by R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

In (a)liii excluded merchandise represented to be permanently reduced, and added provision relating to use of the terms "cost" or "wholesale".

Amended by R.2007 d.337, effective November 5, 2007.

See: 39 N.J.R. 2586(a), 39 N.J.R. 4850(b).

Rewrote (a)8i through (a)8ii; in (a)8iii, substituted ";" and" for the period at the end; and added (a)8iv.

Case Notes

Penalty statute applied retroactively to misrepresentation of food on menu. *Division of Consumer Affairs v. Lubrano*, 94 N.J.A.R.2d (CMA) 93.

Respondent's motion to depose the Executive Director of the Office of Consumer Protection, in furtherance of defense that inspection processes were arbitrary and capricious, denied due to lack of good cause showing that information could not be otherwise obtained. *Div. of Consumer Affairs v. Acme Markets, Inc.*, 3 N.J.A.R. 210 (1981).

13:45A-9.3 Price reduction advertisements; merchandise advertised at a price of less than \$100.00

(a) An advertiser offering a price reduction on merchandise at a price of less than \$100.00 shall, in addition to complying with the provisions of N.J.A.C. 13:45A-9.2:

1. State with specificity in any price reduction advertisement the period of time during which the price reduction shall be applicable, unless that merchandise is advertised in the manner set forth in N.J.A.C. 13:45A-9.2(a) 1i through iii;

2. Ensure that the amount of the price reduction is sufficiently large that the consumer, if he or she knew what the former price was, would believe that a genuine bargain or saving was being offered; and

3. Comply with the provisions of N.J.A.C. 13:45A-9.4 if the advertisement makes reference to a former price or price range; however, this requirement shall not apply to

merchandise discount offers made in accordance with N.J.A.C. 13:45A-9.8.

Amended by R.1993 d.6, effective January 4, 1993.
See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Deleted (a)3iii; stylistic revisions.

Repeal and New Rule, R.1996, d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Section was "Price reduction advertisements".

Amended by R.1998 d.489, effective October 5, 1998.

See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).

Rewrote (a)3.

13:45A-9.4 Price reduction advertisements; items of merchandise specifically advertised at a price of more than \$100.00

(a) An advertiser offering an item of merchandise specifically advertised for sale at a price of \$100.00 or more shall, in addition to complying with the provisions of N.J.A.C. 13:45A-9.2:

1. State the selling price or price range;
2. State the former price or price range or the amount of the reduction in dollars;
3. State with specificity in any price reduction advertisement the period of time during which the price reduction shall be applicable, unless the merchandise is advertised in the manner set forth in N.J.A.C. 13:45A-9.2(a) 1i through iii;
4. Set forth the former price or price range or the amount of reduction in dollars in close proximity to the selling price or price range and the advertised item;
5. Set forth the basis upon which the former price or price range or the amount of reduction in dollars was established in close proximity to the former price or price range of the advertised item. In this regard, terms such as "comparable value," "competitor's price," "our regular price," or words of similar import shall be used to designate the basis for the former price; and
6. Set forth with specificity when in the remote past a former price of an item of merchandise was effective if it was not actively or openly offered for sale within the advertiser's trade area in the regular course of business during at least 28 of the 90 days before the effective date of the advertisement. In this regard, when advertising a seasonal sale, such as Christmas dishes, pool supplies, outdoor furniture, etc., actual dates, specific holidays or terms such as "last season," may be used to describe when the former price was used in the remote past.

(b) A former price or a selling price may be stated in terms of a price range when, and only when:

1. An advertiser operates more than one retail outlet at which advertised merchandise has been or will be available for purchase at different prices in the ordinary course of business. In such case, the price range shall be based upon

the sales or offers of sale at the advertiser's retail outlets; or

2. An advertiser advertises two or more items of comparable merchandise as available at reduced prices, in which case the price range shall be based upon former or usual selling prices of the advertised products.

- i. The following examples would comply with this paragraph: "Regular price \$110 to \$125—On sale for \$100"; "Brand X 19" color TV—Regularly \$250 to \$300. Now \$150 to \$200."

New Rule, R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Former N.J.A.C. 13:45A-9.4, "Application of regulation", recodified to 13:45A-9.7.

13:45A-9.5 Price reduction advertisements; merchandise advertised as a savings of a percentage or a range of percentages

(a) An advertiser offering merchandise for sale at a savings of a percentage or a range of percentages (such as "save 20% or 20% to 50% off") shall, in addition to complying with the provisions of N.J.A.C. 13:45A-9.2:

1. State the minimum percentage reduction as conspicuously (such as the same size print) as the maximum percentage reduction when applicable; and
2. Set forth the basis upon which the former price was established pursuant to N.J.A.C. 13:45A-9.6(b), in close proximity to the percentage reduction. In this regard, terms such as "competitor's price" or "our regular price" or words of similar import shall be used to designate the basis for the former price.

(b) Percentage-off discounts made in accordance with N.J.A.C. 13:45A-9.8 shall be exempt from the requirements of (a) above.

New Rule, R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Amended by R.1998 d.489, effective October 5, 1998.

See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).

Added a new (b).

13:45A-9.6 Pricing; prohibition on fictitious pricing and methods of substantiation

(a) An advertiser shall not use a fictitious former price. Use of a fictitious former price will be deemed to be a violation of the Consumer Fraud Act.

(b) A former price or price range or the amount of reduction shall be deemed fictitious if it can not be substantiated, based upon proof:

1. Of a substantial number of sales of the advertised merchandise, or comparable merchandise of like grade or

quality made within the advertiser's trade area in the regular course of business at any time within the most recent 60 days during which the advertised merchandise was available for sale prior to, or which were in fact made in the first 60 days during which the advertised merchandise was available for sale following the effective date of the advertisement;

2. That the advertised merchandise, or comparable merchandise of like grade or quality, was actively and openly offered for sale at that price within the advertiser's trade area in the regular course of business during at least 28 days of the most recent 90 days before or after the effective date of the advertisement; or

3. That the price does not exceed the supplier's cost plus the usual and customary mark-up used by the advertising merchant in the actual sale of the advertised merchandise or comparable merchandise of like grade or quality in the recent regular course of business.

(c) If the former price specifically references a time in the remote past during which it was offered, it shall be deemed fictitious unless substantiated pursuant to either (b)1 or 3 above.

(d) The following examples of fictitious pricing are provided for illustration only and are not intended to limit the types of advertising the Division shall consider to be fictitious:

1. John Doe is a retailer of Brand X fountain pens which cost him \$5.00 each. His usual markup is 50 percent over cost. That is, his regular retail price is \$7.50. In order subsequently to offer an unusual "bargain," Doe temporarily raises the price of Brand X pens to \$10.00 each. In so doing, Doe realizes that he will only be able to sell a few pens, if any, at this inflated price. But he does not care, because he intends to maintain that price for only a few days. Then he "cuts" the artificially inflated price of \$10.00 to the usual price—\$7.50 at which time he advertises: "Terrific Bargain: X Pens, Were \$10, Now Only \$7.50." This is obviously a false claim. The advertised "bargain" is not genuine.

2. Retailer Doe advertises Brand X pens as having a "Retail Price \$15.00, My Price \$7.50," when, in fact, only a few small suburban boutique-type stores in the area charge \$15.00. All of the larger outlets, like retailer Doe's, located in and around the main shopping areas charge approximately \$7.50. This advertisement would be deceptive because the price charged by the small suburban boutique or specialty stores would have no real significance to Doe's customers, to whom the advertisement of "Retail Value \$15.00" would suggest a prevailing, and not merely an isolated and unrepresentative price in the area in which they shop.

3. Retailer Doe advertises Brand X pen as "Comparable Value \$15.00" when only a small number of unrepresentative specialty stores in the trade area offer Brand Y, an essentially similar pen, for that price. This is a related form of misleading advertising because the price of the comparable merchandise (that is, Brand Y), which is cited for comparison is not representative of the price for Brand Y being charged by representative retail outlets in the advertiser's trade area.

New Rule, R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

13:45A-9.7 Application of regulation

(a) This subchapter shall apply to the following advertisements:

1. Any advertisement uttered, issued, printed, disseminated or distributed within this State concerning goods and services advertised as available at locations exclusively within this State; and

2. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed to any substantial extent within this State concerning goods and services advertised as available at locations within this State and outside this State; and

3. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed primarily within this State concerning goods and services

advertised as available at locations exclusively outside this State; and

4. Any radio and television broadcasts uttered, issued, disseminated or distributed primarily within this State and outside this State, or at locations exclusively outside this State.

(b) An advertiser, a manufacturer, an advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertising seller shall be deemed an advertiser within the meaning of this subchapter, when such entity prepares or places an advertisement for publication. No such entity shall be liable for a violation of this subchapter when the entity reasonably relies upon data, information or materials supplied by an advertising seller for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertising seller. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this subchapter.

(c) An advertiser has no liability under this subchapter for a failure to comply with any requirement thereof if the advertiser shows by a preponderance of evidence that failure to comply resulted from actions of persons other than the advertiser which were not, or should not have been reasonably anticipated by the advertiser; or that such failure was the result of a labor strike or a natural disaster such as, but not limited to, fires, floods and earthquakes.

(d) If any provisions of this subchapter or the application thereof to any person or circumstances is held unconstitutional or beyond the statutory powers of the Attorney General, the remainder of this subchapter and the application of such provisions to other persons or circumstances shall not be affected.

Amended by R.1993 d.6, effective January 4, 1993.

See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Revised (b).

Recodified from 13:45A-9.4 by R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Case Notes

Culpability of advertising agencies and newspapers. *Fenwick v. Kay American Jeep, Inc.*, 136 N.J.Super. 114, 344 A.2d 785 (App.Div.1975) reversed 72 N.J. 372, 371 A.2d 13.

13:45A-9.8 Retail discounts in scanner stores; percentage-off discounts; point-of-sale discounts; multi-tiered pricing offers; targeted discounts

(a) Retail establishments which use scanners that have the capability of providing percentage-off discounts, and wish to offer percentage-off discounts at the point of sale

shall set forth the regular price and the price after any discounts are taken relating to the merchandise purchased by the consumer on the register receipt given to the consumer at the point of sale.

(b) An advertiser who offers a percentage-off discount is not required to disclose the basis of the percentage reduction or the regular price or price range in an advertisement pursuant to N.J.A.C. 13:45A-9.5 provided that:

1. The retail price per unit of merchandise is less than \$100.00; and
2. The regular price and the price after any discounts are taken are set forth on the register receipt given to the consumer at the point of sale.

(c) An advertiser may discount merchandise at the point of sale without marking the merchandise with the discounted price provided that the following information is posted conspicuously in the form of a notice at the point of display:

1. A description of the merchandise or the range or category of merchandise and the price to which the discount shall apply;
2. A notice that the discount will be taken at the time of purchase; and
3. The specific amount or type of discount applicable, such as "\$10.00 off" or "25% off posted price."

(d) Advertisements and point of display materials involving multi-tiered pricing offers made by advertisers shall contain the following:

1. All retail prices or discounts comprising the offer and the types of purchases to which they apply, for example:
 - i. "Treefree Paper Towels—Get first roll at 79¢, 2nd roll at 69¢ and each additional roll at 59¢";
 - ii. "Wonder Hot Dog Rolls—\$1.09 only; 79¢ with purchase of Plochman's Mustard"; and
2. Any limitations applicable to the offer, such as the type, brand or size of the merchandise or restrictions on the number of units which may be purchased.

(e) Advertisements containing targeted discounts shall conspicuously state that the offer is limited to a certain category of consumer and shall specifically identify those consumers. If the merchandise to be discounted is also being advertised at a reduced price for all consumers, the advertisement shall clearly distinguish between the types of offers made by the advertiser and identify those consumers who are entitled to each offer.

1. Any targeted discounts or pricing information posted at the point of display shall clearly and conspicuously state that the offer is limited, and shall identify the customers who are entitled to take advantage of the offer.

New Rule. R.1998 d.489, effective October 5, 1998.
See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).

SUBCHAPTER 10. SERVICING AND REPAIRING OF HOME APPLIANCES

13:45A-10.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Home appliance" means any electrical, mechanical or thermal article produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence including, but not limited to, air conditioners, cameras, computers, dehumidifiers, dishwashers, dryers, electric blankets, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereo equipment, television and washers.

"Home appliance dealer" means any person, including any business entity who, in the ordinary course of business, is engaged in the advertising, sale or lease of home appliances.

"Home appliance repairer" means any person, including any business entity who, in the ordinary course of business, is engaged in the service or repair of home appliances.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2000 d.460, effective November 20, 2000.

See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

Inserted definition of "Home appliance".

13:45A-10.2 Required information

(a) Whenever a consumer purchases a home appliance, the home appliance dealer shall supply the consumer with a written copy of any information concerning:

1. Manufacturer's warranties, if any are still applicable;
2. Dealer's warranties, if any;
3. Dealer's service contract, if such is agreed upon, which shall include a clear statement of:
 - i. Any basic "diagnostic" charges or any additional set fee;
 - ii. The methods used to determine any additional charge including the charge for labor and parts;
 - iii. The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller; and

4. Whether the item being purchased is reconditioned or refurbished.

(b) Whenever a consumer requests service on a home appliance from a home appliance repairer, the home appliance repairer shall disclose before the consumer becomes committed to any expense:

1. Any diagnostic charges or other set fees; and
2. The methods used to determine the total charge including the charges for labor and parts.

(c) If the home appliance repairer is also the dealer from whom the appliance was purchased and there was a service contract covering the requested services, the provisions of (b) above shall not apply.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Amended by R.2000 d.460, effective November 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

In (a), inserted 3iii, and added 4.

13:45A-10.3 Deceptive practices

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of repairing and servicing home appliances:

1. Commencing work other than diagnostic work or work included in a diagnostic fee without having obtained the consumer's signature or the signature of the consumer's agent on a written itemized estimate of the labor and parts necessary, including specific notation of exchange price on parts where applicable. If such written consent cannot be obtained, repair work may be commenced only if the consumer has been advised of the estimate and has consented thereto and the person advising the consumer has noted the conversation on the estimate as well as the date, time and phone number at which he reached the consumer.

2. Failure to provide the consumer with a copy of the above authorization and any other servicer's receipt or document requiring the consumer's signature, as soon as the consumer signs such document.

3. Making any deceptive or misleading statements, including but not limited to false or unrealistic promises and groundless estimates of a character likely to influence, persuade or induce a consumer to authorize the repair or service of a home appliance.

4. Charging the consumer for work done or parts supplied in excess of the estimated price without the oral or written consent of the consumer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the supplier of services shall make a notation on the documentation previously signed by the consumer of the date, time, name of the person authorizing the additional repairs and the telephone number, if any, together with a specification of the additional parts and labor and the total additional cost.

5. Failure to offer to return replaced parts to the consumer at the time of completion of the work, provided that the parts by virtue of their size, weight or other similar factors or for any safety reasons are not practical to return, unless the estimate and bill make specific reference to an exchange price for a particular part.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-10.4 Exceptions

(a) The provisions of N.J.A.C. 13:45A-10.2 and 10.3 above shall not apply to the repair and servicing of the following if the repair or servicing required is such as to constitute an emergency which presents an imminent hazard or threat to life or health:

1. Gas or oil consuming appliances;
2. Central heating and cooling systems;
3. Heat pumps;
4. Self contained combination heating and cooling systems.

13:45A-10.5 Violations

Without foreclosing the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violations of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. SALE OF ANIMALS

13:45A-12.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Animal" means a dog or cat.

"Consumer" means any natural person purchasing a dog or cat from a pet dealer.

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

"Kennel" means the business of boarding dogs or cats or breeding dogs or cats for sale.

"Person" means any person as defined by N.J.S.A. 56:8-1(d).

"Pet dealer" means any person engaged in the ordinary course of business in the sale of animals for profit to the public or any person who sells or offers for sale more than five animals per year.

"Pet shop" means the business of selling, offering for sale or exposing for sale dogs or cats.

"Quarantine" means to hold in segregation from the general animal population any dog or cat because of the presence or suspected presence of a contagious or infectious disease.

"Unfit for purchase" means any disease, deformity, injury, physical condition, illness or defect which is congenital or hereditary and severely affects the health of the animal, or which was manifest, capable of diagnosis or likely to have been contracted on or before the sale and delivery of the animal to the consumer. The death of an animal within 14 days of its delivery to the consumer, except death by accident or as a result of injuries sustained during that period shall mean such animal was unfit for purchase.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Because a dog breeder sold animals to the public for profit, she was a "pet dealer" as defined by N.J.S.A. 56:8-93 and N.J.A.C. 13:45A-12.1, and thus was subject to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to 56:8-166, and the regulations promulgated thereunder by the Director of the New Jersey Division of Consumer Affairs. The New Jersey Pet Purchase Protection Act, N.J.S.A. 56:8-92 to 56:8-97, did not apply. *Maguire v. Mohrmann*, 397 N.J. Super. 103, 935 A.2d 1259, 2007 N.J. Super. LEXIS 362 (App.Div. 2007).

13:45A-12.2 General provisions

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:

1. To sell an animal within the State of New Jersey without an animal history and health certificate and without providing the consumer with a completed animal history and health certificate. The animal history and health certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

- i. The animal's breed, sex, age, color, and birth date;
- ii. The name and address of the person from whom the pet dealer purchased the animal;
- iii. The breeder's name and address, and the litter number of the animal;
- iv. The name and registration number of the animal's sire and dam;
- v. The date the pet dealer took possession of the animal;
- vi. The date the animal was shipped to the pet dealer, where such date is known by the dealer;
- vii. The date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal;
- viii. A statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, and the date of administering the vaccinations and inoculations; and
- ix. A 10-point bold-face type warning in the following form:

WARNING

The animal which you have purchased (check one)
 has has not been previously vaccinated or inoculated. Vaccination or inoculation neither guarantees good health nor assures absolute immunity against disease. Examination by a veterinarian is essential at the earliest possible date to enable your veterinarian to insure the good health of your pet.

2. To fail to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale and/or to fail to permit inspection thereof by an authorized representative of the Division upon two days' notice (exclusive of Saturday and Sunday).

3. To include in the animal history and health certificate any false or misleading statement.

4. To directly or indirectly refer, promote, suggest, recommend or advise that a consumer consult with, use, seek or obtain the services of a licensed veterinarian unless the consumer is provided with the names of not less than three licensed veterinarians of whom only one may be the veterinarian retained by the pet dealer for its purposes.

5. To describe or promote the operation of the business as a "kennel" unless the business operation falls within the definition contained in N.J.A.C. 13:45A-12.1 or the operation of the business as a "kennel" has been authorized by the issuance of a license pursuant to N.J.S.A. 4:19-15.8. In the absence of meeting such criteria, a pet dealer shall be considered to be engaged in the operation of a "pet shop" and shall, where the name for the business operation includes the word "kennel," indicate the following disclaimer in proximate location to the name for the business operation in all promotional or advertising activities:

"This business only engages in the operation of a pet shop."

6. To use or employ a name for the business operation which suggests or implies that such business operation is engaged in or is associated with any organization which registers or certifies the pedigree or lineage of animals and/or to represent, expressly or by implication, approval by or affiliation with such organization, unless the following disclaimer, as appropriate, appears in proximate location to the name for the business operation:

"This business only engages in the operation of a pet shop."

"This business only engages in the operation of a kennel."

7. To state, promise or represent, directly or indirectly, that an animal is registered with an animal pedigree registry organization if such registration has not already been accomplished or that an animal is capable of being so registered, followed by a failure either to effect such registration or provide the consumer with the documents necessary therefor 120 days following the date of sale of such animal, if the animal has not already been returned to the pet dealer. In the event that a pet dealer fails to effect registration or to provide the necessary documents within 120 days following the date of sale, the consumer shall, upon written notice to the pet dealer, be entitled to choose one of the following options:

i. To return the animal and to receive a refund of the purchase price plus sales tax; or

ii. To retain the animal and to receive a partial refund of 75 percent of the purchase price plus sales tax.

8. A pet dealer's failure to comply with the consumer's election pursuant to (a)7 above within 10 days of written notice thereof shall be deemed a separate deceptive practice for purposes of this section.

9. To fail to display conspicuously on the business premises a sign not smaller than 22 inches by 18 inches which clearly states to the public in letters no less than one inch high the following:

KNOW YOUR RIGHTS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. Read your animal history and health certificate, the Statement of New Jersey Law Governing the Sale of Dogs and Cats and your Contract. In the event of a complaint you may contact: Division of Consumer Affairs, Post Office Box 45025, 124 Halsey Street, Newark, New Jersey 07101. (201) 504-6200.

(b) It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions contained in (a) above.

Administrative change to (a)9.

See: 25 N.J.R. 1516(b).

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-12.3 Required practices related to the health of animals and fitness for sale and purchase

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:

1. A pet dealer shall have each animal examined by a veterinarian licensed to practice in the State of New Jersey prior to the sale of the animal. The name and address of the examining veterinarian, together with the findings made and treatment (if any) ordered as a result of the examination, shall be noted on each animal's history and health certificate as required by N.J.A.C. 13:45A-12.2(a)1vii.

2. A pet dealer shall label and identify each cage as to the:

- i. Sex and breed of animal;
- ii. Date and place of birth of each animal; and
- iii. Name and address of the attending licensed New Jersey veterinarian and the date of initial examination.

3. A pet dealer shall be required to quarantine any animal diagnosed as suffering from a contagious or infectious disease, illness or condition until such time as a licensed New Jersey veterinarian determines that such

animal is free from contagion or infection. All animals requiring quarantining shall be placed in a quarantine area separated from the general animal population.

4. A pet dealer shall be permitted to inoculate and vaccinate animals prior to purchase only on the order of a veterinarian licensed to practice in the State of New Jersey. A pet dealer, however, shall be prohibited from representing, directly or indirectly, that he is qualified to engage in or is engaging in, directly or indirectly, the following activities: diagnosing, prognosing, treating, administering, prescribing, operating on, manipulating or applying any apparatus or appliance for disease, pain, deformity, defect, injury, wound or physical condition of animals after purchase for the prevention of, or to test for, the presence of any disease in such animals. These prohibitions include but are not limited to the giving of inoculations or vaccinations after purchase, the diagnosing, prescribing and dispensing of medication to animals and the prescribing of any diet or dietary supplement as treatment for any disease, pain, deformity, defect, injury, wound or physical condition.

5. A pet dealer shall have any animal which has been examined more than 14 days prior to purchase reexamined by a licensed New Jersey veterinarian for the purpose of disclosing its condition at the time of purchase. Such examination shall take place within 72 hours of delivery of the animal to the consumer unless the consumer waives this right to reexamination in writing. The written waiver shall be in the following form and a copy shall be given to the consumer prior to the signing of any contract or agreement to purchase the animal:

KNOW YOUR RIGHTS

To ensure that healthy animals are sold in this State, New Jersey law requires that a dog or cat be examined by a licensed New Jersey veterinarian prior to its sale by a pet dealer and within 72 hours of the delivery of the dog or cat to a consumer who has purchased the animal where the initial examination took place more than 14 days prior to the date of purchase. A pet dealer need not have the animal reexamined if you, the consumer, decide that you do not want such a reexamination performed.

If you do not want a reexamination performed, please indicate your decision below.

WAIVER OF REEXAMINATION RIGHT

I understand that I have the right to have my animal reexamined within 72 hours of its delivery to me. I do not want to have such a reexamination performed.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

6. If at any time within 14 days following the sale and delivery of an animal to a consumer, a licensed veterinarian certifies such animal to be unfit for purchase due to a non-congenital cause or condition or within six months certifies an animal to be unfit for purchase due to a congenital or hereditary cause or condition, a consumer shall have the right to elect one of the following options:

i. The right to return the animal and receive a refund of the purchase price, including sales tax, plus reimbursement of the veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

ii. The right to retain the animal and to receive reimbursement for veterinary fees incurred prior to the consumer's receipt of the veterinary certification, plus the future cost of veterinary fees to be incurred in curing or attempting to cure the animal. The pet dealer's liability under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

iii. The right to return the animal and to receive in exchange an animal of the consumer's choice, of equivalent value, plus reimbursement of veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

iv. In the event of the animal's death within 14 days of its delivery to the consumer, except where death occurs by accident or injury sustained during that period, the right to receive a full refund of the purchase price plus sales tax for the animal, or in exchange an animal of the consumer's choice of equivalent value, plus reimbursement of veterinary fees incurred prior to the death of the animal. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal.

7. The pet dealer shall accept receipt of a veterinary certification of unfitness which has been delivered by the consumer within five days following the consumer's receipt thereof, such certification to contain the following information:

- i. The name of the owner;
- ii. The date or dates of examination;
- iii. The breed, color, sex and age of the animal;
- iv. A statement of the veterinarian's findings;
- v. A statement that the veterinarian certifies the animal to be "unfit for purchase";
- vi. An itemized statement of veterinary fees incurred as of the date of the certification;
- vii. Where the animal is curable, the estimated fee to cure the animal;
- viii. Where the animal has died, a statement setting forth the probable cause of death; and
- ix. The name and address of the certifying veterinarian and the date of the certification.

8. When a consumer presents a veterinary certification of unfitness to the pet dealer, the pet dealer shall confirm the consumer's election in writing. The election shall be in the following form and a copy shall be given to the consumer upon signing:

UNFITNESS OF ANIMAL—ELECTION OF OPTION

I understand that, upon delivery of my veterinarian's certification of unfitness, I have the right to elect one of the following options. I am aware of those options and I understand each of them. I have chosen the following option:

1. Return of my animal and receipt of a refund of the purchase price, including sales tax for the animal, plus reimbursement of the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

2. Retention of my animal and reimbursement for the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness, plus the future cost to be incurred in curing or attempting to cure my animal. The total reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax for my animal.

3. Return of my animal and receipt of an animal of my choice of equivalent value in exchange plus reimbursement of veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

4. DEATH OF ANIMAL ONLY. (check one) Receipt of a full refund of the purchase price, including sales tax for the animal, or in exchange an animal of my choice of equivalent value plus reimbursement of the veterinary fees incurred prior to the death of the animal. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

Consumer's Name
(Print)

Consumer's Signature

Date

Pet Dealer's or Agent's
Name (Indicate Title or
Position)
(Print)

Pet Dealer's or Agent's
Signature

Date

9. A pet dealer shall comply with the consumer's election as required by (a)7i through iv above not later than 10 days following receipt of a veterinary certification. In the event that a pet dealer wishes to contest a consumer's election, he shall notify the consumer and the Director of the Division of Consumer Affairs in writing within five days following the receipt of the veterinarian's certification, and he may require the consumer to produce the animal for examination by a veterinarian of the dealer's choice at a mutually convenient time and place. The Director shall, upon receipt of such notice, provide a hearing 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, to determine why the option elected by the consumer should not be allowed.

10. A pet dealer shall give the following written notice to a consumer prior to the delivery of the animal. Such notice, signed by both the pet dealer and the consumer, shall be embodied in a separate document and shall state the following in 10 point boldface type:

**KNOW YOUR RIGHTS—A STATEMENT OF
NEW JERSEY LAW GOVERNING THE
SALE OF DOGS AND CATS**

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. In the event that a licensed veterinarian certifies your animal to be unfit for purchase within 14 days following receipt of your animal or within six months in the case of a congenital or hereditary cause or condition, you may:

- i. Return your animal and receive a refund of the purchase price including sales tax; or
- ii. Keep your animal and attempt to cure it; or
- iii. Return your animal and receive an animal of your choice of equivalent value.

Veterinary fees limited to the purchase price of the animal, including sales tax, which were related to the condition rendering the animal unfit for sale, must be paid by the dealer in the event that you choose to keep the animal. If you choose to return the animal, veterinary fees incurred prior to receipt of the veterinary certification, limited to the purchase price of the animal, including sales tax, which were related to the condition rendering the animal unfit for sale, must be paid by the dealer.

Further, in the event of your animal's death within this 14-day period, except when death occurs by accident or as a result of injuries sustained after delivery, you may choose to receive either a full refund of the purchase price, plus sales tax, or an animal of equivalent value. In addition, veterinary fees, limited to the purchase price, including sales tax must be paid by the pet dealer.

In order to exercise these rights, you must present to the pet dealer a written veterinary certification that the animal is unfit for purchase and an itemized bill of all veterinary fees incurred prior to your receipt of the certification. Both of these items must be presented no later than five days after you have received the certification of unfitness. In the event that the pet dealer wishes to contest the certification or the bill, he may request a hearing at the Division of Consumer Affairs. If the pet dealer does not contest the matter, he must make the refund or reimbursement not later than ten days after receiving the veterinary certification. Although your dog or cat is required to be examined by a licensed veterinarian prior to sale, symptoms of certain conditions may not appear until after sale. If your dog or cat appears ill, you should have it examined by a licensed veterinarian of your choice at the earliest possible time.

If the pet dealer has promised to register your animal or to provide the necessary papers and fails to do so within the 120 days following the date of sale, you are entitled to return the animal and receive a full refund of the purchase price plus sales tax or to keep the animal and receive a refund of 75 percent of the purchase price plus sales tax. In the event you elect to keep the animal and the dealer provides the 75 percent refund, the dealer is no longer obligated to register the animal or to provide the necessary papers to do so.

11. A pet dealer shall maintain copies of all notices required pursuant to (a)10 above, signed by both the pet dealer and the consumer, for at least one year from the date the notice was signed and shall ensure that such notices are

readily available for inspection, upon request, by an authorized representative of the Division of Consumer Affairs.

12. It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions of this section except as specifically authorized under (a)5 above.

Administrative correction.

See: 25 N.J.R. 4600(a).

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Dog buyer sued a dog breeder after the dog died within five days of sale. As the breeder chose not to exercise the right to autopsy the animal after the buyer substantially complied with the requirements of N.J.A.C. 13:45A-12.3(a)7 to provide a veterinary certification that the dog was unfit for sale, the buyer was properly awarded the purchase price of the dog and veterinary expenses. *Maguire v. Mohrmann*, 397 N.J. Super. 103, 935 A.2d 1259, 2007 N.J. Super. LEXIS 362 (App.Div. 2007).

Pet consumer entitled to refund from dealer if veterinarian's certificate shows pet unfit for sale. *Dueben v. Therien*, 97 N.J.A.R.2d (CMA) 150.

SUBCHAPTER 13. POWERS TO BE EXERCISED BY COUNTY AND MUNICIPAL OFFICERS OF CONSUMER AFFAIRS

13:45A-13.1 Statement of general purpose and intent

The within regulations are promulgated pursuant to authority conferred by L.1975 c.376 and are intended to operate as working guidelines for county and municipal consumer protection agencies in the exercise of those powers conferred herein. Any and all powers delegated hereby shall be exercised in strict accordance herewith and with such directives as may from time to time be issued by the Attorney General through the Director of the Division of Consumer Affairs.

13:45A-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the New Jersey Consumer Fraud Act L.1960 c.39 (C56:8-1 et seq.) as amended and supplemented.

“Director” means the Director of the Division of Consumer Affairs.

“Person” means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner,

officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

13:45A-13.3 General provisions

(a) The powers hereinafter delegated shall be exercised consistent herewith in the name of a county or municipal director of consumer affairs. Such a director shall be established by resolution adopted by a county board of chosen freeholders or by ordinance adopted by the governing body of a municipality. In the event that such ordinance or resolution has been adopted prior hereto, the same shall be deemed valid for the purpose of creating a county or municipal director as required hereby.

(b) The powers delegated herein shall be exercised either by the director of a county office of consumer affairs or by a municipal director of consumer affairs. In the event a county office and a municipal office work on a matter concurrently, the Director shall supervise each in order to insure consistent policies and practices.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-13.4 Qualifications of county or municipal director

(a) A county or municipal director of consumer affairs in order to exercise those powers hereinafter delegated shall:

1. Be established by formal appointment by resolution adopted by the county board of chosen freeholders or by ordinance adopted by the governing body of the municipality;

2. Successfully complete such initial educational and training courses as may be established by the director and such supplemental courses as may from time to time be prescribed;

3. Require that all staff employees or representatives dealing with the investigation or mediation of consumer complaints successfully complete such educational and training courses as may be established by the director. In the event that such staff employees or representatives shall fail to successfully complete such courses or shall be employed prior to the giving of such course, such employees or representatives may continue in such employment under the direct supervision and control of an individual who has successfully completed the course;

4. File such reports with the Division of Consumer Affairs as may be required by the director.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

- i. The term "retail price" or "you pay" or similar term;
 - ii. The numerical retail price;
 - iii. The quantity or size of the consumer commodity expressed in terms of the approved unit of measure.
4. A description of the commodity to be sold shall appear on the sign or list.
5. Additional stock or code information may appear on the unit price sign or list.
6. All letters or numbers shall be in conspicuous figures and shall be clear and legible.
- i. The list shall display the unit price and retail price in numbers of equal size.
 - ii. The sign shall display the unit price and retail price in equal size if in numbers of less than five inches. For signs with numbers for the retail price larger than five inches, the unit price shall be no less than three inches in size or one-half the retail price size, whichever is greater.
7. The overall design of the sign or label shall convey the consumer information in a clear, readable and conspicuous fashion. Any stock or code information shall not obscure or deemphasize the consumer information.

13:45A-14.9 Unit price tags

Whenever these regulations require a unit price tag to be attached directly to the consumer commodity, a sample format of the tag shall be submitted to the director for approval prior to the display of the tag. In reviewing submitted price tags, the director shall apply those standards set forth in N.J.A.C. 13:45A-14.7 governing the format for unit price labels.

13:45A-14.10 Means of disclosing unit price information

(a) Whenever a regulated consumer commodity is exposed or offered for sale at retail, the unit price and retail price shall be disclosed in the following manner:

1. If the commodity is displayed upon a shelf, the unit price label shall appear directly below the commodity, or, alternatively, a unit price tag shall be attached to the commodity. If the use of a unit price label or unit price tag is impossible or impractical, a unit price sign or list may be used provided such sign or list is conspicuously located at or near the commodity.
2. If the commodity is displayed in a special fashion such as in an end display, portable rack or large bin, the unit price tag shall be attached to the commodity, or, alternatively, a unit price sign or list shall be conspicuously placed at or near the point where the commodity is displayed. Nothing in this section should be construed to prohibit the use of hand-letter unit price signs on special

displays so long as such signs contain the disclosures required in (a)1 above.

3. If a commodity is refrigerated, the unit price label shall be affixed to the case, to a shelf edge, or a unit price label shall be attached to the commodity. In the event such attachments are not possible, then a unit price sign or list may be used if the sign or list is displayed in proximity to the articles for sale. Where such proximate display is impossible, a unit price list for such articles must be kept available and a sign posted at the site of the articles for sale as to such availability.

13:45A-14.11 Placement of unit price information on consumer commodities by nonretailers

Nothing in this subchapter shall prohibit a manufacturer, supplier or wholesaler from affixing to a consumer commodity the unit price information required by these regulations.

13:45A-14.12 (Reserved)

Repealed by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section was "Extension of time to comply with these regulations".

13:45A-14.13 Nonintentional technical errors

For the purpose of enforcement of this subchapter, "nonintentional technical errors" shall mean inaccuracies in the unit pricing information reflected upon a stamp, tag, label, sign or list where such defects have resulted from a malfunction of a printing press, electronic data processing equipment or other mechanical equipment used to produce such stamps, tags, labels, signs or lists, or from the mistake of a computer programmer or machine operator, where such malfunction or mistake was not within the knowledge or control of the owner or operator or management personnel of the store and where such owner or operator or management personnel could not with reasonable diligence have detected and corrected such errors.

13:45A-14.14 Waiver of unit price requirements

(a) Prior to the remodeling of a store or resetting of the shelves taking place, a retail establishment may request from the director, or his designee, permission to vary from the unit price procedure. Verbal permission to vary is acceptable provided a written confirmation follows same. A retail establishment, which has failed to obtain such permission, shall be in violation of this subchapter if it does not comply with the requirements herein while remodeling a store or resetting shelves.

(b) No waiver from compliance with this subchapter shall be granted to a retail establishment for the restocking of shelves.

13:45A-14.15 Penalties

Any violation of this subchapter shall be deemed a violation of the Consumer Fraud Act, N.J.S.A. 56:8-2, subjecting a violator to those sanctions established pursuant to said Act.

ii. On merchandise for which no proof of purchase exists;

iii. At any time, or only up to a specified time after the date of purchase;

iv. In cash, as a credit to the account on which the purchase was debited, or as a store credit only.

SUBCHAPTER 15. DISCLOSURE OF REFUND POLICY
IN RETAIL ESTABLISHMENT

13:45A-15.1 Definitions

The following words and terms when used in this subchapter shall have the following meanings, unless the context indicates otherwise.

“Merchandise” shall include any objects, wares, goods, commodities, or any other tangible item offered, directly or indirectly, to the public for sale.

“Proof of purchase” means a receipt, bill, credit card slip, or any other form of evidence which constitutes proof of purchase.

“Retail establishment” means any place of business where merchandise is exposed or offered for sale at retail to members of the consuming public.

13:45A-15.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., failure to comply with the following shall be deemed unlawful thereunder:

1. Every retail establishment shall conspicuously post its refund policy as to all merchandise exposed or offered for sale at retail to members of the consuming public in the following manner:

- i. On a sign attached to the merchandise itself; or
- ii. On a sign affixed to each cash register or point of sale; or
- iii. On a sign so situated as to be clearly visible to the buyer from the cash register; or
- iv. On a sign posted at each store entrance used by members of the consuming public.

2. The sign required by (a)1 above to be posted in every retail establishment shall conspicuously disclose any and all material conditions of, or qualifications to, its refund policy, including, without limitation, whether a refund will be given:

- i. On merchandise which has been advertised as “sale” merchandise or “as is”;

13:45A-15.3 Exemption

(a) The provisions of N.J.A.C. 13:45A-15.2 shall not apply to any retail establishment that has a policy of, for a period not less than 20 days after the date of purchase, providing a cash refund for a cash purchase, or providing a cash refund or issuing a credit for a credit purchase, which credit is applied to the account on which the purchase was debited, in connection with the return of any of its unused and undamaged merchandise.

13:45A-15.4 Remedy

In addition to any other remedy provided by the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any retail establishment which violates any provision of N.J.A.C. 13:45A-15.2 shall, for a period of up to 20 days after the date of purchase, provide any buyer who returns unused and undamaged merchandise with the option of either a cash refund, a credit to the account on which the purchase was debited, or a store credit.

SUBCHAPTER 16. HOME IMPROVEMENT PRACTICES

Law Review and Journal Commentaries

Can Consumer Fraud Ruling Teach Old Dogs New Tricks? Douglas J. Katich, 138 N.J.L.J. No. 8, 17 (1994).

13:45A-16.1 Purpose and scope

(a) The purpose of the rules in this subchapter is to implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., by providing procedures for the regulation and content of home improvement contracts and establishing standards to facilitate enforcement of the requirements of the Act.

(b) The rules in this subchapter shall apply to all sellers as defined in N.J.A.C. 13:45A-16.1A and to all home improvement contractors as defined in N.J.A.C. 13:45A-17.2 whether or not they are exempt from the provisions of N.J.A.C. 13:45A-17.

New Rule, R.2004 d.418, effective November 1, 2004 (operative November 9, 2004).

See: 36 N.J.R. 3506(a), 36 N.J.R. 4984(a).

Former N.J.A.C. 13:45A-16.1, Definitions, recodified to N.J.A.C. 13:45A-16.1A.

Finding of N.J.A.C. 13:45A-16.2(a)6v violation upheld; total recovery under the Consumer Fraud Act for compensatory damages in small claims division court may not exceed \$1,000; judgment reduced to limit. *Wisser v. Kaufman Carpet Co., Inc.*, 188 N.J.Super. 574, 458 A.2d 119 (App.Div.1983).

Violation of Consumer Fraud Act. *Swiss v. Williams*, 184 N.J.Super. 243, 445 A.2d 486 (Dist. Ct. of Mercer Co.1982).

SUBCHAPTER 17. HOME IMPROVEMENT CONTRACTOR REGISTRATION

Authority

N.J.S.A. 56:8-1 et seq., specifically N.J.S.A. 56:8-152.

Source and Effective Date

R.2004 d.418, effective November 1, 2004
(operative November 9, 2004).
See: 36 N.J.R. 3506(a), 36 N.J.R. 4984(a).

Public Notice: Implementation of Home Improvement Contractor Registration Regulation, effective December 31, 2005.

See: 37 N.J.R. 87(a).

Public Notice: Implementation of Home Improvement Contractor Registration Regulations.

See: 37 N.J.R. 4558(a).

13:45A-17.1 Purpose and scope

(a) The purpose of the rules in this subchapter is to implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended by P.L. 2004, c.16 (N.J.S.A. 56:8-136 et seq.) by providing procedures for the regulation of home improvement contractors and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's registration procedures for those persons who fall under the requirements of this law.

(b) These rules shall apply to home improvement contractors in this State unless otherwise exempt under N.J.A.C. 13:45A-17.4.

13:45A-17.2 Definitions

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

"Advertise" means to communicate to the public by means of any print, electronic or any other media, including, but not limited to, newspapers, magazines, periodicals, journals, circulars, flyers, business cards, signs, radio, telephone, facsimile machine, television, computer or the Internet. "Advertise" includes having a person's name in a classified advertisement or directory in this State under any classification of home improvement as defined in this section but does not include simple residential alphabetical listings in standard telephone directories.

"Director" means the Director of the Division of Consumer Affairs.

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

"Employee" means employee as defined in N.J.A.C. 18:35-7.1.

"Home improvement" means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or noncommercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or noncommercial property and includes any of the above activities performed under emergency conditions.

"Home improvement contract" means an oral or written agreement for the performance of a home improvement between a contractor and an owner of residential or noncommercial property, or a contractor and a tenant or lessee of residential or noncommercial property, if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"Home improvement contractor" or "contractor" means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

"Residential or non-commercial property" means a structure used, in whole or in substantial part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures.

13:45A-17.3 Registration required

(a) On or after December 31, 2005, unless exempt under N.J.A.C. 13:45A-17.4:

1. No person shall engage in the business of making or selling home improvements in this State unless registered with the Division in accordance with this subchapter; and

2. No person shall advertise indicating that the person is a contractor in this State unless the person is registered with the Division in accordance with this subchapter.

(b) Unless exempt under N.J.A.C. 13:45A-17.4, contractors hired by other contractors to make or sell any home improvements shall register with the Division in accordance with this subchapter.

(c) Officers and employees of a registered home improvement contractor shall not be required to register separately from the registered business entity provided that the officers and employees sell or make home improvements solely within their respective scopes of performance for that registered business entity.

(d) Officers and employees of a home improvement contractor that is exempt under N.J.A.C. 13:45A-17.4 shall not be required to register provided that the officers and employees sell or make home improvements solely within their respective scopes of performance for that exempt business entity.

Administrative change.
See: 37 N.J.R. 2212(a).

13:45A-17.4 Exemptions

(a) The following persons are exempt from the registration requirements of this subchapter:

1. Any person registered pursuant to "the New Home Warranty and Builders' Registration Act," P.L. 1977, c.467 (N.J.S.A. 46:3B-1 et seq.), but only in conjunction with the building of a new home as defined in N.J.A.C. 5:25-1.3;

2. Any person performing a home improvement upon a residential or non-commercial property owned by that person, or by the person's family;

3. Any person performing a home improvement upon a residential or non-commercial property owned by a bona fide charity or other non-profit organization;

4. Any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, locksmith, burglar alarm business, fire alarm business, or any other person in any other related profession requiring registration, certification, or licensure by the State, who is acting within the scope of practice of that profession;

5. Any person employed by a community association or cooperative corporation who is making home improvements within the person's scope of employment at the residential or non-commercial property that is owned or leased by the community association or cooperative corporation;

6. Any public utility as defined under N.J.S.A. 48:2-13;

7. Any person licensed as a home financing agency, a home repair contractor or a home repair salesman pursuant to N.J.S.A. 17:16C-77, provided that the person is acting within the scope of such license; and

8. Any home improvement retailer with a net worth of more than \$50,000,000 or any employee of such home improvement retailer who is making or selling such home improvements within the person's scope of employment of the home improvement retailer.

13:45A-17.5 Initial and renewal applications

(a) Each home improvement contractor required to be registered under this subchapter shall initially register with the Division by submitting the following on forms provided by the Director:

1. The name and street address of each place of business of the home improvement contractor and any fictitious or trade name to be used by the home improvement contractor;

2. The type of business organization;

3. The name, residence and business street address of each officer, director, principal and person with an ownership interest of 10 percent or more in the home improvement contractor business, including the percentage of ownership held;

4. The name and number of any professional or occupational license, certificate or registration issued by this State or any other governmental entity to any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business;

5. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been adjudged liable in an administrative or civil action involving any of the situations in (a)5i through vi below. 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 person with an ownership interest of 10 percent or more in the home improvement contractor business engaged in an unlawful practice or practices related to any of the named situations in (a)5i through vi below regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency. As described above, this paragraph covers the following situations:

i. Obtained any registration, certification or license by fraud, deception or misrepresentation;

ii. Engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

iii. Engaged in gross negligence, gross malpractice or gross incompetence;

iv. Engaged in acts of negligence, malpractice or incompetence involving selling or making a home improvement; and

v. Engaged in professional or occupational misconduct;

6. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

7. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has had their authority to engage in the activity regulated by the Director revoked or suspended by any other state, agency or authority;

8. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has violated or failed to comply with the provisions of any act, regulation or order administered or issued by the Director;

9. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business believes they are unable to meet the requirements of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq. or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety and welfare; and

10. The name and street address of an agent in the State of New Jersey for service of process.

(b) In addition to the information required in (a) above, the applicant shall include the following with the initial application:

1. A properly completed disclosure statement that complies with the requirements of N.J.A.C. 13:45A-17.6;

2. Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12; and

3. The initial registration fee in the amount specified in N.J.A.C. 13:45A-17.14.

(c) A registered home improvement contractor shall include the following with the annual renewal application:

1. A completed renewal application that will be on a form specified by the Director;

2. Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12;

3. The renewal registration fee in the amount specified in N.J.A.C. 13:45A-17.14; and

4. If the completed renewal application is received by the Division after the renewal application's due date as specified on the renewal application, the late fee in the amount specified in N.J.A.C. 13:45A-17.14.

13:45A-17.6 Disclosure statement

(a) Each applicant shall file a disclosure statement with the Director stating whether it or any of its officers, directors, principals or persons with an ownership interest of 10 percent or more in the home improvement contractor business 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 or 2C:5-2 (conspiracy), N.J.S.A. 2C:11-2 (criminal homicide), N.J.S.A. 2C:11-3 (murder), N.J.S.A. 2C:11-4 (manslaughter), N.J.S.A. 2C:12-1 (assault), N.J.S.A. 2C:12-3 (terroristic threats), N.J.S.A. 2C:13-1 (kidnapping), N.J.S.A. 2C:14-2 (sexual assault), subsection a. or b. of N.J.S.A. 2C:17-1 (arson and related offenses), subsection a. or b. of N.J.S.A. 2C:17-2 (causing or risking widespread injury or damage), 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:21-2 (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:21-6 (fraud relating to credit cards), N.J.S.A. 2C:21-7 (deceptive business practices), N.J.S.A. 2C:21-14 (defrauding secured creditors), 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 prop-

erty of government of financial institution), N.J.S.A. 2C:21-19 (wrongful credit practices and related offenses), 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:27-5 (retaliation for past official action), N.J.S.A. 2C:27-9 (public servant transacting business with certain persons), N.J.S.A. 2C:27-10 (acceptance or receipt of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:27-11 (offer of unlawful benefit by public servant for official behavior), 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), N.J.S.A. 2C:30-3 (speculating or wagering on official action or information), N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance), N.J.S.A. 2C:35-10 (possession, use or being under the influence or failure to make lawful disposition of a controlled dangerous substance), N.J.S.A. 2C:37-2 (promoting gambling), N.J.S.A. 2C:37-3 (possession of gambling records), or N.J.S.A. 2C:37-4 (maintenance of a gambling resort).

13:45A-17.7 Duty to update information

(a) Whenever any information required to be included in the application changes, or if additional information should be added after the filing of the application, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 20 calendar days of the change or addition. Whenever any other information filed with the Director pursuant to the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., or this subchapter has changed, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 20 calendar days of the change or addition.

(b) 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 or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 30 calendar days of the change or addition.

13:45A-17.8 Requirement to cooperate

Home improvement contractor applicants seeking to register with the Division and registered home improvement contractors shall have the continuing duty to provide any assistance or information; to produce any records requested by the Director; and to cooperate in any inquiry, investigation or hearing conducted by the Director.

13:45A-17.9 Refusal to issue, suspension or revocation of registration; hearing; other sanctions

(a) The Director may refuse to issue or renew, or may suspend or revoke any registration issued by the Division upon proof that an applicant or registrant or any of its officers, directors, principals or persons with an ownership interest of 10 percent or more in the home improvement contractor business:

1. Has obtained any registration, certification or license by fraud, deception or misrepresentation;
2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
3. Has engaged in gross negligence, gross malpractice or gross incompetence;
4. Has engaged in repeated acts of negligence, malpractice or incompetence involving selling or making a home improvement;
5. Has engaged in professional or occupational misconduct;
6. Has been adjudged liable in an administrative or civil action involving any finding or admission which would provide a basis for discipline pursuant to (a)1 through 5 above regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency;
7. Has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
8. Has had his or her authority to engage in the activity regulated by the Director revoked or suspended by any other state, agency or authority for reasons consistent with this section;
9. Has violated or failed to comply with N.J.S.A. 56:8-136 et seq. or any provision of this subchapter or the provisions of any act, regulation or order administered or issued by the Director; or
10. Is unable to meet the requirements of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety and welfare.

(b) Information contained in the application required pursuant to N.J.A.C. 13:45A-17.5 and information contained in the disclosure statement required to be filed pursuant to N.J.A.C. 13:45A-17.6 may be used by the Director as grounds for denying, suspending or revoking a registration. An applicant whose registration is denied or a home improvement contractor whose registration is suspended or revoked based upon information contained in the application or disclosure statement or any amendments thereto 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 which shall contain the basis for such action. 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.

(c) Except as provided in (b) above, prior to refusing to issue or renew or suspending or revoking a home improvement contractor registration or assessing a penalty, the Director shall notify the applicant or registrant and provide an opportunity to be heard.

(d) In addition to assessing a monetary penalty for any violation of this subchapter, the Director may revoke a registration or suspend the registration for a period of time dependent upon the seriousness of the violation.

(e) Nothing contained in this subchapter shall limit the Director from imposing any additional fees, fines, penalties, restitution or any other sanctions as permitted under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

13:45A-17.10 Reinstatement of suspended registration

A registration that is suspended by the Director may be reinstated upon the contractor satisfying the conditions for reinstatement as determined by the Director and paying all outstanding fees, fines, penalties and restitution, including the payment of the reinstatement fee specified in N.J.A.C. 13:45A-17.14.

13:45A-17.11 Ownership and use of registration number; replacement and duplicate certificates

(a) Each registration number and certificate containing such registration number issued by the Director to a home improvement contractor remain the property of the State of New Jersey. If the Director suspends, fails to renew, or revokes a registration, the home improvement contractor shall immediately return all registration certificates to the Director and shall remove the registration number from all vehicles, advertising and anything else on which the registration number is displayed or otherwise communicated.

(b) The Director shall issue a replacement certificate upon payment of the replacement certificate fee as set forth in

N.J.A.C. 13:45A-17.14 and receipt by the Director of an affidavit or certified statement attesting that the original was either lost, destroyed, mutilated or is otherwise no longer in the custody of and cannot be recovered by the certificate holder.

(c) The Director shall issue a duplicate certificate to a registered contractor upon payment of the duplicate certificate fee as set forth in N.J.A.C. 13:45A-17.14 and receipt by the Director of an affidavit or certified statement that the registered contractor has multiple places of business in which the contractor must display a certificate. A registered contractor may not possess more registration certificates than the number of places of business utilized by the contractor.

(d) A registered home improvement contractor shall prominently display:

1. The original registration certificate or a duplicate registration certificate issued by the Division at each place of business; and

2. The contractor's registration number on all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this State.

(e) All commercial vehicles registered in this State and leased or owned by a registrant and used by the registrant for the purpose of providing home improvements, except for vehicles leased or owned by a registrant to a customer of that registrant, shall be marked on both sides with the following information:

1. The name of the registered home improvement contractor in lettering at least one inch in height; and

2. "HIC reg. #" followed by the registration number of the registrant in lettering at one inch in height.

(f) As of November 4, 2008, any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to (b) of N.J.S.A. 56:8-149 and shall be displayed in all caps in at least 10-point bold-face type as follows: FOR INFORMATION ABOUT CONTRACTORS AND THE CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS AT 1-888-656-6225.

Amended by R.2008 d.232, effective August 4, 2008.

See: 40 N.J.R. 1611(a), 40 N.J.R. 4598(c).

Rewrote (d)2; added new (e); recodified former (e) as (f); and rewrote (f).

13:45A-17.12 Mandatory commercial general liability insurance

(a) On or after December 31, 2005 every registered home improvement contractor shall secure and maintain in full force and effect during the entire term of registration a com-

mercial general liability insurance policy and shall file with the Director proof that such insurance is in full force and effect.

(b) The insurance policy required to be filed with the Director shall be a commercial general liability insurance policy, occurrence form, and shall provide a minimum coverage in the amount of \$500,000 per occurrence. On or after December 31 2005, every registered contractor engaged in home improvements whose commercial general liability insurance policy is canceled or nonrenewed shall submit to the director a copy of the certificate of commercial general liability insurance for a new or replacement policy which meets the requirements of (a) above before the former policy is no longer effective.

(c) The proof of insurance required by (a) above shall be a certificate provided by the insurer containing the insured's name, business street address, policy number, term of the insurance, and information assuring that the policy conforms with (b) above.

(d) A home improvement contractor who either does not renew or otherwise changes the contractor's commercial general liability policy shall submit a copy of the certificate of commercial general liability insurance for the new policy before the former policy is no longer effective.

Administrative change.
See: 37 N.J.R. 2212(a).

13:45A-17.13 Requirements of certain home improvement contracts

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provisions of N.J.S.A. 56:8-151.

13:45A-17.14 Fees

(a) The Division shall charge the following non-refundable home improvement contractor registration fees:

- 1. Initial registration fee \$90.00;
- 2. Renewal registration fee \$75.00;
- 3. Late fee \$25.00;
- 4. Reinstatement fee \$50.00;
- 5. Replacement or duplicate certificate fee \$20.00.

SUBCHAPTER 18. PLAIN LANGUAGE REVIEW

13:45A-18.1 Fee for contract review

Any creditor, seller, insurer, lessor, or any person in the business of preparing and selling forms of consumer con-

tracts, requesting a review of a consumer contract, or writing required to complete the consumer transaction, to determine its compliance with the Plain Language Act, N.J.S.A. 56:12-1 et seq., shall pay to the Director of the Division of Consumer Affairs a fee in the amount of \$50.00.

R.1982 d.221, effective July 19, 1982.
See: 14 N.J.R. 464(a), 14 N.J.R. 767(b).

SUBCHAPTER 19. PETITION FOR RULEMAKING

13:45A-19.1 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Director of the Division of Consumer Affairs or with any board, bureau, committee or other agency located within the Division to promulgate, amend or repeal a rule.

(b) With respect to a petition for a new rule or an amended rule, the petitioner shall include his or her name and address, the substance or nature of the request, the problem or purpose which is the subject of the request, the petitioner's interest in the request, the proposed text of the new rule or amended rule and the statutory authority under which the requested action may be taken.

(c) With respect to a petition for an amended rule, the petitioner shall indicate any existing text to be deleted and include any new text to be added.

(d) Within 15 days of receiving the petition, the Director shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of petition pursuant to N.J.A.C. 1:30-3.6(a).

(e) Within 30 days of receiving the petition, the Director or the board, bureau, or other agency located within the Division shall, pursuant to N.J.S.A. 52:14B-4(f), either deny the petition, giving a written statement of its reasons, or proceed to act on the petition, which action may include initiation of a formal rulemaking proceeding. The Director or the administrative head of the appropriate board, bureau, committee or other agency located within the Division shall advise the petitioner in writing of the response to the request and shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition pursuant to N.J.A.C. 1:30-3.6(b).

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), added "or an amended rule" "the petitioner's interest in the request" and "or amended rule".

SUBCHAPTER 20. RESALE OF TICKETS OF ADMISSION TO PLACES OF ENTERTAINMENT

13:45A-20.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Advertisement” means any attempt by a licensee to directly or indirectly induce the purchase of tickets, appearing in any newspaper, magazine, periodical, circular, sign or

other written matter placed before the public, or in any radio or television broadcast or any other media, electronic or otherwise.

“Director” means the Director of Consumer Affairs in the Department of Law and Public Safety.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Person” means corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.

“Place of entertainment” means any privately or publicly owned and operated entertainment facility within the State of New Jersey such as a theater, stadium, museum, arena, racetrack or other place where performances, concerts, exhibits, games or contests are held and for which entry fee is charged.

“Resale” means a sale by a person other than the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

“Resell” means to offer for resale or to consummate a resale.

“Ticket” means any piece of paper which indicates that the bearer has paid for entry or other evidence which permits entry to a place of entertainment.

“Ticket broker” means any person situated and operating in this State who is involved in the business of reselling tickets of admission to places of entertainment and who charges a premium in excess of the price, plus taxes, printed on the tickets.

Recodified to N.J.A.C. 13:45A-20.1A and amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Recodified from N.J.A.C. 13:45A-20.1A by R.2000 d.460, effective November 20, 2000.

See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

Former N.J.A.C. 13:45A-20.1, Delayed effective date of regulation, repealed.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Added definitions “resale” and “resell”; deleted definition “ticket agent”; rewrote definition “ticket reseller” as “ticket broker”.

13:45A-20.1A (Reserved)

Recodified from N.J.A.C. 13:45A-20.1 and amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Recodified to N.J.A.C. 13:45A-20.1 by R.2000 d.460, effective November 20, 2000.

See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

13:45A-20.2 Registration

(a) An application for registration shall be on a form prescribed by the Director.

(b) An application for registration shall not be approved unless the Director finds that the submitted application form is complete in all respects.

(c) An application for registration shall be accompanied by a bond in due form made payable to the Division of Consumer Affairs, State of New Jersey in the sum of \$10,000 with two or more sufficient sureties or an authorized surety company, which bond shall be approved by the Director.

1. A suit to recover on the bond may be brought by the person damaged or by the Division of Consumer Affairs.

2. Upon the commencement of any action or actions against the surety upon the bond, the surety shall immediately notify the Division of Consumer Affairs.

3. The registrant shall file a new and additional bond in the sum of \$10,000 within 30 days of the commencement of a suit to recover on the bond.

4. Any failure by the registrant to file such a new and additional bond within such period shall constitute cause for the revocation of the registration previously issued to the registrant.

(d) The Director shall afford an applicant who has been rejected for registration, an opportunity to be heard in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

1. The burden of establishing that the application should be approved shall rest with the applicant.

(e) The Director may consider in determining whether or not to grant a registration:

1. Whether the applicant has previously been found to have violated or been convicted of any statute or crime involving dishonesty, fraud or deceit.

2. Whether the applicant is financially responsible.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section heading was “Licensure”; substituted “registration” for “licensure” and “license” throughout; substituted “registrant” for “licensee” throughout.

13:45A-20.3 Fees: new or renewal certificate of registration

(a) An application for a new or renewal certificate of registration shall be submitted on an application form obtained from the Director, fully executed and accompanied by a fee of \$300.00 in the form of a money order or certified check made payable to the order of the State of New Jersey, Division of Consumer Affairs.

(b) A refund of 50 percent of the fees shall be made by the Division of Consumer Affairs when an application is rejected. Fifty percent of the fee shall be retained by the Division to cover administrative and investigative costs in the processing of the application.

(c) A request by a registrant for a copy of the certificate of registration issued for the purpose of display in a branch office shall be accompanied by a fee of \$50.00.

(d) A request for a change of business address shall be accompanied by a fee of \$10.00.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section heading was "Fees: new or renewal license; in (a) and (c), substituted "certificate of registration" for "license"; in (c), substituted "registrant" for "licensee".

Case Notes

Statute prohibiting ticket scalping satisfied due process. *New Jersey Ass'n of Ticket Brokers v. Ticketron*, 226 N.J.Super. 155, 543 A.2d 997 (A.D.1988) certification denied 113 N.J. 364, 550 A.2d 471, certification denied 113 N.J. 365, 550 A.2d 472.

13:45A-20.4 Place of business

(a) A ticket broker shall maintain a bona fide place of business.

1. A bona fide place of business when used in this subsection shall include, but is not limited to, a place of business which provides reasonable access to the public.

(b) A ticket broker shall not sell nor permit any employee, agent or servant to sell any ticket for a place of entertainment at any location other than those places of business licensed for the sale of tickets by the Director.

(c) A registrant shall request the prior approval of the Director for any change in the business address.

(d) A registration shall not be transferred or assigned.

1. A corporate registrant shall notify the Director prior to any change in the ownership interest in the registered business including but not limited to a transfer of 10 percent or more of stock interest held therein.

(e) A registrant shall clearly and conspicuously post his license in each of his places of business.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a) and (b), substituted "broker" for "reseller"; in (c), (d) and (e), substituted "registrant" for "licensee"; in (d), made a minor grammatical correction and substituted "registration" for "license".

13:45A-20.5 Sale or exchange

(a) A registrant shall not sell or exchange any ticket for entry to a place of entertainment without first impressing his or her sale or exchange stamp clearly showing the registration number issued by the Division on the reverse side of that portion of each ticket which is retained by the owner of the place of entertainment.

1. A ticket shall bear the stamp of every registrant engaged in its sale or exchange.

(b) A place of entertainment or its agent shall not sell or resell any ticket for entry to a place of entertainment unless there is printed on the face of each ticket the price charged therefor.

(c) A place of entertainment shall not sell or resell any ticket for entry to a place of entertainment unless the

maximum premium, not to exceed 20 percent of the ticket price or \$3.00 whichever is greater, plus taxes, at which a ticket may be resold, stating an exception for resales by registered ticket brokers or season ticket holders, shall be printed on the face or back of any ticket. Where the maximum premium which may be charged for a ticket is printed on the back side of the ticket, the phrase "see reverse side" shall appear on the face of each ticket or ticket stock printed.

(d) No person other than a registered ticket broker or season ticket holder shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a maximum premium in excess of 20 percent of the ticket price or \$3.00, whichever is greater, plus lawful taxes. No registered ticket broker or season ticket holder shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a premium in excess of 50 percent of the price paid to acquire the ticket, plus lawful taxes.

(e) A purchaser of tickets who places a special order with a ticket broker for tickets that are not in stock or are obtained for a purchaser's specific need and are paid for in advance by the ticket broker, shall not be eligible to receive a refund for that purchase unless the ticket broker is able to find someone else to purchase the tickets and as long as the purchaser is notified in advance of this policy.

(f) It shall be a prohibited practice for a ticket broker as a condition of selling or exchanging a ticket for a particular entertainment event, to require a buyer to purchase other tickets.

(g) It shall be a prohibited practice for a registrant to accept or demand any other things of value in excess of the lawful purchase price of a ticket.

(h) Any buyer who pays any monies towards the purchase of a ticket and fails to receive the promised ticket on the promised delivery date shall be given notification by the ticket broker of the failure to deliver tickets and shall be given the option of receiving a full refund within 30 days or consenting to an extension of the delivery date.

(i) A ticket broker shall provide a buyer of a ticket with a receipt which specifies the date on which the tickets will be delivered to the buyer and the total purchase price for the tickets.

(j) No ticket broker shall engage in or continue in the business of reselling tickets for admission to a place of entertainment without meeting the following requirements:

1. Owning, operating or maintaining a permanent office, branch office, bureau, agency, or other place of business, not including a post office box, for the purpose of reselling tickets;

2. Obtaining a certificate of registration to resell or engage in the business of reselling tickets from the director;

3. Listing the ticket broker's registration number in any form of advertisement or solicitation in which tickets are being sold for the purpose of purchase by the general public for events in this State;

4. Maintaining records of ticket sales, deposits and refunds for a period of not less than two years from the time of any of these transactions;

5. Disclosing to the purchaser, by means of verbal description or a map, the location of the seats represented by the tickets;

6. Disclosing to the purchaser the cancellation policy of that broker;

7. Disclosing that a service charge is added by the ticket broker to the stated price on the tickets and is **included by the broker** in any advertisement or promotion for an event;

8. Disclosing to the purchaser, whenever applicable, that the ticket broker has a guarantee policy. If a ticket broker guarantees delivery of tickets to a purchaser and fails to deliver the tickets, the ticket broker shall provide a full refund for the cost of the tickets;

9. Disclosing to the purchaser of tickets when he is utilizing a tentative order policy, popularly known as a "try and get." When a ticket broker fails to obtain tickets on a "try and get" basis, the broker shall refund any deposit made by a purchaser of those tickets within seven business days after the event for which the tickets were sought;

10. When guaranteeing tickets in conjunction with providing a tour package, a ticket broker who fails to provide a purchaser with those tickets shall refund fully the price of the tour package and tickets; and

11. Providing to a purchaser of tickets who cancels an order a full refund for the cost of the tickets less shipping charges, if those tickets are returned to the broker within three days after receipt; provided, that when tickets are purchased within seven days of an event, a refund shall be given only if the tickets are returned within one day of receipt; and further provided, that no refund shall be given on any tickets purchased within six days of an event unless the ticket broker is able to resell the tickets.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Rewrote the section.

13:45A-20.6 Records

(a) A ticket broker shall keep full and accurate sets of records maintained in accordance with generally accepted accounting practices and principles.

(b) Records of a ticket broker shall clearly set forth:

1. The prices at which all tickets have been bought and sold by the ticket broker; and

2. The names and addresses of the persons from whom the ticket broker purchased the tickets and to whom the ticket broker sold the tickets.

(c) Records of a ticket broker shall include sales invoice books.

1. The invoices used shall be printed and numbered consecutively.

2. The invoices used shall be in duplicate, the original of which shall be given to the purchaser and the duplicate kept by the ticket broker in consecutive order.

3. The invoices used shall include the following information:

i. Date of the transaction;

ii. Name and place of entertainment;

iii. Number of ticket(s) sold;

iv. Price of ticket(s) with ticket broker's premium recorded separately;

v. Seat location;

vi. Date of performance;

vii. Whether payment was made by cash, check or charge account;

viii. Name and address of purchaser;

(d) Records of a ticket broker shall include a sales journal which reflects a record of daily sales.

(e) Records set forth in this subchapter shall be maintained for a period of at least two years and shall be made available for inspection by the Division at any reasonable time and upon reasonable notice.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Substituted "broker" for "reseller" throughout; in (e), added "maintained for a period of at least two years and shall be".

13:45A-20.7 Advertising

(a) A ticket broker shall not attempt in any advertising material, directly or indirectly, to include any statement or representation relating to a concert that has not been scheduled to occur on a particular date and at a specific place of entertainment.

(b) A registrant shall clearly and conspicuously disclose his registration number in any public advertisement or advertising material.

(c) Advertising for any event by a ticket broker shall include the price charged by a place of entertainment for each ticket offered for sale but ticket prices are not required to be included in pamphlets, brochures or billboards prepared as a schedule of events prior to the time a ticket is offered for sale.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a) and (c), substituted "broker" for "reseller"; in (b), substituted "registrant" for "licensee" and "registration" for "license".

SUBCHAPTER 21. REGULATIONS CONCERNING THE SALE OF FOOD REPRESENTED AS KOSHER

13:45A-21.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context indicates otherwise:

"Advertises, represents or holds itself out" means engaging, directly or indirectly, in promotional activities including, but not limited to, oral representations, newspaper, radio and television advertising, telephone book listings, distribution of fliers and menus and any in-store signs or announcements.

"Dairy" means a food that is or contains any milk or milk derivative.

"Dealer" means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as kosher. This shall include, but not be limited to, manufacturers, slaughterhouses, wholesalers, stores, restaurants, hotels, caterers, catering facilities, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies. Such establishments may also deal in food not represented as kosher.

"Director" means the Director of the Division or his or her designee.

"Disclosure" means the form(s) provided by the Division and executed by a dealer for the purpose of disclosing to consumers and to the Division practices relating to the preparation, handling and sale of food represented to be kosher.

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

"Food" means a food, food product, ingredient, dietary supplement or beverage.

"Kosher brand" means a branding symbol approved by the United States Department of Agriculture and used by slaughterhouses.

"Meat" means animal and/or poultry meat, meat products and/or meat by-products.

"Pareve" means a food which contains neither meat nor dairy products and unless otherwise disclosed by the merchant is represented to be kosher.

"Person" means an individual, corporation, business trust, trust, estate, partnership, association, two or more persons having a joint or common interest or any other legal or commercial entity. When used in this subchapter, "person" shall include, but not be limited to, all retail establishments, all dealers as defined above, manufacturers, wholesalers, processors, slaughterhouses and all others along the chain of commerce from the time the product is produced or, in the case of meat or poultry, from the time of slaughter to the time of its sale.

"Plumba" means the seal commonly used in the kosher industry with the word "kosher" indicated either in English or Hebrew letters, and with certain letters, figures or emblems indicated that will positively identify such plumba with the particular slaughterhouse where the animal or poultry was slaughtered or processed.

"Properly sealed packages" means those packages which bear a kosher symbol insignia and are sealed by the manufacturer, processor or wholesaler at its premises.

"Sell" means to offer for sale, expose for sale, serve or sell, directly or indirectly.

"Tag" means an identification of whatever form bearing the name and address of the slaughterhouse where the animal was slaughtered, the name of the person who sanctioned the slaughtering of meat at the slaughterhouse named and the date of the slaughter. All requisite information must be included in English with Arabic numerals. It may also contain the information in other languages. When information presented in English with Arabic numerals conflicts with information presented in other languages, the information presented in English with Arabic numerals shall be considered definitive.

"Wash letter" means the document stating the time and date the meat was last washed. All requisite information must be included in English with Arabic numerals. It may also contain information in other languages. When this information is not delineated on the attached tags, the wash letter must accompany the meat until the meat is fully fabricated. When information presented in English with Arabic numerals conflicts with the information presented in other languages, the information presented in English with Arabic numerals shall be considered definitive.

“Wholesaler” means any person selling food to another person where that food is intended for resale.

13:45A-21.2 Disclosure requirements

(a) A dealer shall post on premises where food is sold, in a location readily visible to the consumer, a completed disclosure statement provided by the Division for that purpose.

1. In establishments such as hospitals or other places where representations that food is kosher are not made until after the consumer has made a request for kosher food, the disclosure shall be provided to the consumer either prior to serving the food or together with the food served.

2. Nursing homes, summer camps, caterers or other places providing food pursuant to a contract shall provide the consumer or his or her legal representative with a copy of the disclosure prior to the signing of the contract. This requirement is in addition to the posted disclosure stated in (a) above.

(b) A dealer representing itself as having rabbinical supervision shall post in a location on its premises, readily visible to the consumer, the completed rabbinical supervision disclosure statement provided by the Division.

(c) A dealer selling food represented as kosher for Passover shall post on its premises, in a location readily visible to the consumer, a completed Passover disclosure provided by the Division for that purpose. The disclosure must be posted at least 30 days before Passover and stay posted until the conclusion of Passover.

1. Where a dealer assumes a facility to be used exclusively for the Passover holiday and it is not its regular facility, that dealer is not required to post the Passover disclosure until such time as it takes residence in that facility.

2. Nursing homes, summer camps, caterers or other places providing food during Passover pursuant to a contract shall provide the consumer or his or her legal representative with a copy of the disclosure prior to the signing of the contract. This requirement is in addition to the posted disclosure stated in (c) above.

(d) A dealer shall complete and return to the Division within 14 calendar days of receipt:

1. The copy of the disclosure form provided by the Division for that purpose; and

2. If representing to be under rabbinical supervision, the copy of the disclosure form provided by the Division for that purpose; and

3. If representing the sale of food as kosher for Passover, the copy of the disclosure form as provided in (c) above.

(e) A dealer completing the disclosures as stated in (a), (b), (c) and/or (d) above is required to conform sales practices to those disclosures.

(f) Dealers shall immediately amend disclosures to reflect any change in the posted practices and shall inform the Director, in writing, and if applicable, any party to a contract, within 14 calendar days of any change in the stated information.

(g) A dealer representing itself as being under rabbinical supervision shall maintain a permanently bound logbook that shall include for each inspection visit of the supervising rabbi or his representative the signature and printed name of the person performing the inspection, date and time of arrival at the establishment. The logbook shall be maintained for a period of not less than two years after the final entry.

(h) Persons advertising the sale of both food represented as kosher and food not represented as kosher shall display in a prominent place in its front window or front entrance the following sign which shall be printed in block letters at least four inches in height: “KOSHER AND NONKOSHER FOOD SOLD HERE.”

1. In the case of a restaurant, hotel, caterer or other place where food is served the word “SERVED” may be submitted for “SOLD.”

2. Any dealer posting the disclosure required in (a) above and identifying itself on that form as selling kosher and nonkosher food is not required to post the disclosure stated in this subsection.

(i) Any person whose sole representation of kosher is limited to properly sealed packages prepared by others shall be exempt from the requirements of this section.

Case Notes

Regulating kosher products violated establishment clause. *Ran-Dav’s County Kosher, Inc. v. State*, 129 N.J. 141, 608 A.2d 1353 (1992), certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

Regulation of kosher products did not constitute permissible accommodation of Orthodox Judaism. *Ran-Dav’s County Kosher, Inc. v. State*, 129 N.J. 141, 608 A.2d 1353 (1992), certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

State regulation of kosher products violated establishment clause. *Ran-Dav's County Kosher, Inc. v. State*, 129 N.J. 141, 608 A.2d 1353 (1992), certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

State consumer protection regulations governing preparation, maintenance, and sale of kosher products did not constitute permissible accommodation of Orthodox Judaism under establishment clauses of State or Federal Constitutions, where attorney general failed to point to any state-imposed burdens under which Orthodox Jews currently suffered. *Ran-Dav's County Kosher, Inc. v. State*, 129 N.J. 141, 608 A.2d 1353 (1992), certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

State consumer protection regulations governing preparation, maintenance, and sale of kosher products violated establishment clauses of Federal and State Constitutions, where regulations imposed substantive religious standards for kosher products industry and authorized civil enforcement of those religious standards with assistance of clergy, directly and substantially entangling government in religious matters. *Ran-Dav's County Kosher, Inc. v. State*, 129 N.J. 141, 608 A.2d 1353 (1992), certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

State consumer protection regulations governing preparation, maintenance, and sale of kosher products did not constitute permissible accommodation of Orthodox Judaism under establishment clauses of State or Federal Constitutions, where attorney general failed to point to any state-imposed burdens under which Orthodox Jews currently suffered. *Ran-Dav's County Kosher, Inc. v. State*, 129 N.J. 141, 608 A.2d 1353 (1992), certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

Regulations regarding kosher products were valid. *Ran-Dav's County Kosher, Inc. v. State*, 243 N.J.Super. 232, 579 A.2d 316 (A.D.1990), reversed 129 N.J. 141, 608 A.2d 1353, certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

Test for determining validity of kosher product regulations is not whether there are no circumstances where regulations would be valid or invalid. *Ran-Dav's County Kosher, Inc. v. State*, 243 N.J.Super. 232, 579 A.2d 316 (A.D.1990), reversed 129 N.J. 141, 608 A.2d 1353, certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

13:45A-21.3 Labeling requirements

(a) A dealer shall ensure that all meat and/or poultry slaughtered to be sold as kosher shall have affixed to it at the slaughterhouse a tag and/or plumba.

(b) The day of the slaughter, where required, shall be reflected by an incision of a Hebrew letter or an English letter, A through F, with Sunday being represented with the letter A. The identification shall be affixed as follows:

1. All forequarters of steers, cows, bulls, heifers, and yearling calves ("baby beef"), shall arrive at wholesalers and butchers with the following kosher identifications:

i. Breast, rib plate, chuck, shoulder: A tag attached by a wire or plastic. Additionally, the rib-cage of each quarter shall indicate the day of slaughter;

ii. All hanging tenders, spleens, oxtails, hearts and intestines (kishka) shall be identified with a tag attached by a wire or plastic, and by the use of a rubber stamp. Skirt steaks (from the diaphragm) when disconnected at the packing house or deboning rooms shall be affixed with a tag attached by a wire or plastic or legibly stamped with a stamp indicating the date of slaughter and kosher supervisor's name;

iii. Liver: two kosher brands, one on the liver's top portion, the other near the bottom. Additionally, a tag shall be attached to the white sinew on the liver's side, by a wire or plastic;

iv. Feet: a tag attached by a plumba-wire to each foot;

v. Breads: a tag attached by a plumba-wire to each pair;

vi. Brains: a tag attached by a plumba-wire to each brain when sold separately from the head;

vii. Tongue: a tag attached by a wire or plastic, as well as a kosher brand; and

viii. Breastbone: incisions indicating day of slaughter;

2. All foresaddles of veal shall arrive at wholesalers and butchers with the following identification attached at the slaughterhouse:

i. Breast: incision on each breast indicating day of slaughter. In addition, each breast shall be affixed with a tag attached by a plumba-wire;

ii. Rack: each rack shall bear an incision, in the rib-cage area, indicating the day of slaughter. If wholesalers, butchers or processors ship the rack separately, a tag shall be affixed by a wire or plastic to each rack;

iii. Liver: a kosher brand, plus a tag attached by a wire or plastic at the white sinew on the liver's side;

iv. Feet: a tag attached by a plumba-wire;

v. Breads: a tag attached by a plumba-wire to each pair; and

vi. Tongue: a tag attached by a wire or plastic, plus a kosher brand;

3. All foresaddles of lamb and mutton shall arrive at wholesalers and butchers with the following identification attached at the slaughterhouse:

i. Breast: incision on each breast indicating day of slaughter. In addition, each breast shall be affixed with a tag attached by a plumba-wire;

ii. Rack: each rack shall bear an incision, in the rib-cage area, indicating the day of slaughter. If wholesalers, butchers or processors ship the rack separately, a tag shall be affixed by a wire or plastic to each rack;

iii. Liver: a kosher brand, plus a tag attached by a wire or plastic at the white sinew on the liver's side; and

iv. Tongue: a tag attached by a wire or plastic, plus a kosher brand; and

4. Cheek-meat, ground (chopped) meat, shoulder clods, skirts, flanken, and other such meat that are piled or stored inside plastic bags or vacuum packed and there-

after shipped, shall have a tag placed inside the bag or container as well as a kosher stamp or tag attached to the package's exterior. If the items have not been salted, a tag indicating the last washing shall be included. Meat shipped as indicated in this paragraph shall not be contained in packages exceeding 10 pounds. Each brisket or plate shipped in "combos" shall be affixed with a tag.

(c) Portions of meat, excluding poultry, having been fabricated by the wholesaler, regardless of the size of the portion, must have a tag affixed to it. The tag shall bear the name and address of the wholesaler, the name of the slaughterhouse from which the meat was purchased, the name of the authority sanctioning the kosher slaughter, the date of the fabrication of the meat and whether the meat has been soaked and salted. If the meat was not soaked and salted the tag must include the date and time of the last washing of the meat.

(d) A document containing the information specified in (c) above may be substituted for the tag provided that the meat is identified with either a tag or plumba.

(e) Except as provided in (f) below, all poultry sold as kosher must have plumbas affixed at the slaughterhouse, as follows:

1. Turkey necks: 10 pounds or less, in a bag securely closed with a plumba.
2. Chicken necks: five pounds or less, in a bag securely closed with a plumba.
3. Chicken and turkey livers: five pounds or less, in a bag securely closed with a plumba.
4. Chicken and turkey gizzards: five pounds or less, in a bag securely closed with a plumba.
5. Chicken wings: five pounds or less, in a bag securely closed with a plumba.
6. Turkey wings: 10 pounds or less, in a bag securely closed with a plumba.
7. Chicken and turkey thighs with back portion: five pounds or less, in a bag securely closed with a plumba.
8. Chicken and turkey legs: five pounds or less, in a bag securely closed with a plumba.
9. Chicken and turkey boneless breasts: five pounds or less, in a bag and securely closed with a plumba.
10. Chicken and turkey breasts: five pounds or less, in a bag securely closed with a plumba.
11. Chicken and turkey boneless bottom meat: five pounds or less, in a bag securely closed with a plumba.
12. Chicken and turkey whole poultry: Each piece shall have a plumba securely affixed to it.

(f) A poultry processor may apply to the Director for an exemption from the labeling requirements of (e) above based on volume sales to an individual entity. The Director retains discretion to approve alternative labeling requirements for such shipments.

(g) The slaughterer and/or wholesaler of poultry and/or meat sold as kosher shall ensure that plumbas and/or tags are affixed and so remain, as stated in this section. Slaughterers and/or wholesalers who have sold meat and/or poultry not in compliance with this section shall not refuse to accept returned poultry and/or meat and must provide a refund for the returned item.

(h) All excised fats, veins or meat trimmings which will be sent to a renderer or discarded shall be put into receptacles marked DISCARD. Such fats, veins and trimmings shall not then be sold or used as kosher.

(i) A dealer shall not remove plumbas, tags or any other marks of kosher identification affixed to meat and/or poultry at the slaughterhouse or by the wholesaler until immediately preceding the final fabrication of the product.

(j) A dealer shall not remove the identifying kosher marks of any food until immediately prior to the sale or use of the product.

(k) A dealer who represents in its disclosure that it does not soak and salt its meat but washes it within every 72 hour period, shall disclose legibly the date and time of the day, A.M. or P.M., of each washing and the name of the person performing the washing, on all tags attached to the meat or shall write the information on a wash letter. This applies to all meat sent from slaughterhouses, wholesalers, butcher shops, or any other place until the meat has been fully fabricated.

(l) A dealer shall indicate the date of packaging on the label of packaged raw meat, excluding poultry.

(m) A dealer shall ensure that packaged raw meat, excluding poultry, shall bear one of the following disclosures: "soaked and salted," "not soaked and salted" or "soaked and salted upon request only."

Case Notes

Regulations covering kosher products were valid. *Ran-Dav's County Kosher, Inc. v. State*, 243 N.J.Super. 232, 579 A.2d 316 (A.D.1990), reversed 129 N.J. 141, 608 A.2d 1353, certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

Test to determine validity of kosher product regulation was not that there were no circumstances where regulations would be valid or invalid. *Ran-Dav's County Kosher, Inc. v. State*, 243 N.J.Super. 232, 579 A.2d 316 (A.D.1990), reversed 129 N.J. 141, 608 A.2d 1353, certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

13:45A-21.4 Recordkeeping requirements

Complete and accurate records of all meat and/or poultry purchased as kosher shall be kept by dealers. This shall include the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat and/or poultry, and copies of all invoices and bills of sale. A dealer shall retain such records on its premises for a two year period following the purchase of properly identified kosher meat and/or poultry. Wash letters as referred to in N.J.A.C. 13:45A-21.1 shall be kept as long as the meat is in possession of the dealer and shall be kept attached to its appropriate invoice.

13:45A-21.5 Filing requirements

(a) Every dealer shall file annually with the Director:

1. If the dealer is under rabbinical supervision, a letter, in English, from a supervising rabbi or rabbinical agency that the dealer is rabbinically supervised. The letter shall include the name and address of the person providing the certification, the date the letter was issued, the date it becomes effective, the date it expires, the name and address of the dealer receiving certification and the type of establishment certified;

2. In the case of products produced on behalf of another person, a letter, in English, from the supervising rabbi or rabbinical agency that states the name and address of the person providing the certification, the date the letter was issued, the date it becomes effective, the date it expires, the name and address of the manufacturer receiving certification, the type of establishment certified, and where applicable, the specific products and brands certified; or

3. If the establishment is not under rabbinical supervision, a letter so stating.

(b) Any individual or organization giving rabbinical supervision to any dealer located in New Jersey shall file annually with the Director a document listing the name, address and type of each establishment that is supervised.

(c) Dealers required to file pursuant to this section shall provide written notification to the Director of any change related to rabbinical supervision, represented status, address or ownership status within seven business days of such change.

(d) Any person whose sole representation of kosher products is limited to properly sealed packages prepared by others shall be exempt from the requirements of this section.

13:45A-21.6 Inspections of dealers

(a) Inspections are to be conducted by authorized inspectors of the Division.

(b) For the purpose of making any inspection an inspector shall have a right of entry to, upon and through the business premises of persons making any representation of kosher.

13:45A-21.7 Unlawful practices

(a) In addition to a violation of any other laws, the following shall constitute an unlawful practice under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.:

1. Failure to comply with the disclosure requirements of N.J.A.C. 13:45A-21.2;

2. Failure to comply with the filing requirements of N.J.A.C. 13:45A-21.5;

3. Failure to conform sales practices with the posted disclosures;

4. Failure to conform posted disclosures with the disclosure filed with the Division;

5. Use of any of the following in the advertisement or sale of any food by a dealer that fails to post or file the required disclosure or by a person not representing itself as selling kosher food:

i. By direct statements, orally or in writing, that the food sold is kosher or pareve;

ii. By display or by inscription on any food or its package, container or contents, the word "kosher", "pareve", "Glat" or "rabbinical supervision" or similar expression, in any language, or by any sign, emblem, insignia, six-pointed star, Menorah, symbol or mark in simulation of the word kosher unless such inscription is on a properly sealed package; or

iii. By display on any interior or exterior sign, menu or otherwise, or by advertisement, either oral or in writing, the words "kosher-style", "kosher-type", "Jewish", "Hebrew", "holiday (Jewish) foods", "traditional (Jewish)", "Bar Mitzvah", "Bat Mitzvah" or other similar words, either alone or in conjunction with the word "type", "style" or other similar expression, unless there is clearly and conspicuously stated a disclaimer in the same size type or letters in some prominent place or location on the sign or menu or in the case of an advertisement in type no smaller than the smallest type in the advertisement, and in no event less than 10-point type, that the product or products offered for sale are not represented as kosher.

(1) The disclaimer shall appear in a box within the advertisement and shall be preceded with the word "NOTICE" or other similar word, in not smaller than bold 14-point type.

(2) An advertisement that utilizes any kosher symbol that also promotes the sale of non-kosher food is in violation of this section unless there is clearly and conspicuously stated in the advertisement a

disclaimer in accordance with the requirement of this section, that some of the food offered for sale is not represented to be kosher;

6. By advertising an establishment as being under rabbinical supervision without including in the advertisement the name of the supervising rabbi or agency;

7. By representing a food and/or an establishment as being under rabbinical supervision when that food and/or establishment is not in conformance with the requirements of that supervision;

8. Use by any person of a recognized kosher food symbol, including but not limited to OU, OK, Kof-K, Triangle-K, Star-K, without first obtaining written authorization from the person or agency represented by that symbol;

9. Use of the word(s) "kosher" or "pareve" or a kosher symbol insignia or the letter(s) "K", "KM," "KP" or "KD", on properly sealed packages that are not produced under rabbinical supervision, shall bear the statement "not under rabbinical supervision" in bold type on the label;

10. Use of the letter "P" as part of a kosher symbol on any product when that product is not represented as kosher for Passover;

11. Possession by any person, other than the manufacturer or packer at its premises, of kosher or kosher for Passover identification bearing a kosher symbol, unless the certifying entity of that symbol authorizes application of that symbol to that product on that premise;

12. Possession by any person of meat and/or poultry represented as having been slaughtered to be sold as kosher, when that meat and/or poultry is not properly identified with the slaughterhouse tag and/or plumba or the wholesaler's tag;

13. Failure to comply with the labeling requirements of N.J.A.C. 13:45A-21.3;

14. Failure to comply with the recordkeeping requirements of N.J.A.C. 13:45A-21.4;

15. Failure to allow an inspector entry upon the business premises of a dealer or to interfere in any way with an inspection;

16. Failure to respond in a timely fashion to an inquiry conducted by the Division;

17. Failure to attend any scheduled proceeding as directed by the Division. In the event that a person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the person's responsibility to do so in a timely fashion. The failure of a person to retain

counsel, absent a showing of good cause for such failure, shall not require an adjournment of the proceeding;

18. Failure to answer any question pertinent to an inquiry made pursuant to N.J.S.A. 56:8-3, or other applicable law, unless the response is subject to a bona fide claim of privilege; or

19. Failure to make a proper and timely response by way of appearance and/or production of documents to any subpoena issued pursuant to N.J.S.A. 56:8-3 or as otherwise may be provided by law.

Case Notes

Regulations covering kosher products had a secular purpose and were valid. *Ran-Dav's County Kosher, Inc. v. State*, 243 N.J.Super. 232, 579 A.2d 316 (A.D.1990), reversed 129 N.J. 141, 608 A.2d 1353, certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

Test to determine validity of kosher product regulations was not whether there were any circumstances where regulations were valid or invalid. *Ran-Dav's County Kosher, Inc. v. State*, 243 N.J.Super. 232, 579 A.2d 316 (A.D.1990), reversed 129 N.J. 141, 608 A.2d 1353, certiorari denied 113 S.Ct. 1366, 507 U.S. 952, 122 L.Ed.2d 744.

13:45A-21.8 Presumptions

Possession by a dealer of any product not in conformance with its disclosure is presumptive evidence that the dealer is in possession of that food with the intent to sell.

SUBCHAPTER 22. HALAL FOOD

13:45A-22.1 Purpose and scope

(a) The rules in this subchapter implement the provisions of P.L. 2000, c.60 (N.J.S.A. 56:8-98 et seq.), which created the "Halal Food Consumer Protection Act" under the Division of Consumer Affairs.

(b) This subchapter shall apply to all dealers, as defined in N.J.A.C. 13:45A-22.2, who prepare, distribute, sell or expose for sale any food represented to be halal.

13:45A-22.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Advertises, represents or holds itself out" means engaging, directly or indirectly, in promotional activities including, but not limited to, oral representations, newspaper, radio and television advertising, Internet and electronic media, telephone book listings, distribution of fliers and menus and any in-store signs or announcements.

“Dealer” means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as halal, including, but not limited to, persons, manufacturers, slaughterhouses, processors, wholesalers, stores, restaurants, hotels, caterers, catering facilities, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies. Such establishments may also deal in food not represented as halal.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the Director’s designee.

“Disclosure” means the form(s) provided by the Division and executed by a dealer for the purpose of disclosing to consumers and to the Division practices relating to the slaughter of animals, preparation, handling and sale of food represented to be halal.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Food” means a food, food product, food ingredient, dietary supplement or beverage.

“Meat” means animal and/or poultry meat, meat products or meat byproducts.

“Person” means an individual, corporation, business trust, trust, estate, partnership, association, two or more persons having a joint or common interest or any other legal or commercial entity. When used in this subchapter, “person” shall include, but not be limited to, all retail establishments, all dealers as defined above, and all others along the chain of commerce from the time a food is produced or, in the case of meat or poultry, from the time of slaughter to the time of its sale.

“Properly sealed packages” means those packages which bear a halal symbol sealed by the manufacturer, processor or wholesaler at its premises.

“Sell” means to offer for sale, expose for sale, serve or sell, directly or indirectly.

“Wholesaler” means any person selling food to another person where that food is intended for resale.

13:45A-22.3 Disclosure statement; posting of disclosure

(a) A dealer selling food represented as halal shall request in writing from the Division the halal disclosure form(s) and halal disclosure statement(s) applicable to its business. When making a request, the dealer shall identify its business type as a (or a combination of the following):

1. Slaughterhouse;
2. Retail establishment; or

3. Restaurant, nursing home, summer camp, caterer or other dealer who serves prepared food pursuant to a contract.

(b) A dealer shall complete and return to the Division within 14 calendar days of receipt the halal disclosure form(s) provided by the Division. A dealer who completes a halal disclosure form shall conform its sales practices to those it set forth on the halal disclosure form that it returns to the Division.

(c) A dealer selling food represented as halal shall complete and post, in a location on its premises readily visible to the consumer, the applicable halal disclosure statement provided by the Division as follows:

1. Slaughterhouses selling cattle, goats, sheep, and lambs represented as halal shall post the halal disclosure statement found at the end of this subchapter as Appendix A, which is incorporated into the rule by reference;

2. Slaughterhouses selling poultry represented as halal shall post the halal disclosure statement found at the end of this subchapter as Appendix B, which is incorporated into the rule by reference;

3. Retail establishments selling food represented as halal shall post the halal disclosure statement found at the end of this subchapter as Appendix C, which is incorporated into the rule by reference; and

4. Restaurants, nursing homes, summer camps, caterers or other dealers who serve prepared food pursuant to a contract that are serving food represented as halal shall post the halal disclosure statement found at the end of this subchapter as Appendix D, which is incorporated into the rule by reference.

(d) In the event of any change in the practices reported to the Division on the halal disclosure form and posted on the halal disclosure statement, a dealer shall immediately manually amend its posted halal disclosure statement to reflect the change in the posted practices and shall inform the Director in writing, and if applicable, any party to a contract, within 14 calendar days of any change in the stated information. The Division shall provide the dealer with a new halal disclosure form and a new halal disclosure statement. The dealer shall complete and return the new halal disclosure form to the Division within 14 calendar days and shall complete and post the new halal disclosure statement.

(e) A person may sell both food represented as halal and food not represented as halal as long as the food is properly identified and the fact is noted on the halal disclosure statement.

(f) A person whose sole representation of halal food is limited to the contents of food which is in properly sealed packages prepared by others who labeled the package halal shall be exempt from the requirements of this section.

(g) In addition to the posted halal disclosure statement required by this section, nursing homes, summer camps, caterers or other dealers who serve prepared food pursuant to a contract shall furnish to the consumer or his or her legal representative a copy of the halal disclosure statement prior to the signing of the contract.

New Rule, R.2005 d.133, effective May 2, 2005.
See: 36 N.J.R. 3992(a), 37 N.J.R. 1529(b).

13:45A-22.4 Oral disclosure

In establishments such as hospitals or other places where representations that food is halal are not made until after the consumer has made a request for halal food, the disclosure may be orally provided to the consumer either prior to serving the food or together with the food when served.

13:45A-22.5 Reliance on representation; good faith; defense

(a) A person subject to the requirements of N.J.A.C. 13:45A-22.3 and 22.4 shall not have committed an unlawful practice if it can be shown, by a preponderance of the evidence, that the person relied in good faith upon the representations that the food is halal made by the following:

1. A slaughterhouse;
2. A manufacturer;
3. A processor;
4. A packer; or
5. A distributor.

13:45A-22.6 Recordkeeping requirements

(a) Dealers shall keep complete and accurate records of all food purchased as halal including:

1. The name and address of the slaughterhouse, wholesaler or other source from which the food is purchased;
2. The dates of purchase;
3. The quantities of food purchased;
4. The identity or nature of food; and
5. Copies of all invoices and bills of sale.

(b) In addition to the requirements of (a) above, dealers who are slaughterhouses shall maintain a record of:

1. The source of the animals;
2. The name(s) of the person who slaughters the animals;
3. The name(s) of the responsible supervisor, if any; and
4. The method of slaughter.

(c) A dealer shall retain such records on its premises for a two-year period following the date of purchase.

(d) A dealer shall turn over all the records required in (c) above upon the sale of the dealer's business to the purchaser of the business. The dealer may provide legible certified true copies of the records in lieu of originals.

Amended by R.2005 d.133, effective May 2, 2005
See: 36 N.J.R. 3992(a), 37 N.J.R. 1529(b).
Added (d).

13:45A-22.7 Presumptions

Possession by a dealer of any food which does not conform with the disclosure statement required by N.J.A.C. 13:45A-22.3 is presumptive evidence that the dealer possesses that food with the intent to sell it in nonconformance with the disclosure.

13:45A-22.8 Inspection of dealers

(a) Inspections of dealers and dealers' premises shall be conducted by authorized inspectors of the Division.

(b) For purposes of conducting an inspection, an inspector shall have the right of entry to, upon and through the business premises of any dealer which represents food as halal.

13:45A-22.9 (Reserved)

13:45A-22.10 Unlawful practices

(a) In addition to any violation of any other statutes or regulations, the following shall constitute an unlawful practice by a dealer under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.:

1. Failure to comply with the disclosure requirements of N.J.A.C. 13:45A-22.3;
2. Failure to request a halal disclosure statement form from the Division;
3. Failure to return the completed disclosure statement within 14 calendar days of receipt;
4. Failure to conform sales practices with the posted disclosures;
5. Failure to conform posted disclosures with the disclosure filed with the Division;
6. Failure to comply with the recordkeeping requirements of N.J.A.C. 13:45A-22.6;
7. Use by any person of a recognized halal food symbol without first obtaining written authorization by the person or agency representing that symbol;
8. Failure to permit an inspector entry upon the business premises of a dealer or to interfere in any way with an inspection;

9. Failure to respond in a timely fashion to an inquiry conducted by the Division;

10. Failure to attend any scheduled proceeding as directed by the Division. In the event that a person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the person's responsibility to do so in a timely fashion. The failure of a person to retain counsel, absent a showing of good cause for such failure, shall not require an adjournment of the proceeding;

11. Failure to answer any question pertinent to an inquiry made pursuant to N.J.S.A. 56:8-3, or other applicable law, unless the response is subject to a bona fide claim of privilege; or

12. Failure to make a proper and timely response by way of appearance and/or production of documents to any subpoena issued pursuant to N.J.S.A. 56:8-3 or as otherwise may be provided by law.

APPENDIX A

Slaughterhouse Disclosure Statement
(Cattle, goats, sheep, and lambs)

Please check all that apply (A checked box means "yes."):

A. Raising of Animals

- This establishment slaughters only cattle, goats, sheep, and lambs that have been fed only 100% vegetarian feed, organic feed, or Amish feed, none of which contain any animal by-products.
- The cattle, goats, sheep, and lambs slaughtered here were not treated with hormones.

B. Origin of Animals Slaughtered

- Animals are raised on the premises.

Animals are purchased from the following farms:

Animals are purchased from the following auctions:

C. Slaughter

The U.S.D.A. Plant Number of this slaughterhouse is _____.

The slaughter of animals is performed in the following manner:

- The animal is alive at the time of slaughter.
- The animal is not stunned before slaughter.
- The animal is hand-slaughtered with a sharp knife.
- The knife used during the slaughter is sharpened/cleaned after each use.
- The animal is facing Mecca when slaughtered.
- The animal is slaughtered by a person who represents him/herself as a Muslim.

- The slaughterer pronounces an Islamic benediction while performing the slaughter.

- The animal is slaughtered with a swift, deep incision on the neck which cuts the jugular veins and carotid arteries on both sides and also the trachea and esophagus.

- The spinal cord is not severed at the time of slaughter.
- If any additional steps or procedures are performed, they are:

- Pigs are slaughtered in this slaughterhouse.

If the box above is checked, answer the following:

- Pigs are slaughtered on separate equipment.
- Pigs are slaughtered on the same day as animals that are slaughtered to be sold as halal.

D. Post-Slaughter

- Only non-animal derived/non-alcohol based cleansers and sanitizers are used to wash/clean the equipment.

- The animal is drained of blood following slaughter.

- The animal slaughtered to be sold as halal is stored in a cooler or freezer which contains only meat or poultry to be sold as halal.

- Animals are labeled as halal or zabiha halal consistent with the Food Standards and Labeling Policy Book of the U.S.D.A.

- If the slaughterhouse fabricates meat to be sold as halal, food packaging materials have been certified as halal by a halal certifying agency.

- If the slaughterhouse fabricates meat to be sold as halal, the meat has not been co-mingled with any food or food product not represented to be halal.

New Rule, R.2005 d.133, effective May 2, 2005.
See: 36 N.J.R. 3992(a), 37 N.J.R. 1529(b).

APPENDIX B

Slaughterhouse Disclosure Statement (Poultry)

Please check all that apply (A checked box means "yes."):

A. Raising of Poultry

- This establishment slaughters only poultry that have been fed only 100% vegetarian feed, organic feed, or Amish feed, none of which contain any animal by-products.
- The poultry slaughtered here were not treated with hormones.

B. Origin of Poultry Slaughtered

- Poultry is raised on the premises.

Poultry is purchased from the following farms:

Poultry is purchased from the following auctions:

C. Slaughter

The U.S.D.A. Plant Number of this slaughterhouse is _____.

The slaughter of poultry is performed in the following manner:

- The poultry is alive at the time of slaughter.
- The poultry is not stunned before slaughter.
- The poultry is slaughtered by mechanical means.
- The poultry is hand-slaughtered with a sharp knife.
- The knife used during the slaughter is sharpened/cleaned after each use.
- The poultry is facing Mecca when slaughtered.
- The poultry is slaughtered by a person who represents him/herself as a Muslim.

- The slaughterer pronounces an Islamic benediction while performing the slaughter.

- The poultry is slaughtered with a swift, deep incision on the neck which cuts the jugular veins and carotid arteries on both sides and also the trachea and esophagus.

- The spinal cord is not severed at the time of slaughter.
- If any additional steps or procedures are performed, they are:

- Pigs are slaughtered in this slaughterhouse.
If the box above is checked, answer the following:
- Pigs are slaughtered on separate equipment.
- Pigs are slaughtered on the same day as animals that are slaughtered to be sold as halal.

D. Post-Slaughter

- Only non-animal derived/non-alcohol based cleansers and sanitizers are used to wash/clean the equipment.
- The poultry is drained of blood following slaughter.
- The poultry slaughtered to be sold as halal is stored in a cooler or freezer which contains only meat or poultry to be sold as halal.
- Poultry is labeled as halal or zabiha halal consistent with the Food Standards and Labeling Policy Book of the U.S.D.A.
- If the slaughterhouse fabricates poultry to be sold as halal, food packaging materials have been certified as halal by a halal certifying agency.
- If the slaughterhouse fabricates poultry to be sold as halal, the poultry has not been co-mingled with any food or food product not represented to be halal.

New Rule, R.2005 d.133, effective May 2, 2005.
See: 36 N.J.R. 3992(a), 37 N.J.R. 1529(b).

APPENDIX C

Retail Disclosure Statement

A. General Disclosure

For purposes of this disclosure, non-halal means food that this establishment does not represent to be halal. Please check all that apply (A checked box means "yes."):

- [] This establishment sells only halal foods.
[] This establishment sells both halal and non-halal foods.
[] This establishment sells only meat and poultry as halal.
[] This establishment sells dairy goods as halal.
[] This establishment sells bakery products as halal.
[] This establishment makes no representation as to the halal status of its foods other than that which appears on the package label of prepackaged food.
[] Meat sold at this establishment is under the supervision of a halal certifying agency.
[] Dairy products sold at this establishment are under the supervision of a halal certifying agency.
[] Bakery goods sold at this establishment are under the supervision of a halal certifying agency.
[] This establishment uses separate utensils, cutting boards, machine slicers, meat grinders, knives and other equipment for halal and non-halal foods which are identified as such.
[] This establishment uses separate refrigerators, freezers, and storage areas for halal and non-halal food.
[] Non-halal food products are not mixed with halal food products.

B. Meat and Poultry

Meat offered for sale at this establishment has been purchased from the vendor(s) listed below who made the following representations:

- [] The animal was fed only 100% vegetarian feed, organic feed, or Amish feed, none of which contain any animal by-products.
[] The animal was not treated with hormones.
[] The animal was alive at the time of slaughter.
[] The animal was not stunned before slaughter.
[] The animal was hand-slaughtered with a sharp knife.
[] The knife used during the slaughter was sharpened/cleaned after each use.
[] The animal was facing Mecca when slaughtered.
[] The animal was slaughtered by a person who represents him/herself as a Muslim.
[] The slaughterer pronounced an Islamic benediction while performing the slaughter.

- [] The animal was slaughtered with a swift, deep incision on the neck which cuts the jugular veins and carotid arteries on both sides and also the trachea and esophagus.
[] The spinal cord was not severed at the time of slaughter.
[] Only non-animal derived/non-alcohol based cleansers and sanitizers were used to wash/clean the equipment.
[] The animal was drained of blood following slaughter.
[] The animal slaughtered to be sold as halal was stored in a cooler or freezer which contains only meat or poultry to be sold as halal.
[] If any additional steps or procedures were performed, they were:

The name, address and telephone number of the vendor(s) from whom the meat referred to above was purchased:

The poultry offered for sale at this establishment has been purchased from the vendor(s) listed below who made the following representations:

- [] The poultry was fed only 100% vegetarian feed, organic feed, or Amish feed, none of which contain any animal by-products.
[] The poultry was not treated with hormones.
[] The poultry was alive at the time of slaughter.
[] The poultry was not stunned before slaughter.
[] The poultry was slaughtered by mechanical means.
[] The poultry was hand-slaughtered with a sharp knife.
[] The knife used during the slaughter was sharpened/cleaned after each use.
[] The poultry was facing Mecca when slaughtered.
[] The poultry was slaughtered by a person who represents him/herself as a Muslim.
[] The slaughterer pronounced an Islamic benediction while performing the slaughter.
[] The poultry was slaughtered with a swift, deep incision on the neck which cuts the jugular veins and carotid arteries on both sides and also the trachea and esophagus.
[] The spinal cord was not severed at the time of slaughter.
[] Only non-animal derived/non-alcohol based cleansers and sanitizers were used to wash/clean the equipment.
[] The poultry was drained of blood following slaughter.
[] The poultry slaughtered to be sold as halal was stored in a cooler or freezer which contains only meat or poultry to be sold as halal.
[] If any additional steps or procedures were performed, they were:

The name, address and telephone number of the vendor(s) from whom the poultry referred to above was purchased:

- This establishment purchases only meat or poultry labeled halal or zabiha halal from a federally inspected meat packaging plant.
- This establishment sells meat or poultry which has not been identified as halal or zabiha halal by the slaughterhouse.
- Pork or pork products are not sold at this establishment.

C. Bakery Products

- Bakery products sold here do not contain any alcohol.
- Bakery products sold here do not contain any pork, animal fat or lard.
- Bakery products sold here do not contain any non-halal beef gelatin.
- Bakery products sold here contain only gelatin derived from plants.
- Bakery products sold here contain only gum derived from plants.

D. Milk and Dairy Products

- All cheese sold here is certified as halal.
If the box above is checked, the name, address and telephone number of the halal certifying agency is:

- All milk sold here is certified as halal.
If the box above is checked, the name, address and telephone number of the halal certifying agency is:

E. Food Products Prepared On Site

- Prepared food labeled or represented as halal does not contain or use any ingredients from an animal not represented as halal by the slaughterhouse.
- Prepared food labeled or represented as halal does not contain any product containing pork.
- Prepared food labeled or represented as halal does not contain any alcohol.
- No alcohol is used in the preparation of any prepared food represented as halal.

F. Food Packaging

- Food packaging materials have been certified as halal by a halal certifying agency. The name, address and telephone number of the halal certifying agency is:

G. Cleaners and Sanitizers

- Only non-animal derived/non-alcohol based cleansers and sanitizers are used to wash/clean the equipment.

New Rule, R.2005 d.133, effective May 2, 2005.
See: 36 N.J.R. 3992(a), 37 N.J.R. 1529(b).

APPENDIX D

Restaurant, nursing home, summer camp, caterer or other dealer who serves prepared food

Disclosure Statement

Please check all that apply (A checked box means "yes."):

A. General Disclosures

- [] This establishment sells only food represented as halal as described in this notice.
[] This establishment sells both food represented as halal and food not represented as halal.
[] This establishment is under the supervision of a halal certifying agency. The name, address and telephone number of the halal certifying agency is:
[] All food sold does not contain pork or pork products.
[] All food sold does not contain blood as an ingredient.
[] All food sold does not contain alcohol.
[] All cheese used is certified as halal.
[] All milk used is certified as halal.
[] This establishment uses separate utensils, cutting boards, cooking utensils, ovens, microwaves and knives for halal and non-halal foods which are identified as such.
[] This establishment uses separate refrigerators, freezers and storage areas for food represented as halal and food not represented as halal.
[] All food served as halal is not mixed with any non-halal food.
[] Alcohol is not used in the preparation of food.

B. Meat and Poultry

Meat offered for sale at this establishment has been purchased from the vendor(s) listed below who made the following representations:

- [] The animal was fed only 100% vegetarian feed, organic feed, or Amish feed, none of which contain any animal by-products.
[] The animal was not treated with hormones.
[] The animal was alive at the time of slaughter.
[] The animal was not stunned before slaughter.
[] The animal was hand-slaughtered with a sharp knife.
[] The knife used during the slaughter was sharpened/cleaned after each use.
[] The animal was facing Mecca when slaughtered.
[] The animal was slaughtered by a person who represents him/herself as a Muslim.
[] The slaughterer pronounced an Islamic benediction while performing the slaughter.
[] The animal was slaughtered with a swift, deep incision on the neck which cuts the jugular veins and carotid arteries on both sides and also the trachea and esophagus.
[] The spinal cord was not severed at the time of slaughter.
[] Only non-animal derived/non-alcohol based cleansers and sanitizers were used to wash/clean the equipment.
[] The animal was drained of blood following slaughter.
[] The animal slaughtered to be sold as halal was stored in a cooler or freezer which contains only meat or poultry to be sold as halal.
[] If any additional steps or procedures were performed, they were:

The name, address and telephone number of the vendor(s) from whom the meat referred to above was purchased:

The poultry offered for sale at this establishment has been purchased from the vendor(s) listed below who made the following representations:

- [] The poultry was fed only 100% vegetarian feed, organic feed, or Amish feed, none of which contain any animal by-products.
[] The poultry was not treated with hormones.
[] The poultry was alive at the time of slaughter.
[] The poultry was not stunned before slaughter.
[] The poultry was slaughtered by mechanical means.
[] The poultry was hand-slaughtered with a sharp knife.
[] The knife used during the slaughter was sharpened/cleaned after each use.
[] The poultry was facing Mecca when slaughtered.
[] The poultry was slaughtered by a person who represents him/herself as a Muslim.
[] The slaughterer pronounced an Islamic benediction while performing the slaughter.
[] The poultry was slaughtered with a swift, deep incision on the neck which cuts the jugular veins and carotid arteries on both sides and also the trachea and esophagus.
[] The spinal cord was not severed at the time of slaughter.
[] Only non-animal derived/non-alcohol based cleansers and sanitizers were used to wash/clean the equipment.
[] The poultry was drained of blood following slaughter.
[] The poultry slaughtered to be sold as halal was stored in a cooler or freezer which contains only meat or poultry to be sold as halal.
[] If any additional steps or procedures were performed, they were:

The name, address and telephone number of the vendor(s) from whom the poultry referred to above was purchased:

- [] Meat and poultry offered for sale have been slaughtered as halal or zabiha halal and identified as such at the slaughterhouse consistent with Federal labeling guidelines.
[] This establishment purchases only meat or poultry labeled halal or zabiha halal from a federally inspected meat packing plant.
[] Pork or pork products are not sold at this establishment.
[] This establishment sells meat or poultry which has not been identified as halal or zabiha halal by the slaughterhouse.

C. Food Packaging

- [] Food packaging materials have been certified as halal by a halal certifying agency. The name, address and telephone number of the halal certifying agency is:

D. Cleaners and Sanitizers

- [] Only non-animal derived/non-alcohol based cleansers and sanitizers are used to wash/clean the equipment.

New Rule, R.2005 d.133, effective May 2, 2005.
 See: 36 N.J.R. 3992(a), 37 N.J.R. 1529(b).

SUBCHAPTER 23. DECEPTIVE PRACTICES
 CONCERNING WATERCRAFT REPAIR

13:45A-23.1 Definitions

“Customer” means the owner, or any family member, employee or any other person whose use of the watercraft is authorized by the owner.

“Director” means the Director of the Division of Consumer Affairs.

“Repair of watercraft” means all maintenance and repair to such watercraft, its engine or motor, but excluding lubrication, oil changes, installing light bulbs, and other such minor accessories and services. No service or accessory to be installed shall be excluded for purpose of this rule if the Director determines that the performance of the service or the installation of an accessory requires mechanical expertise has given rise to a high incidence of fraud or deceptive practices or involves a part of such watercraft essential to its safe operation.

“Watercraft” includes but is not limited to any craft, boat or vessel, powerboat, sailboat, motor sailer, mono hull, catamaran or trimaran, documented or registered (if required) in the State of New Jersey or by any other agency having authority to document or register watercraft.

“Watercraft repair dealer” means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on any watercraft, its propulsion system (internal combustion or electrical, inboard or outboard) or the replacement of parts including, but not limited to, hull planking, fiberglass sections and standing rigging, and shall include, but not be limited to, boat dealers, repair shops (fixed, mobile or marina) and marinas where such maintenance, diagnosis or repair services are available. Excluded are those persons who engage in the business of repairing watercraft of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

13:45A-23.2 Deceptive practices: watercraft repairs

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and to afford customers of watercraft repair dealers similar rights and protections afforded to customers of automotive repair dealers, N.J.A.C. 13:45A-7.1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of a watercraft repair dealer, whether such act or omission is done by the watercraft repair dealer, its employees, agents, partners, officers, or members, or by any third party who performs such service at the request of the watercraft repair dealer.

1. Making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known or, which by the exercise of reasonable care should be known to be untrue or misleading.

2. Commencing work for compensation without securing one of the following:

i. Specific written authorization from the customer which states the nature of the repair requested or problem presented; or

ii. If the customer’s watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the watercraft repair dealer during other than normal working hours or by one other than the customer, or in other than distress circumstances, oral authorization from the customer to proceed with the requested repair or problem presented, evidenced by a notation on the repair order and/or invoice of the repair requested or problem presented, date, time, name of person granting such authorization and the telephone number if any, at which said person was contacted.

3. Commencing work for compensation without either:

i. One of the following:

(1) Providing the customer with a written estimated price to complete the repair quoted in terms of a not-to-exceed figure; or

(2) Providing the customer with a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the repair. If the dealer makes a diagnostic examination, the dealer has a right to furnish such estimate in a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnosis charge must be agreed to in advance by the customer. No cost of diagnosis which would have been incurred in accomplishing the repair shall be billed twice if the customer elects to have the dealer make the repair. Should it be necessary to haul the watercraft and or transport it to the repair facility where the maintenance, diagnosis or estimate is to be made (in all but distress circumstances), charges for such hauling and/or transportation shall be disclosed in advance and itemized separately on the estimate or invoice; or

(3) Providing the customer with a written estimated price to complete a specific repair, for example “repack stuffing box”; or

(4) Obtaining from the customer a written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or

(5) If the customer waives his right to a written estimate in a written statement, signed by the customer obtaining from the customer oral approval of an estimated price of repairs evidenced by a notation on the repair or invoice of the estimated price of repairs, date, time, name of person approving such estimate, and the telephone number if any, at which such person was contacted; or

ii. If the customer’s watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the repair dealer during other than normal working hours or by one other than the customer, obtaining from the customer either:

(1) A written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or

(2) Oral approval of an estimated price of repairs evidenced by a notation on the repair order or invoice of the estimated price of repairs, date, time, name of person approving such estimate and the telephone number, if any, at which such person was contacted.

4. Failure to provide a customer with a copy of any receipt or document signed by him, when he signs it.

5. Making false promises of a character likely to influence, persuade or induce a customer to authorize the repair, diagnosis, service or maintenance of any craft or its propulsion system.

6. Charging the customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the customer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the watercraft repair dealer shall make a notation on the repair order and the invoice of the date, time, name of person authorizing the additional repairs and the telephone number called, if any, together with a specification of the additional parts and labor and total additional cost. The watercraft repair dealer shall obtain the consent of any customer before any additional work not estimated is done or parts not estimated are supplied.

7. Failure to return replaced parts to the customer at the time of completion of work, provided that the customer, before work is commenced, requests such return, and provided that the parts, by virtue of their size, weight or other similar factors, are not impractical to return. Those parts and components, that are replaced and that are sold on an exchange basis and those parts that are required to be returned by the watercraft repair dealer to the manufacturer or distributor, are exempt from the provisions of this section.

8. Failure to record on an invoice all repair work performed by a watercraft repair dealer or for a customer, itemizing separately the charges for parts and labor, and clearly stating whether any new, rebuilt, reconditioned or used parts have been supplied. A legible copy shall be given to the customer.

9. The failure to deliver to the customer, with the invoice, a legible written copy of all guaranties, itemizing the parts, components and labor represented to be covered by such guaranty or in the alternative, delivery to the customer of a guaranty covering all parts, components and labor supplied pursuant to a particular repair order. A guaranty shall be deemed false and misleading unless it conspicuously and clearly discloses in writing the following:

i. The nature and extent of the guaranty including a description of all parts, characteristics or properties covered by or excluded from the guaranty, the duration of the guaranty and what must be done by a claimant before the guarantor will fulfill his obligation (such as returning the product and paying service or labor charges); and

ii. The manner in which the guarantor will perform. The guarantor shall state all conditions and limitations and exactly what the guarantor will do under the guaranty, such as repair, replacement or refund. If the guarantor or recipient has an option as to what may satisfy the guaranty, this must be clearly stated; and

iii. The guarantor's identity and address shall be clearly revealed in any documents evidencing the guaranty.

10. Failure to clearly and conspicuously disclose the fact that a guaranty provides for adjustment on a pro rata basis, and the basis upon which the guaranty will be prorated; that is, the time, the part, component or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on the price other than that paid by the customer, clear disclosure must be made of the amount. However, a fictitious price must not be used even where the sum is adequately disclosed.

11. Failure to post in a conspicuous place a sign informing the customer that the watercraft repair dealer is obligated to provide a written estimate when the customer physically presents such watercraft to the dealer during normal working hours and, in any event, before work is commenced except in distress circumstances. In addition, copies of any receipts or document signed by the customer, a detailed invoice, a written copy of any guaranty and the return of any replaced parts that have been requested must be provided. The sign is to read as follows:

"A CUSTOMER OF THIS ESTABLISHMENT IS ENTITLED TO:

1. When a watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof is presented during normal working hours, and in any event before work begins, a written estimate price stated either:

(A) PRICE NOT TO EXCEED \$ and given without charge; or

(B) As an exact figure broken down as to hauling, transporting, parts and labor. This establishment has the right to charge you for this diagnostic service, although, if you then have the repair done here you will not be charged twice for any part of such charge necessary to make the repair.

(C) As an exact figure to complete a specific repair.

2. For your protection, you may waive your right to an estimate only by signing a written waiver.

3. Require that this establishment not start work on your watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof until you sign an authorization stating the nature of the repair or problem if you physically present the watercraft here during normal working hours.

4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.

5. The replaced parts, if requested before work is commenced, unless their size, weight or similar factors make return of the parts impractical.

6. A written copy of any guaranty.”

12. Nothing in this section shall be construed as requiring a watercraft repair dealer to provide a written estimate if the dealer does not agree to do the repair.

13. Any other unconscionable commercial practice prohibited pursuant to N.J.S.A. 56:8-1 et seq.

SUBCHAPTER 24. TOY AND BICYCLE SAFETY

13:45A-24.1 Purpose and scope

(a) The purpose of this subchapter is:

1. To implement P.L. 1991, c.250, by setting forth regulations for the reporting of toy-related deaths or injuries;

2. To implement P.L. 1991, c.295, by setting forth regulations for disseminating notice of defective or hazardous toys or other articles intended for use by children;

3. To implement P.L. 1991, c.323, by setting forth regulations for a notice promoting the use of helmets to be affixed to bicycles sold at retail in the State of New Jersey; and

4. To implement P.L. 2007, c. 124, by setting forth regulations concerning the dissemination of a list of children's products that have been identified as unsafe.

(b) The sections of this subchapter shall apply as follows:

1. N.J.A.C. 13:45A-24.2 applies to all physicians, defined for purposes of this section as Doctors of Medicine, Doctors of Osteopathy, and Doctors of Podiatric Medicine who are licensed by the State Board of Medical Examiners, and Doctors of Chiropractic who are licensed by the State Board of Chiropractic Examiners; and to the medical directors of all licensed health-related facilities located within the State of New Jersey, such as hospitals, public health centers, emergency and other medical treatment centers, or the premises of health maintenance organizations if patients are seen or treated therein.

2. N.J.A.C. 13:45A-24.3 applies to manufacturers, importers, and distributors of toys or other articles intended for use by children, and to all dealers who offer to sell or sell such items to consumers in the State of New Jersey.

3. N.J.A.C. 13:45A-24.4 applies to all persons in the business of selling bicycles at retail in the State of New Jersey.

Amended by R.2008 d.154, effective June 16, 2008.

See: 40 N.J.R. 1075(a), 40 N.J.R. 3744(a).

In (a)2, deleted “and” from the end; in (a)3, substituted “; and” for a period at the end; and added (a)4.

13:45A-24.2 Reporting of toy-related injuries

(a) As used in this section, the following words shall have the following meanings:

“Toy” means a plaything or item primarily marketed for the amusement or recreation of children, as well as any article that is designed for use by children, such as a stroller, crib, child-sized furniture, pacifier, teething ring, etc.

“Toy-related injury” means an injury to a person of any age caused or worsened by a toy as defined above; the term does not include an injury which involved a toy but was not directly caused by the toy or worsened by an apparent characteristic of the toy.

(b) Whenever a physician has before him or her a person whose injury or death the physician determines to be or reasonably suspects may be toy-related, the physician or designee shall, as soon as practicable but no later than the next business day, make a report as follows:

1. If the injured person was seen in a private office or non-institutional setting, the physician shall report the toy-related injury to:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel.: (201) 504-6257

2. If the injured person was seen in a licensed health-care facility or other medical treatment center, or on the premises of a health maintenance organization, the physician or designee shall promptly report the injury or death to the medical director of that organization.

3. The medical director shall transmit the information supplied pursuant to (b)2 above as soon as practicable but no later than the next business day to the Office of Consumer Protection at the address set forth in (b)1 above.

(c) The initial report to the Office of Consumer Protection shall be made by telephone during business hours (8:30 A.M. to 4:30 P.M. Monday through Friday); the physician or medical director, as applicable, shall then complete a written form provided by the Office of Consumer Protection and shall return it within seven days of receipt to the address set forth in (b)1 above.

(d) The Division Director shall maintain a record of the toy-related injuries or deaths reported by physicians and medical directors and shall:

1. Prepare a report which does not identify either the physician or patient involved;

2. Transmit the information on a regular basis to the U.S. Consumer Product Safety Commission; and

3. Make the report available monthly to the public, upon request to the Office of Consumer Protection at the address set forth in (b)1 above. The request shall include a check or money order, payable to "Division of Consumer Affairs," for the processing fee of \$5.00. Cash will not be accepted.

(e) If upon review of such reports of injury or death, the Director determines that a specific toy may pose an immediate danger to the residents of this State, the Director shall issue a statement warning the public that such reports have been received.

(f) The Director may release the information identifying the physician and/or patient involved solely to an appropriate governmental organization for good cause shown.

(g) Failure by a physician or medical director to report a toy-related injury or death as set forth herein shall be referred by the Director to the attention of the State Board of Medical Examiners, or the State Board of Chiropractic Examiners, as applicable.

13:45A-24.3 Recall notices for children's products

(a) As used in this section, the following words shall have the following meanings:

"Child" means a person less than 14 years of age.

"Children's product" means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

1. The product is designed or intended for the care of, or use by, a child; or

2. The product is designed or intended to come into contact with a child while the product is used.

A product is not a "children's product" for the purposes of this subchapter if it may be used by or for the care of a child, but is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for the care of a child, or if it is a balloon, medication, drug, or food or is intended to be ingested.

"Dealer" means a person who sells at retail a toy or other article intended for use by children. A dealer who sells at wholesale such toy or article shall, with respect to that sale, be considered the "distributor" of that item.

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

"Distributor" means a person who sells at wholesale a toy or other article intended for use by children, or a parent company which purchases said items and distributes them to its authorized outlet stores.

"Manufacturer" means a person who, under any name, manufactures or imports a toy or other article distributed in New Jersey. When the toy or other article is distributed or sold under a name other than that of the actual manufacturer of the toy or other article, the term "manufacturer" includes any person under whose name the toy or other article is distributed or sold.

"Unsafe children's product" means a children's product:

1. That has been recalled for any reason by a Federal agency or the product's manufacturer, distributor, or importer and the recall has not been rescinded; or

2. Is the subject of a warning issued by a Federal agency that its intended use constitutes a safety hazard and the warning has not been rescinded.

(b) Any manufacturer, distributor or dealer who, pursuant to any law or any regulation of the U.S. Consumer Product Safety Commission, is required to give public notice or who voluntarily gives such notice, with regard to a defect or hazard in any toy or other article intended for use by children, shall at the same time notify the Director, in writing, at the following address:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel. (201) 504-6257

(c) A dealer shall maintain a record of receipt of toy recall notices, including the date of receipt, and shall make it available upon request to a representative of the Office of Consumer Protection.

(d) A dealer who is notified by a manufacturer, a distributor, or the U.S. Consumer Product Safety Commission of a defective or hazardous toy or other article intended for use by children shall, if the dealer has carried or normally carries such item, prominently display that notification for at least 120 days after its receipt on each premises where the toy or article was sold or would normally be sold, as follows:

1. Each notification shall be displayed at the place in the store where the product is or, if the product is no longer sold, where it was, displayed, and at the customer service area. Notifications shall be placed so that they can be easily read by adult persons of average height and normal vision. No structures, furniture, boxes, merchandise, packaging

material, etc., shall impede access to the display of notifications.

(e) The Director shall create, maintain, and update on the website of the Division (<http://www.nj.gov/oag/ca/home.htm>) a comprehensive list or lists of children's products that have been identified as unsafe children's products.

(f) The Division's list or lists of unsafe children's products shall be taken from the Consumer Product Safety Commission's list or lists, and may be a direct link to the list or lists on the Consumer Product Safety Commission's website.

(g) In addition to posting the list of unsafe children's products on its website, the Division shall make a copy of the list available to the public at no cost upon request made to the **Division by telephone** at 800-242-5846 (in State) or 973-504-6200 or by fax at 973-273-8035.

(h) Failure to comply with any requirement of this section shall be deemed a violation of the Consumer Fraud Act, N.J.S.A. 56:8-2 et seq.

Amended by R.2007 d.342, effective November 5, 2007.
See: 39 N.J.R. 2321(a), 39 N.J.R. 4850(a).

In (d)1, substituted "place in the store where the product is or, if the product is no longer sold, where it was, displayed, and at the customer service area" for "principal entrance of the store, or in the cash register area, or in a location elsewhere that is readily accessible to the public".

Amended by R.2008 d.154, effective June 16, 2008.

See: 40 N.J.R. 1075(a), 40 N.J.R. 3744(a).

Section was "Toy recall notices". In (a), added definitions "Child", "Children's product" and "Unsafe children's product"; rewrote (e); added new (f) and (g); and recodified former (f) as (h).

13:45A-24.4 Bicycle safety notices

(a) In addition to the notices required by N.J.S.A. 39:4-10.3 to be posted, a bicycle safety statement promoting the use of helmets shall be prominently affixed to every new or used bicycle offered to be sold or sold at retail by a person in the business of selling bicycles. The statement shall be attached to the seat, handlebar or, if in the form of a decal, to the top tube of the bicycle or, if unassembled, prominently printed on or firmly attached to the outside of the box or carton containing the unassembled bicycle.

(b) The statement may be in the form of the warning card, "This Bike is Missing One Part," designed by the New Jersey Coalition for Prevention of Developmental Disabilities, available from:

The New Jersey Coalition for Prevention of
Developmental Disabilities
985 Livingston Avenue
North Brunswick, New Jersey 08902
Tel. (732) 246-2525

Alternatively, the statement promoting the use of bicycle helmets may be in the form of a tag, notice, or decal designed by the bicycle supplier or retailer, provided the wording is clear and concise, appears in no less than 20-point type if in the form of a tag or notice and no less than 18-point type if in the form of a decal, and is printed in boldface capital letters, in color contrasting with the background. The tag or notice shall be made of cardboard, durable paper or plastic, and shall be no smaller than four inches by six inches if in the form of a tag or notice and no less than one by two inches if in the form of a decal; it may be covered by transparent plastic but shall not be obscured.

(c) A statement promoting the use of bicycle helmets that is contained within the text of the owner's manual, shall not satisfy the requirement.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), added "In addition to the notices required by N.J.S.A. 39:4-10.3 to be posted," to the beginning of the first sentence; in (b), changed the area code in the telephone number.

SUBCHAPTER 24A. FLAME RESISTANCE STANDARDS FOR TENTS AND SLEEPING BAGS

13:45A-24A.1 Definitions

The following words and terms when used in this subchapter shall have the following meanings unless the context indicates otherwise:

"Sleeping bag" means a bag providing warmth and insulation that may be lined or padded and is normally designed for sleeping outdoors or in a camp or tent.

"Tent" means a collapsible shelter, for one or more persons, of canvas or other material, either natural or synthetic or any combination thereof, stretched and sustained by poles or rope and intended for recreational camping outdoors.

13:45A-24A.2 Flame resistance standards

(a) For the purposes of N.J.S.A. 2A:123-16 et seq., a tent that at least meets the flammability standards for tents of the Industrial Fabric Association International CPAI-84 (1995 edition), including any subsequent revisions, incorporated in this rule by reference, shall be classified as being flame resistant.

(b) For the purposes of N.J.S.A. 2A:123-16 et seq., a sleeping bag that at least meets the flammability standards for sleeping bags of the Industrial Fabric Association International CPAI-75 (1976 edition), including any subsequent revisions, incorporated in this rule by reference, shall be classified as being flame resistant.

(c) Copies of CPAI-84 and CPAI-75 are available for purchase at the Industrial Fabrics Association International bookstore: www.ifaibookstore.com or 1-800-207-0729.

SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

13:45A-25.1 "Health club" defined

(a) The term "health club" shall include any establishment which:

1. Devotes at least 40 percent of its facility to the preservation, maintenance, encouragement or basic development of physical fitness or physical well-being through physical exercise; and

2. Where patron use is predominantly at will (that is, usage is permitted whenever the establishment is open or during specified time periods, such as "weekends", "week-days", "mornings", etc.).

(b) The term "health club" shall not include a single focus establishment/facility that is devoted to the development of one particular physical skill, or activity or enjoyment of one specific sport. The following facilities are not subject to the Act Regulating Sellers of Health Club Services, P.L. 1987, c. 238 ("Act"):

1. Basic aerobic and "dance exercise" centers operating on a scheduled lesson or hourly basis;
2. Children's gyms (commercial play-spaces with trampolines and other gymnastic equipment) operating on a scheduled lesson or hourly basis;
3. Martial arts schools (for example, karate institutes);
4. Dancing schools (for example, ballet and jazz);
5. Gymnastic schools operating on a scheduled lesson or hourly basis;
6. Tanning salons ("sun studios");
7. Weight control centers;
8. Metabolic and nutrition centers;
9. Other single sport centers (for example, swim clubs, tennis clubs and racquetball clubs).

(c) Health club facilities located in hotels, motels, condominiums, cooperatives, corporate offices or other business facilities and which charge fees comparable to other for-profit health clubs are subject to the Act unless usage is limited to guests, residents or employees at no charge or at nominal cost, in which event the facilities are not within the scope of the Act.

13:45A-25.2 Registration; fees

(a) Applicant(s) shall request information from the Health Club Coordinator, Office of Consumer Protection, Post Office Box 45025, Newark, New Jersey 07101 regarding the initial registration of a facility; thereafter an application shall be forwarded to the applicant, along with a copy of the Act and a copy of all current rules.

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$300.00 every two years for each health club facility operated, \$150.00 if paid during the second half of the biennial period.

(c) Upon verification of the information submitted in the application, payment of the registration fee and posting of a security, if not exempt from that requirement pursuant to N.J.A.C. 13:45A-25.4, a Certificate of Registration and the Notice described in (e) below shall be issued to the facility. The Certificate of Registration and Notice shall be displayed in a prominent place at the main entrance of each health club facility.

(d) Each contract for health club services shall contain, in the upper right-hand corner, the facility's Certificate of Registration number.

(e) The following shall be the text of the Notice to be provided by the Division to each registered facility:

NOTICE

This facility is registered as a seller of health club services by the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, 124 Halsey Street, Newark, New Jersey 07102. Such registration does not mean that this facility has been approved or endorsed by that agency. Patrons are advised that under New Jersey law, facilities offering contracts for health club services for longer than a three-month period must post with the Division of Consumer Affairs security against failure to provide such services.

(f) A registrant may note in advertising that it is a registered health club; however, a registrant shall not state or imply that the facility has been approved or endorsed by the Division.

(g) All registrations shall expire every two years on the 10th day of February.

Amended by R.1990 d.104, effective February 5, 1990.

See: 21 N.J.R. 3657(a), 22 N.J.R. 358(b).

Registration fee increased from \$100.00 to \$200.00 every two years.

Amended by R.1992 d.101, effective March 2, 1992.

See: 23 N.J.R. 3637(a), 24 N.J.R. 853(a).

Revised (a), (b), (e) and (g).

13:45A-25.3 Exemption from registration

(a) Where a facility claims exemption from registration because less than 40 percent of its square footage is devoted to health club services, the facility shall calculate the 40 percent square footage on the basis of the total indoor square footage of the establishment including the exercise equipment area(s), sauna(s), swimming pool(s), locker facilities and shower areas. The facility shall return a completed application form to the Division of Consumer Affairs along with documentation of the "less than 40 percent" claim, which shall include:

1. A schematic drawing noting the dimensions and use of each area of the facility;
2. A list of the various rooms/spaces with the total square footage of each room/space;
3. A statement of the total square footage of the facility; and
4. Two sample advertisements or brochures if any have been published by the facility within a three month period prior to the date documentation is filed.

(b) If, after the filing of the claim of exemption from registration, a facility makes an internal or external change in space allocation which changes the relationship of the health club services area to the total premises, the facility shall file a revised schematic diagram with the Division. This filing shall be made no later than 90 days after the date when the change in space allocation is completed.

(c) A claim of exemption from registration because less than 40 percent of the facility's square footage is devoted to health club services shall be subject to on-site verification at the discretion of the Director of the Division.

13:45A-25.4 Exemption from security requirement

A separate Declaration of Exemption from Security Requirement shall be filed for each facility claiming exemption from the bond/letter of credit/security requirement of N.J.S.A. 56:8-41 because its membership contracts are for a period no longer than three months. When the Declaration of Exemption from Security Requirement is filed, it must be accompanied by a copy of a written contract as proof that the contract duration is for a period of no longer than three months. The Declaration of Exemption from Security Requirement shall be available upon request from the Health Club Coordinator, Office of Consumer Protection, Post Office Box 45025, Newark, NJ 07101.

Amended by R.1992 d.101, effective March 2, 1992.

See: 23 N.J.R. 3637(a), 24 N.J.R. 853(a).

Revised text.

13:45A-25.5 Documentation of maintenance of security

Each establishment which has posted a bond as security shall maintain complete and accurate records relating to the bond and premium payments made thereon. Each establishment which has posted a letter of credit or provided other security acceptable to the Director of the Division shall maintain complete and accurate records relating to those items. These records shall be available on the premises of the establishment for review by the Director or his or her designated representative on any operating day.

13:45A-25.6 Health club contracts

(a) For the purpose of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Affiliated health club” means a health club located within 25 miles of a member’s new permanent residence that will provide the same or similar services and facilities to the member as the originating health club.

“Member” means a buyer of a health club services contract from the originating health club.

“Originating health club” means the health club that is party to a contract sought to be cancelled.

“Originating health club’s facility” means the facility identified in the contract between a member and the originating health club by name and street address as the health club that the member joined.

(b) A health club services contract subject to cancellation pursuant to N.J.S.A. 56:8-42g shall not be cancelled if, after receipt of a notice of cancellation from a member, which notice shall be sent or delivered to the originating health club’s facility, the originating health club reaffirms the contract in writing to the member guaranteeing that there is an affiliated health club or clubs that will provide to that member the use of the same or similar services and facilities as the originating health club at no additional expense for the remaining term of the contract, giving the name and address of the affiliated club or clubs.

(c) If, during the remaining term of a health club services contract that is subject to cancellation but for (b) above, the services and facilities contracted for become unavailable from the affiliated health club without additional expense and the originating health club receives notice from the member to that effect, the originating health club shall refund to the member, within 20 days of receipt of notice, the pro rata portion of the contract price paid to the originating health club that relates to the portion of the contract term for which the services and facilities are unavailable and the member shall have no further obligation under the contract.

(d) The obligation to make the refund provided for in (c) above, is an obligation of the originating health club under

the health club services contract secured by any bond or other security it maintains under N.J.S.A. 56:8-41.

New Rule, R.2009 d.76, effective March 2, 2009.

See: 40 N.J.R. 5530(a), 41 N.J.R. 1082(a).

Former N.J.A.C. 13:45A-25.6, Violations; sanctions, recodified to N.J.A.C. 13:45A-25.7.

13:45A-25.7 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

Recodified from N.J.A.C. 13:45A-25.6 by R.2009 d.76, effective March 2, 2009.

See: 40 N.J.R. 5530(a), 41 N.J.R. 1082(a).

SUBCHAPTER 26. AUTOMOTIVE DISPUTE RESOLUTION

Cross References

Special rules regarding disputes arising under the New Jersey Lemon Law, see N.J.A.C. 1:13A.

Law Review and Journal Commentaries

Expert testimony not required in Lemon Law suits, court says. Matt Ackermann, 150 N.J.L.J. 609 (1997).

13:45A-26.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Lemon Law, P.L. 1988, c.123, by establishing an automotive dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method of refund computation, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motor vehicles.

(b) This subchapter is applicable to:

1. All manufacturers of passenger automobiles and motorcycles registered, sold or leased in the State of New Jersey;
2. All purchasers and lessees of passenger cars and motorcycles registered, sold or leased in the State of New Jersey; and
3. Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (b).

Amended by R.2010 d.166, effective August 2, 2010.

See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

In (b)1, substituted “automobiles” for “cars”.

Case Notes

Lemon Law relief denied for paint chipping. *Zurita v. Mitsubishi Motor Sales*, OAL Dkt. No. CMA 11788-07, 2007 N.J. AGEN LEXIS 795, Initial Decision (December 12, 2007, deemed adopted, 2008 N.J. AGEN LEXIS 43 (January 1, 2008)).

Intermittent lighting of the brake light constituted a nonconformity under the Lemon Law: a warning light system that is unreliable creates an unsafe condition, and thus constitutes a nonconformity under the Lemon Law. *Fondoules v. Ford Motor Co.*, OAL Dkt. No. CMA 6099-07, 2007 N.J. AGEN LEXIS 854, Final Decision (November 30, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 729) adopted, which denied Lemon Law relief where the consumer alleged a constant, loud engine knocking noise and the engine pistons had been improved on models manufactured after the consumer's vehicle; the manufacturer's expert testified that the vehicle fell within the normal standards for internal combustion engine noise. *He v. Lexus Division, Toyota Motor Sales, USA, Inc.*, OAL Dkt. No. CMA 8224-07, 2007 N.J. AGEN LEXIS 956, Final Decision (November 20, 2007).

Adopting Initial Decision's conclusion that repeated lighting of the air bag warning light, when it was from a variety of causes, constituted a substantial impairment to the use or safety of the vehicle within the meaning of the Lemon Law statute and regulations (adopting and modifying 2007 N.J. AGEN LEXIS 767). *Miller v. Hyundai Motor America*, OAL Dkt. No. CMA 00035-07, 2007 N.J. AGEN LEXIS 955, Final Decision (November 7, 2007).

Consumer did not show that a minivan's pronounced pull substantially impaired its use since the consumer drove the vehicle more than 22,000 miles; however, under the mixed objective/subjective standard, the consumer met the burden of demonstrating that the pull rendered the vehicle unsafe within the meaning of the Lemon Law. *Dymko v. American Honda Motor Co.*, OAL Dkt. No. CMA 00977-07, 2007 N.J. AGEN LEXIS 586, Initial Decision (August 10, 2007).

Lemon Law claim failed, where consumer's complaints of pulling to the left, intermittent stalling upon starting, and loss of power could not be replicated despite extensive road testing. *Pezzuto v. American Honda Motor Co.*, OAL Dkt. No. CMA 10398-06, 2006 N.J. AGEN LEXIS 958, Initial Decision (November 2, 2006).

Insufficient competent and credible evidence was submitted that the problem with the vehicle's power sliding doors continued to exist, and thus Lemon Law relief was denied; in addition, the manufacturer contended that certain damage to a vehicle's power sliding doors was a result of an external force rather than a mechanical or electrical problem, the electronic door switch was an option, the doors could be operated manually, and the consumers had continued to use the vehicle. *Blath v. Mazda North American Operations*, OAL Dkt. No. CMA 4568-06, 2006 N.J. AGEN LEXIS 886, Initial Decision (October 25, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 697) adopted, which concluded that a rattle-type noise heard in the front of the consumer's vehicle when going over bumps did not warrant Lemon Law relief; although struts were replaced numerous times, an upgraded strut was installed that alleviated the problem and there was no convincing evidence of substantial impairment of safety, value, or use. *Jones v. Nissan North America, Inc.*, OAL Dkt. No. CMA 7669-06, 2006 N.J. AGEN LEXIS 764, Final Decision (August 31, 2006).

Predominant use of the consumer's pickup truck was personal, and not commercial, and consequently the consumer was entitled to Lemon Law relief, where (1) the truck was not registered commercially, and did not have commercial license plates nor any lettering or advertising on it; and (2) the consumer, who co-owned a company that installed doors and windows, testified that he drove 100 to 200 miles per week on business-related matters — half of this for travel to business sites in residential areas, where he would install windows and doors on homes, and half to give estimates, mostly on the weekend. *Morehouse v. Ford Motor Co.*, OAL Dkt. No. CMA 4569-06, 2006 N.J. AGEN LEXIS 762, Final Decision (August 22, 2006, modified, 2006 N.J. AGEN LEXIS 855

(September 14, 2006) (supplementary order regarding calculation of refund).

Annoyances and inconveniences do not constitute substantial impairment under the Lemon Law, and consumer failed to provide any objective evidence of transmission shifting. *Post v. Daimler Chrysler Motor Co.*, OAL Dkt. No. CMA 05815-06, 2006 N.J. AGEN LEXIS 399, Initial Decision (June 14, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 357) adopted, which concluded that Lemon Law claimant had not established an alleged brake "dragging" effect substantially impairing the use, safety, or value of the leased vehicle. *Allen v. Ford Motor Co.*, OAL Dkt. No. CMA 05173-06, 2006 N.J. AGEN LEXIS 527, Final Decision (June 14, 2006).

Lemon Law relief rejected, where there was insufficient evidence of abnormal pulling and steering wheel vibration and no substantial impairment of use; the lessee had full use of the vehicle other than for four days and drove it about 1,000 miles per month. *Capizzi v. Nissan North American, Inc.*, OAL Dkt. No. CMA 01846-06, 2006 N.J. AGEN LEXIS 356, Initial Decision (May 12, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 151) adopted, which concluded that repeated and frustrating efforts in starting the engine, which, according to the manufacturer's own expert witness, should have started within the industry standard of four seconds, constituted a nonconformity which impaired the vehicle's use under the Lemon Law. *San Martino v. Mazda North American Operations*, OAL Dkt. No. CMA 01737-06, 2006 N.J. AGEN LEXIS 524, Final Decision (March 31, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 62) adopted, which found that the operation of the resume function on consumer's cruise control was consistent with the normal operation of the vehicle and not a nonconformity under the Lemon Law. *Ciraulo v. Daimler Chrysler Motor Co.*, OAL Dkt. No. CMA 110-06, 2006 N.J. AGEN LEXIS 146, Final Decision (February 22, 2006).

Defect existed in the functioning of the consumer's windshield wipers, whereby the wipers did not clear rain, snow, sleet, or wiper fluid from the windshield in cold weather, and this defect was a substantial impairment of use or safety under the Lemon Law: despite ample time, the manufacturer did not repair the defect. *Dasilva v. Ford Motor Co.*, OAL Dkt. No. CMA 7782-04, 2005 N.J. AGEN LEXIS 1067, Final Decision (December 22, 2005).

Lemon Law claimant need not establish the cause of the defect. *Dasilva v. Ford Motor Co.*, OAL Dkt. No. CMA 7782-04, 2005 N.J. AGEN LEXIS 1067, Final Decision (December 22, 2005).

Initial Decision adopted (2005 N.J. AGEN LEXIS 632), which concluded that a vehicle's navigation system that did not always provide correct directions did not constitute a nonconformity under the Lemon Law. *Maffeo v. Mercedes-Benz USA, Inc.*, OAL Dkt. No. CMA 6020-05, 2005 N.J. AGEN LEXIS 1127, Final Decision (November 18, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 369) adopted, which found that the subject vehicle's excessive oil consumption and engine tapping noise were nonconformities under the Lemon Law and that no expert testimony was needed to establish that the defects substantially impaired the vehicle's use and value. *Carvalho v. Isuzu Motors America, Inc.*, OAL Dkt. No. CMA 4127-05, 2005 N.J. AGEN LEXIS 1126, Final Decision (August 12, 2005).

Dismissal of Lemon Law complaint due to failure to establish material defect in commercial vehicle affirmed. *Romano v. Ford*, 97 N.J.A.R.2d (CMA) 138.

Application to vacate completed settlement agreement denied. *Martin v. Hyundai Motor America*, 97 N.J.A.R.2d (CMA) 115.

Lemon law petition dismissed for additional use of vehicle. *Riley v. Volkswagen, U.S., Inc.*, 97 N.J.A.R.2d (CMA) 111.

Failure to substantiate new car defect complaints defeats lemon law claim. *Ghahramni v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 101.

Lack of objective evidence of transmission defect defeats lemon law claim. *Gennusa v. Mercedes-Benz of North America*, 97 N.J.A.R.2d (CMA) 89.

Failure to comply with statutory requirements bars consumer's lemon law claim. *Heflter v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 85.

Lemon law complaints require adequate opportunity to repair and actual nonconformity affecting car's use, value or safety. *Solomon v. Hyundai Motor Corporation, USA*, 97 N.J.A.R.2d (CMA) 80.

Commercial vehicle ineligible for relief under Lemon Law. *Rivera v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 55.

Lack of objective evidence defeats consumer's lemon law claim. *Tattersall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 49.

Lack of evidence defeats consumer's lemon law claim. *Olszewski v. Chrysler Motor Corp.*, 97 N.J.A.R.2d (CMA) 46.

New car noise not qualifying nonconforming defect under lemon law. *Nebbia v. Nissan Motor Company*, 97 N.J.A.R.2d (CMA) 44.

Easily repairable nonconformity precludes lemon law relief. *Lee v. Hyundai Motor of America*, 97 N.J.A.R.2d (CMA) 41.

Multiple out-of-service repair attempts without fixing car's serious electrical malfunctions justifies lemon law relief. *Parrish v. Saab-Scania of America*, 97 N.J.A.R.2d (CMA) 38.

New car's vibration noise fails to qualify as lemon law nonconformity. *Marder v. Chrysler Corporation*, 97 N.J.A.R.2d (CMA) 34.

New car's infrequent stalling fails to meet lemon law standard. *Tenido v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 33.

Leased car's use and safety substantially impaired by engine's hesitation arising from inherent defect. *Pertain v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 23.

Automobile purchaser was not entitled to Lemon Law relief for defect which recurred two years after successful repair. *Fowler-Fernandez v. Volkswagen United States, Inc.*, 96 N.J.A.R.2d (CMA) 190.

Van's commercial design does not preclude Lemon Law complaint so long as van is not used commercially. *Short v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 185.

Lemon Law does not provide relief for nonconformities which occur above legal speed limit. *Sher v. Buick Motor Division*, 96 N.J.A.R.2d (CMA) 109.

Truck purchased primarily for commercial use not covered under Lemon Law. *Maino v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 32.

Car suffering from collision damage not subject to Lemon Law remedy. *Lloyd-Brown v. Hyundai Motor Corporation*, 96 N.J.A.R.2d (CMA) 6.

13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

"Examination" means an examination of the motor vehicle by a service technician performed by or on the behalf of a manufacturer or its dealer.

"Lemon Law" means P.L. 1988, c.123, an Act concerning new motor warranties and repealing P.L. 1983, c.215, as amended by P.L. 1993, c.21.

"Lemon Law Unit" ("LLU") means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased or repaired in the State or outside the State, except the living facilities of motor homes.

"Nonconformity" means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.

"OAL" means the Office of Administrative Law.

"Out of service" means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

"Term of protection" means within the first 24,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

"Title" means the certificate of ownership of a motor vehicle.

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised definition "motor vehicle".

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.2010 d.166, effective August 2, 2010.

See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

Added definition "Examination": in definition "Motor vehicle", deleted a comma following the second occurrence of "leased", and inserted ", except the living facilities of motor homes"; and in definition "Terms of protection", substituted "24,000" for "18,000".

Case Notes

Noise defect qualified as a nonconformity for purposes of the Lemon Law where the consumer's safety fears caused him to avoid hauling materials, making it so that the consumer was unable to use the vehicle in the manner intended; it was reasonable to conclude that a noise

emanating from a vehicle was indicative of some underlying problem and would have shaken the confidence of any reasonable consumer, substantially impairing the value of the vehicle (adopting as modified 2009 N.J. AGEN LEXIS 106). *Rufrano v. Nissan North America, Inc.*, OAL Dkt. No. CMA 11891-08, 2009 N.J. AGEN LEXIS 616. Final Decision (March 10, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 791) adopted, which concluded that consumer seeking Lemon Law relief failed to establish the existence of an abnormal vibration in the gas pedal through objective factual evidence or expert testimony; he and his mother made regular use of the vehicle, the manufacturer was not able to duplicate the alleged defect, nor was the alleged defect duplicated on the test-drive conducted by the ALJ. *Ragusano v. Ford Motor Co.*, OAL Dkt. No. CMA 8077-08, 2008 N.J. AGEN LEXIS 1050. Final Decision (October 10, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 664) adopted, which concluded that noisy brakes were not a nonconformity that substantially impaired the safety, value, or use of the motor vehicle; although the sound may have been an annoyance to the consumer, there was no showing that the noise was the result of some defect found in the braking system impairing the ability to stop. *Pospisil v. Kia Motors America*. OAL Dkt. No. CMA 09952-07, 2007 N.J. AGEN LEXIS 997, Final Decision (November 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 768) adopted, which found that noise from the power steering and leak of power steering fluid on leased vehicle did not rise to the level of a nonconformity under the Lemon Law: the defect had been reduced to a slow leak and the problem with the steering could be solved by adding power steering fluid. *Jones v. Ford Motor Co.*, OAL Dkt. No. CMA 9433-07, 2007 N.J. AGEN LEXIS 957. Final Decision (October 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 462) adopted, which concluded that the consumer failed to prove a remediable steering vibration under the Lemon Law. *Moore v. Hyundai Motor America*, OAL Dkt. No. CMA 03904-07, 2007 N.J. AGEN LEXIS 852, Final Decision (July 13, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 398) adopted, which concluded that difficulties with a leased vehicle's telephone system and radio did not rise to the level of substantial impairments under the Lemon Law; vehicle performance was not affected and the telephone was an optional feature, which the consumer was urged to avoid. *Samuels v. Mercedes-Benz USA, Inc.*, OAL Dkt. No. CMA 03179-06, 2006 N.J. AGEN LEXIS 526. Final Decision (May 26, 2006).

Remanded by the Director for further findings of fact with respect to the frequency of occurrence of the defective condition, i.e., the thumping and jerking: if the defect occurs with sufficient frequency that the consumer could not reasonably be expected to sell the vehicle without either substantially lowering the price from the prevailing price of such a vehicle, or would have to misrepresent the condition of the vehicle to a prospective buyer in order to obtain the prevailing price, then the defect constitutes a nonconformity, and the consumer is entitled to Lemon Law relief. *Bernal v. Ford Motor Co.*, OAL Dkt. No. CMA 12680-05, 2006 N.J. AGEN LEXIS 95 (January 31, 2006).

Where rotten egg smell was present frequently but not constantly and there was no evidence that the odor was linked to a health or safety problem, the smell was not so intense as to constitute a substantial impairment under the Lemon Law. *Gellis v. Mitsubishi Motor Sales*, OAL Dkt. No. CMA 08005-05, 2005 N.J. AGEN LEXIS 647. Initial Decision (November 9, 2005).

Intermittent failure of the consumer's vehicle to start occurred with sufficient frequency to constitute a nonconformity under the Lemon Law. *Toney v. Nissan North America, Inc.*, OAL Dkt. No. CMA 1971-05; CMA 11690-04, 2005 N.J. AGEN LEXIS 1165. Final Decision (October 14, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 424) adopted, which found that thumping sound in the rear of the consumer's vehicle when it accelerated quickly from a full stop if the gasoline tank was full or three-

quarters full did not substantially impair the use, value, or safety of the vehicle under the Lemon Law. *LaPelusa v. Lexus Division, Toyota Motor Sales, U.S.A., Inc.*, OAL Dkt. No. CMA 7866-05, 2005 N.J. AGEN LEXIS 1069, Final Decision (September 1, 2005).

No Lemon Law remedy for new car consumer failing to prove alleged defects impair use, safety and value. *Sera v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 149.

Failure to demonstrate nonconformity leads to dismissal of Lemon Law claim. *Pizzute v. American Suzuki Motor Corporation*, 97 N.J.A.R.2d (CMA) 147.

Lemon Law claim dismissed when burden of proof not met. *Petonak v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 143.

Irreparable defects substantially impairing use and safety of car entitles lessee to Lemon Law remedies. *Hall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 142.

Vibration impaired the use, value and safety of vehicle. *Randall v. Chevrolet, Division of General Motors Corporation*, 97 N.J.A.R.2d (CMA) 135.

Dismissal of Lemon Law complaint due to failure to demonstrate substantial impairment of vehicle affirmed. *Leonard v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 132.

Vehicle's use, value or safety not impaired by vibration. *King v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 129.

Vehicle's use, value or safety not impaired by alleged defects in transmission and brake fluid. *Galanty v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 127.

Vehicle's use, value or safety not impaired by noise from power steering system. *Haralambidis v. Chevrolet Motor Division-G.M.*, 97 N.J.A.R.2d (CMA) 125.

Vehicle's use, value or safety not effected by alleged hesitation in transmission. *Wilks v. Mazda Motor of America*, 97 N.J.A.R.2d (CMA) 117.

Repeated stalling constitutes substantial impairment of vehicle's use, value and safety. *Franco v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 113.

Alignment defect constitutes substantial impairment of vehicle's use, value and safety. *Albrecht v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 107.

No lemon law recovery when consumer's gas choice causes new car stalling. *Hamilton v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 103.

New car lessor receives lemon law refund when transmission defect substantially affects value and safety. *Archibald v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 97.

Dashboard reflection on front window not substantial defect. *Doyle v. General Motors*, 97 N.J.A.R.2d (CMA) 95.

Subjective dislike of new car's alleged rotten egg smell insufficient basis for lemon law claim. *Dworkis v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 93.

Four-wheel drive pulling condition not nonconformity for lemon law purposes. *Hynes v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 88.

Nonconforming vehicle defects caused by road accident not remedial under lemon law. *Jones v. Chrysler Motor Company*, 97 N.J.A.R.2d (CMA) 77.

Subjective noise complaint insufficient for lemon law claim. Choudhury v. Ford Motor Company, 97 N.J.A.R.2d (CMA) 75.

Car owner's unhappiness with transmission insufficient for lemon law recovery. Weiss v. Ford Motor Corporation, 97 N.J.A.R.2d (CMA) 52.

Automobile owner who experienced engine knocking noise, followed by loss of power, was entitled to relief under Lemon Law. Capps v. Nissan Motor Corporation, 97 N.J.A.R.2d (CMA) 19.

Automobile's slipping clutch substantially impaired its safety, use, and value, entitling owners to Lemon Law relief. Totin v. Hyundai Motor Company, 97 N.J.A.R.2d (CMA) 16.

Grinding noise in automobile's brakes did not impair its safety, use, or value, and thus owner was not entitled to relief under Lemon Law. Davis v. Toyota Motor Sales, 97 N.J.A.R.2d (CMA) 14.

Rotten egg smell emanating from automobile's exhaust pipe did not substantially impair its safety, use, or value, and thus owner was not entitled to Lemon Law relief. Monninger v. Hyundai Motor Company, 97 N.J.A.R.2d (CMA) 12.

Poor gas mileage is not covered under Lemon Law. Hassmiller v. Ford Motor Company, 97 N.J.A.R.2d (CMA) 10.

Owner's unverifiable allegation that automobile's engine raced at idle was insufficient to support Lemon Law relief. Glombiak v. Nissan Motor Corporation, 97 N.J.A.R.2d (CMA) 7.

Strong odor of rotten eggs which emanated from automobile, particularly during stops and starts, constituted nonconformity entitling owner to Lemon Law relief. Conte v. Mitsubishi Motor Sales of America, Inc., 97 N.J.A.R.2d (CMA) 4.

Owner failed to show that value of automobile was substantially impacted by transmission whine, wind noise, and rattles and vibrations in passenger door and dashboard. Martins v. Ford Motor Corporation, 97 N.J.A.R.2d (CMA) 1.

Squeaking noise in van's wheels was significant enough to constitute substantial defect and to impair van's use, safety and value. Lloyd v. Chrysler Corporation, 96 N.J.A.R.2d (CMA) 282.

Steering problem was substantial nonconformity which impaired use, value and safety of automobile. Toth v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 281.

Fact that lessor had driven automobile 16,000 miles in 17 months controverted his claim that engine noise, backfiring, loss of power and excessive gasoline consumption had impaired his use of automobile. Mohamadi v. Mercedes-Benz of N.A., 96 N.J.A.R.2d (CMA) 279.

Lessor of new van failed to show that loud creaking noise in front end of vehicle indicated steering or suspension problem. Shtutman v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 277.

Automobile lessor failed to show that automobile's propensity for stalling in damp or rainy weather constituted continuing nonconformity. Christelles v. Nissan Motor Corporation, 96 N.J.A.R.2d (CMA) 274.

Brake noise was nonconformity which substantially impaired safety and value of leased automobile. Orefice v. Chrysler Corporation, 96 N.J.A.R.2d (CMA) 271.

Noxious smoke venting from engine into passenger compartment of automobile was nonconformity which substantially impaired its use, safety and value. Noonan v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 269.

Lemon Law relief was denied where automobile noise did not impair its use, value or safety. Primiano v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 265.

Slight transmission noise was found not to constitute substantial defect warranting Lemon Law relief. Ciccone v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 263.

Lemon Law claim was denied where truck's drifting to left and right was easily corrected by driver's steering. Sreenen v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 259.

matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026
Newark, New Jersey 07101
Telephone (973) 504-6226

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (c).

Administrative change.

See: 25 N.J.R. 1516(b).

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Administrative Change.

See: 32 N.J.R. 1037(a).

13:45A-26.5 Preliminary steps to initiate a Lemon Law action within the Division of Consumer Affairs Lemon Law Unit

(a) To initiate a claim within the Division of Consumer Affairs Lemon Law Unit under the Lemon Law:

1. Written notification of the potential claim shall be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if and only after one of the following occurs during the first 24,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

i. Except as set forth in (a)liii below, substantially the same nonconformity has been subject to examination or repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist;

ii. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a minimum of 20 days, or in the case of a motor home, for a minimum of 45 days, since the original delivery of the motor vehicle, and a nonconformity continues to exist; or

iii. In the case of nonconformity that is likely to cause death or serious bodily injury if the vehicle is driven, the nonconformity has been subject to examination or repair at least once by the manufacturer or its dealer and the nonconformity continues to exist; and

2. The manufacturer has one more opportunity to examine, repair or correct the nonconformity within 10 days following receipt of the written notification from the consumer of a potential claim provided for in (a)1 above. If the nonconformity continues to exist after expiration of the 10-day time period and the manufacturer refuses to replace or refund the price of the vehicle, the consumer may pursue a Lemon Law claim with the Lemon Law Unit.

(b) Nothing contained in this section shall preclude a consumer from alternatively filing an action in Superior Court.

(c) When a motor home has been constructed by more than one manufacturer, an examination or repair attempt will not count towards the examination or repair attempts referred to in (a)1 above, if the repair facility is not authorized to provide services by the manufacturer who constructed the nonconforming portion of the motor home.

(d) If a nonconformity in a motor home is addressed more than once due to a consumer's decision to continue travelling and to seek examination or repair of the same nonconformity at another authorized repair facility rather than waiting for the examination or repair to be completed at the initial repair facility, it shall constitute one examination or repair for the purpose of the examination or repair attempts referred to in (a)1 above.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section heading was "Preliminary steps"; in introductory paragraph (a), added "within the Division of Consumer Affairs Lemon Law Unit" and substituted "shall" for "must"; in (a)2, substituted "a minimum of 20 days" for "a cumulative total of 20 or more days"; rewrote (b): added (c).

Amended by R.2010 d.166, effective August 2, 2010.

See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

In the introductory paragraph of (a), substituted a colon for ". written" at the end; inserted new designation (a)1; redesignated former (a)1 and (a)2 as (a)1i and (a)1ii; in the introductory paragraph of (a)1, inserted "Written", and substituted "and only after one" for "either" and "24,000" for "18,000"; in (a)1i, substituted "Except as set forth in (a)liii below, substantially" for "Substantially", inserted "examination or", and deleted "or" at the end; in (a)1ii, inserted "or in the case of a motor home, for a minimum of 45 days.", and substituted "or" for a period at the end; added (a)liii; redesignated former (b) as (a)2 and former (c) as (b); in (b)2, inserted "examine,", inserted "the" preceding "written", and inserted "provided for in (a)1 above"; and added new (c) and (d).

Case Notes

Intermittent failure of petitioner's vehicle to start, so that it has to be jump-started, was a defect which substantially impaired the use and safety of the vehicle; petitioner worked at night in an urban area and was responsible for regularly driving around two children. *Michels v. Chrysler Group*, OAL Dkt. No. CMA 09842-09, 2009 N.J. AGEN LEXIS 884, Final Decision (October 19, 2009).

Because petitioner failed to show that the stalling defect continued to exist, and failed to provide notification to respondent of the racing defect, he did not meet the requirements of the presumption of N.J.S.A. 56:12-33, and consequently was not eligible for relief in the administrative forum. *Caruso v. Ducati North America Inc.*, OAL Dkt. No. CMA 12681-08, 2009 N.J. AGEN LEXIS 885, Final Decision (February 19, 2009).

Consumer's "last chance" letter gave sufficient notice to the manufacturer that he intended to file a Lemon Law claim, but the letter was sent at a time when his car was actually being repaired, and contained inaccurate information such that the notice was defective; the lack of specifics of the "last chance" letter, the timing of the letter, and the failure to stress the fact that the vehicle was currently under repair and that the consumer was distressed about the length of time the repair was taking, all combined to deprive the manufacturer of meaningful notice and opportunity to repair the vehicle. *Chazkel v. Daimler Chrysler Motors Co.*, OAL Dkt. No. CMA 8880-07, 2008 N.J. AGEN LEXIS 248, Final Decision (January 31, 2008).

Once a consumer had knowledge of the existence of the override button, a window's pinch protection mechanism that malfunctioned on the average of once a week did not substantially impair the use of the vehicle; however, the defect substantially impaired the value of the

vehicle and posed a substantial safety risk where it would cause a driver to be distracted. *Vigilante v. Saab Cars USA, Inc.*, OAL Dkt. No. CMA 3765-07, 2007 N.J. AGEN LEXIS 996, Final Decision (September 10, 2007).

Consumer is not required, in order to obtain Lemon Law relief, to present the vehicle for repair following the last chance repair; under N.J.S.A. 56:12-33, there is a presumption of an inability to repair in a reasonable time where substantially the same nonconformity has been subject to repair three or more times and it continues to exist. *Vigilante v. Saab Cars USA, Inc.*, OAL Dkt. No. CMA 3765-07, 2007 N.J. AGEN LEXIS 996, Final Decision (September 10, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1027) adopted, which concluded that consumer's loss of confidence in the vehicle was not a sufficient basis for granting Lemon Law relief where the stalling problem with consumer's vehicle had not continued to exist following the third repair. *Moesch v. Volkswagen of America*, OAL Dkt. No. CMA 11648-06, 2007 N.J. AGEN LEXIS 89, Final Decision (January 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 479) adopted, which denied Lemon Law relief because the alleged braking noise had not continued to exist and the evidence failed to show a nonconformity; the vehicle had never failed to stop properly, the consumer admitted to pumping the brakes in emergency situations, and the evidence weighed heavily in favor of the finding that the braking system was operating as designed. *Roger v. General Motors Corp.*, OAL Dkt. No. CMA 5899-06, 2006 N.J. AGEN LEXIS 763, Final Decision (August 23, 2006).

Lemon Law claim was dismissed with prejudice because consumers' "last chance" letter, required pursuant to N.J.A.C. 13:45A-26.5, failed to identify the specific continuing nonconformity alleged. *Velez v. Winnebago Industries*, OAL Dkt. No. CMA 05445-06, 2006 N.J. AGEN LEXIS 358, Initial Decision (May 24, 2006).

Even if, *arguendo*, certain alleged defects in consumer's Lemon Law application constituted a substantial impairment of vehicle use or value, the failure to allege them in the "last chance" letter precluded them procedurally from consideration. *Ciraulo v. Daimler Chrysler Motor Co.*, OAL Dkt. No. CMA 110-06, 2006 N.J. AGEN LEXIS 146, Final Decision (February 22, 2006).

Lack of qualifying nonconformity defeats Lemon Law claim. *O'Connell v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 139.

Lemon Law claim dismissed due to failure to present vehicle for three repair attempts for the same nonconformity. *Doryk v. General Motors Corporation (Chevrolet Motor Division)* (CMA) 122.

Consumer's failure to give statutorily prescribed notice before filing lemon law complaint defeats claim. *Goldberg v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 36.

Purchaser was entitled to Lemon Law presumption that manufacturer was unable to repair nonconformity where automobile was out-of-service for 34 days during first repair attempt. *Ramnanan v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 229.

Lemon Law complaint was dismissed where automobile's problems were repaired by dealer. *Hampton v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 192.

Lemon Law relief granted where automobile dealer failed to avail itself of last chance repair opportunity. *Sigman v. Nissan Motor Corporation, U.S.A.*, 96 N.J.A.R.2d (CMA) 168.

Consumer's failure to comply with Lemon Law's statutory filing requirements precludes claim. *Rivera v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 63.

Consumer denied Lemon Law relief for failure to inform manufacturer of problems and offer opportunity for repair before filing Lemon Law complaint. *Vitale v. Buick Motor Division-GM*, 96 N.J.A.R.2d (CMA) 61.

Lemon Law claim that pickup truck pulled to right while braking was dismissed when defect was corrected by manufacturer at last-chance opportunity. *Boothroyd v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 47.

Lemon Law complainant failed to allow dealer sufficient opportunity to repair automobile problems. *Conrad-Kessariss v. Mitsubishi Motor Sales of America, Inc.*, 96 N.J.A.R.2d (CMA) 19.

Consumer failed to meet procedural requirements by submitting allegedly defective vehicle to repair three or more times and affording manufacturer a last chance opportunity. *Shepps v. Mitsubishi Motor*, 95 N.J.A.R.2d (CMA) 78.

Failure to give manufacturer a final opportunity to repair alleged defect in vehicle was fatal to consumer's claim. *Viccaro v. Mitsubishi Motor*, 95 N.J.A.R.2d (CMA) 56.

Presumption of inability to correct nonconformity was not available when manufacturer commenced repair but was thereafter prevented by consumer from completing repair. *Stassi v. Hyundai Motor*, 95 N.J.A.R.2d (CMA) 49.

Remedies under Lemon Law were not available to consumer without affording dealer last chance opportunity to correct alleged defects in vehicle. *Benenati v. Mitsubishi Motor Sales*, 95 N.J.A.R.2d (CMA) 9.

Failure to tell repairer that malfunction occurred only when the headlights were turned on required the manufacturer be given last chance to repair the nonconformity. *Measley v. Volkswagen of America, Inc.*, 93 N.J.A.R.2d (CMA) 1.

Failure to send correct last chance notice required the complaint under the Lemon Law be dismissed without prejudice. *Millar, Patrick J., v. Chrysler Corporation*, 92 N.J.A.R.2d (CMA) 180.

Settlement agreement was in full force and effect after the manufacturer honestly and in good faith performed its duties under the agreement. *Guarino v. Ford Motor Company*, 92 N.J.A.R.2d (CMA) 99.

13:45A-26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU by certified mail, return receipt requested:

1. A photocopy of the consumer's notification to the manufacturer of a potential claim; and

2. A completed Application for Dispute Resolution; the form will be supplied upon request by the LLU.

(b) During any periods when forms are not available, any written request for dispute resolution shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A-26.7 are included.

(c) A consumer is eligible for dispute resolution by the Division as to a specific motor vehicle only once; no further applications from that consumer relating to the same motor vehicle will be accepted if a final decision has been rendered pursuant to N.J.A.C. 13:45A-26.12(b).

Administrative correction to (b). Effective July 3, 1989.
See: 21 N.J.R. 1831(a).

Phrase "following the term of protection" deleted.

13:45A-26.7 Application

(a) Application for dispute resolution shall require submission of the following:

1. Information as follows:

i. The name and address of the consumer and lienholder, if any;

ii. The date of original delivery of the motor vehicle to the consumer;

iii. The mileage on the date the nonconformity was first reported to the manufacturer or its dealer; and

iv. The mileage on the date the application is mailed back to LLU.

2. A written account of the events resulting in the dispute, including description of the claimed nonconformity(s) and a chronology of the repair attempts.

3. A photocopy of the notification of a potential claim sent by or on behalf of the consumer to the manufacturer after two or more attempts to repair or 20 calendar days out of service, and a photocopy of the return receipt signed by the manufacturer's agent.

4. Photocopies of the statements of repair required by section 6(b) of the Lemon Law, to be given to the consumer by the manufacturer through its dealer, each time a motor vehicle is returned from being examined or repaired.

5. Photocopies of the agreement of sale or lease, including any stated credit or allowance for the consumer's used motor vehicle, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including but not limited to:

i. Sales tax;

ii. License and registration fees;

iii. Finance charges;

iv. Towing;

v. Rental of a motor vehicle equivalent to the consumer's motor vehicle for the period when the consumer's motor vehicle was out of service due to a nonconformity; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes the motor vehicle's use, market value or safety is substantially impaired by the nonconformity(s) complained of;

2. That the nonconformity(s) complained of is not the result of abuse, neglect, or unauthorized modifications of the motor vehicle by anyone other than the manufacturer or its dealer;

3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least two attempts to correct the same substantial defect, or the vehicle was out of service by reason of repair for at least 20 days;

4. That within the term of protection the consumer gave the manufacturer written notification by certified mail, return receipt requested, of a potential claim pursuant to the Lemon Law, section 5(b); and

5. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts (including the post-notification attempt) to repair substantially the same nonconformity and the nonconformity continues to exist; or

ii. The vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, the manufacturer has been given the post-notification opportunity to repair, and a nonconformity continues to exist.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.1999 d.269, effective August 16, 1999.

See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).

In (b), deleted a former 6.

Case Notes

Manufacturer may not insulate itself from Lemon Law responsibilities by having subcontractors undertake separate warranties. *McCarthy v. Hyundai Motor America*, 92 N.J.A.R.2d (CMA) 132.

13:45A-26.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs". The filing fee shall be nonrefundable but is recoverable as a cost if the consumer prevails.

(b) The filing fee shall be requested by the LLU when it has determined that the consumer's application is complete and that it complies with this subchapter and the Lemon Law.

Case Notes

The Lemon Law filing fee is not part of purchase or lease price, but is recoverable as a cost. *Montesian v. Chrysler Motor Corporation*, 93 N.J.A.R.2d (CMA) 19.

13:45A-26.9 Processing of applications

(a) Submitted applications shall be reviewed by the LLU for completeness and compliance with the Lemon Law and this subchapter.

1. Incomplete applications shall be promptly returned for completion to the consumer.

2. Applications not in compliance with this subchapter and the Lemon Law (including but not limited to the required number of repair attempts or the number of days out of service) will be rejected. The reason for the rejection will be sent to the consumer. No judgment will be made by the LLU as to whether the claimed defect(s) are substantiated by the evidence or whether they substantially impair the use, market value or safety of a motor vehicle.

(b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A-26.10 Notification and scheduling of hearings

(a) Each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit (LLU), the name, address, and telephone number of the person designated by the manufacturer to receive notices under the Lemon Law dispute resolution process. The manufacturer shall update this information, as necessary.

(b) On the day that an application is accepted for resolution by the LLU, a notice shall be sent by certified mail, return receipt requested by the LLU to the consumer and manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted, and shall provide general information about the resolution process.

(c) The LLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in

accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the LLU simultaneously with the notice of acceptance of the application, to the manufacturer's designee. Within 10 days of the receipt of the notice of acceptance of the consumer's application for dispute resolution, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the Clerk of the Office of Administrative Law at 33 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer application.

(g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

Amended by R.1999 d.269, effective August 16, 1999.

See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).

In (f), deleted a former third sentence.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), deleted "Within 10 days after the effective date of this subchapter," from the beginning of the first sentence, added "(LLU)" and made grammatical changes; in (f), added "the receipt of" and corrected the address.

13:45A-26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase or lease price of the motor vehicle including finance charges, sales tax, license fees, registration fees, and any stated credit or allowance for the consumer's used motor vehicle, provided that:

i. The full refund of purchase price that may be claimed by a consumer under section 4(a) shall not include any portion of a stated credit or allowance for the consumer's used motor vehicle that grossly exceeds the true value of the consumer's used motor vehicle.

ii. During the Office of Administrative Law hearing, a manufacturer may challenge the stated credit or allowance for the consumer's used motor vehicle. The manufacturer shall bear the burden of proof, and shall provide evidence that the purchase price included a trade-in allowance grossly disproportionate in amount to the true value of the consumer's used motor vehicle.

Such evidence shall include, but not be limited to, the value of the motor vehicle as listed in the N.A.D.A. Official Used Car Guide.

2. The cost of any options or other modification arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery.

3. Other charges or fees, including, but not limited to:

i. Reimbursement for towing, if any;

ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle for the period during **which the consumer's** motor vehicle was out of service due to a nonconformity;

iii. Filing fee for participation in the Division's dispute resolution system; and

iv. Reimbursement for reasonable attorney's fees, fees for reports prepared by expert witnesses, and costs.

(b) From the total sum of the items in (a) above, a deduction shall be made, representing an allowance for vehicle use. This deduction shall be calculated as follows:

1. Multiply the mileage at the time the consumer first presented the motor vehicle to the dealer or manufacturer for correction of the nonconformity(s) in question by the total purchase price of the vehicle (or the total lease price, if applicable), then divide by 100,000 miles.

Correction: "manufacturer's" was spelled "manufacturers' ".
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Case Notes

In computation of refund under the Lemon Law, finance charge and the Lemon Law filing fee should not have been included as part of the purchase price of the vehicle, and should not have been part of the calculations for the offset for vehicle use (modifying 2009 N.J. AGEN LEXIS 106). *Rufrano v. Nissan North America, Inc.*, OAL Dkt. No. CMA 11891-08, 2009 N.J. AGEN LEXIS 616, Final Decision (March 10, 2009).

Manufacturer's request to extend period of time for compliance with Lemon Law refund order from 15 to 30 days denied. *Miller v. Hyundai Motor America*, OAL Dkt. No. CMA 00035-07, 2007 N.J. AGEN LEXIS 955, Final Decision (November 7, 2007).

New Jersey Lemon Law, N.J.S.A. 56:12-29 et seq., recognizes only the allowance in the refund computation pursuant to N.J.A.C. 13:45A-26.11(b) of a limited deduction for vehicle use; wear and tear damages can only be considered if presented as an affirmative defense pursuant to N.J.S.A. 56:12-40. *Miller v. Hyundai Motor America*, OAL Dkt. No. CMA 00035-07, 2007 N.J. AGEN LEXIS 955, Final Decision (November 7, 2007).

Lemon Law award incorrectly deducted the trade-in allowance at purchase, contrary to N.J.S.A. 56:12-32(a). *Wicks v. Volvo Cars of North America*, OAL Dkt. No. CMA 00731-05S, 2005 N.J. AGEN LEXIS 1123, Final Decision (November 21, 2005).

Automobile purchaser was entitled to Lemon Law refund plus reasonable attorney fees and costs. *Clyde v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 188.

Administrative law judge calculated damages for stipulated judgment in Lemon Law case. *Martir v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 154.

Nine bent wheel rims over a period of time, when not due to misuse, were indicative of a nonconformity affecting safety and use requiring manufacturer to provide consumers with reimbursement and a reasonable attorney's fee. *Jurofsky v. Volvo Cars*, 95 N.J.A.R.2d (CMA) 157.

Faulty temperature gauge that erroneously indicated an overheating engine was nonconformity requiring refund with reasonable allowance for vehicle use. *Lamoree v. Chevrolet Motor*, 95 N.J.A.R.2d (CMA) 155.

Classification of vehicle as "lemon" due to abnormal rumbling noises; Lemon Law filing fee as added cost. *Law v. Chrysler Motor Corporation*, 94 N.J.A.R.2d (CMA) 7.

Agreement of parties; total restitution. N.J.S.A. 56:12-29 et seq. *Stine v. Chrysler Motor Corp.*, 93 N.J.A.R.2d (CMA) 74.

Hourly rate of \$150 was reasonable for attorney's fees in Lemon Law action. *Pardo v. Chevrolet Motor Division*, 92 N.J.A.R.2d (CMA) 105.

Expert fees and attorney fees would be determined after submission of a proper Affidavit of Services. *Sager v. Nissan Motor Corporation in U.S.A.*, 92 N.J.A.R.2d (CMA) 35.

13:45A-26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, the OAL, and, if the vehicle in question is to be returned to the manufacturer, the Special Title Section of the MVC. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).
In (b), substituted "MVC" for "DMV".

13:45A-26.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of Superior Court; a notice of appeal must be filed with the Director no later than 45 days

after the date of the final decision as defined in N.J.A.C. 13:45A-26.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2500 for anticipated attorney's fees and other costs;
2. Secured by cash or its equivalent; and
3. Payable to the consumer.

13:45A-26.14 Manufacturer's reporting requirements

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered, sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an informal dispute settlement procedure shall:

1. Advise the LLU of the existence of its informal dispute settlement procedure; and
2. Send the LLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

(c) On January 15 and July 15 of every year, the LLU shall mail a questionnaire by certified mail, return receipt requested, to every manufacturer on the roster compiled pursuant to (a) above, requesting the following information:

1. Any and all informal dispute settlement procedures utilized by the manufacturer. If the informal dispute settlement procedure is an in-house customer assistance mechanism or private arbitration or private buy-back program instituted by the manufacturer, the information provided shall include the reasons for establishing and maintaining such programs.
2. The number of purchase price and lease price refunds requested, the number awarded by any dispute settlement body or other settlement procedure identified in (c)1 above, the amount of each award and the number of awards satisfied in a timely manner.
3. The number of awards in which additional repairs or a warranty extension was the remedy, the amount or value of each award, and the number of awards satisfied in a timely manner;
4. The number and total dollar amount of awards in which some form of reimbursement for expenses or compensation for losses was the remedy, the amount or value of each award and the number of awards satisfied in a timely manner;
5. The average number of days from the date of a consumer's initial request to use the manufacturer's informal dispute settlement procedure until the date of the decision

and the average number of days from the date of the decision to the date on which performance of the award was satisfied; and

6. A list of all motor vehicles and their Vehicle Identification Numbers stamped with "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING," which have been reported to the MVC Special Title Section during the previous six months.

(d) Failure of the manufacturer to return the completed questionnaire to the LLU within 60 days of receipt shall be a violation of this subchapter and the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

Correction: Inserted comma after Act and deleted extra period at end of sentence, from the February 21, 1989 update.

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (a).

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In introductory paragraph (b), deleted "within 30 days after the effective date of this subchapter"; in (c)5, substituted "decision" for "design"; in (c)6, substituted "MVC" for "MRS".

13:45A-26.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all motor vehicle disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The index and statistical record of compliance shall be made available to the public.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), deleted "initial" and "on July 1, 1990 and every six months thereafter".

SUBCHAPTER 26A. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A-26A.1 Scope

Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the rules contained in this subchapter set forth motor vehicle advertising practices which are prohibited as unlawful under the Consumer Fraud Act; the rules also include mandatory disclosure in advertisements of certain information relating to advertised motor vehicles as well as on-site disclosures relating to advertised motor vehicles.

Recodified from 13:45A-2.1 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Division's adjudication jurisdiction is not limited by a "retail restriction"; Consumer Fraud Act applies to franchising. *Morgan v. Air Brook Limousine, Inc.*, 211 N.J.Super. 84, 510 A.2d 1197 (Law Div.1986).

Purpose of 1976 amendments examined. *Barry v. Arrow Pontiac, Inc.*, 100 N.J. 57, 494 A.2d 804 (1985).

13:45A-26A.2 Application

(a) These rules shall apply to the following advertisements:

1. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, **published, circulated or distributed** within this State concerning motor vehicles offered for sale or lease at locations exclusively within this State; and
2. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, pub-

lished, circulated or distributed to any substantial extent within this State concerning motor vehicles offered for sale or lease at locations within this State and outside this State, or at locations exclusively outside the State.

Recodified from 13:45A-2.2 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Evidence supported finding that dealership engaged in unconscionable business practices in violation of Consumer Fraud Act; fact that sales contract was unenforceable by virtue of statute of frauds did not prevent Consumer Fraud Act award based on ascertainable loss of monies or property; plaintiff entitled to treble damages plus costs and attorneys fees. *Truex v. Ocean Dodge, Inc.*, 219 N.J.Super. 44, 529 A.2d 1017 (App.Div.1987).

Dealer's advertisement of cars "priced well below dealer invoice" found a violation of N.J.A.C. 13:45A-2.2(a)7iv; regulation upheld against First Amendment constitutional challenge. *Div. of Consumer Affairs v. Arrow Pontiac, Inc.*, 7 N.J.A.R. 48 (1981) affirmed 193 N.J.Super. 613, 475 A.2d 632, affirmed 100 N.J. 57, 494 A.2d 804.

13:45A-26A.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Advertised motor vehicle” means any new or used motor vehicle offered for sale or lease and specifically identified by an advertised price. With respect to an advertisement which offers a group of new or used vehicles for sale or lease covering a specified price range (for example, “1995 Metros for sale—\$10,000 to 12,999,” or “Lease a new Olds for \$298 a month and up.”), the least expensive motor vehicle in that advertised range is considered to be an advertised motor vehicle.

“Advertised price” means the dollar amount required to purchase or lease a motor vehicle, advertised as:

1. The total price; or
2. The monthly payment price; or
3. The deferred payment price; or
4. A specific discount or savings on the manufacturer’s suggested retail price.

“Advertisement” means any advertisement as defined by N.J.S.A. 56:8-1(a) of any motor vehicle including any statement appearing in a newspaper, periodical, pamphlet, circular, or other publication, paper, sign or radio or television broadcast which offers a motor vehicle for sale or lease at retail.

“Advertiser” means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale, leasing or financing of motor vehicles at retail or who in the course of any 12 month period offers more than three motor vehicles for sale or lease or who is engaged in the brokerage of motor vehicles whether for sale or lease and who causes an advertisement to be made for the retail sale or lease of motor vehicles. An advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertiser shall be deemed an advertiser within the meaning of this subchapter, when the agency or owner’s or publisher’s staff prepares and places an advertisement for publication. The agency, owner, or publisher shall not be liable for a violation of this subchapter when reasonably relying upon data, information or material supplied by the person for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the preparer’s control, including but not limited to, the post-publication performance of the person on whose behalf such advertisement was placed.

“Broker” means a person who in the course of any 12 month period arranges or offers to arrange the retail sale or lease of more than three motor vehicles from the inventory of other business entities.

“Closed-end lease” means a lease in which the lessee is not responsible for the value of the motor vehicle at the end of the lease term unless there is excessive damage, wear and tear, or mileage.

“Dealer” means any person who in the ordinary course of business is engaged in the sale or leasing of motor vehicles at retail or who in the course of any 12-month period offers more than three motor vehicles for sale or lease at retail.

“Demo” means a motor vehicle used exclusively by a dealer or dealer’s employee that has never been titled and to which the new vehicle warranty still applies.

“Dealer-installed option” means optional equipment installed by the dealer at an additional cost.

“Lease” means a contract for the use of a motor vehicle for a period of time exceeding four months whether or not the lessee may become the owner of the motor vehicle at the expiration of the lease.

“Lessee” means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d), who leases a motor vehicle from a broker or dealer.

“Open-end lease” means a lease in which the lessee may owe additional amounts that is, a “balloon” payment, depending on the value of the motor vehicle at the end of the lease term.

“Monroney label” is the label required by Section 3 of the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233.

“Motor vehicle” means any vehicle driven otherwise than by muscular power, excepting such vehicles as those which run only upon rails or tracks.

“MSRP” means the manufacturer’s suggested retail price.

“Period of publication” means the time period between 48 hours prior to the date of first publication of an advertisement and midnight of the third business day following the date of final publication; in the case of a special offer, the period of publication shall extend until midnight of the date the special offer ends.

“Person” means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d).

“Rebate” means any payment of money by the manufacturer to or on behalf of a consumer who has bought or leased a motor vehicle, whether called “rebate”, “factory rebate”, “cash back”, “money back”, or a term of similar import.

“Sale” means a sale as defined by N.J.S.A. 56:8-1(e) of any motor vehicle.

"Special offer" means any advertisement of a reduction from the usual selling price for an applicable time period, whether called "sale", "sale days", "bargain", "bargain days", "special offer", "discount", "reduction", "clearance", "prices slashed", "special savings", or a term of similar import.

"Taxes, licensing costs and registration fees" means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle.

"Used motor vehicle" means any motor vehicle with an odometer reading of greater than 1,000 miles, except for a "demo".

Administrative correction.

See: 21 N.J.R. 1520(a).

Revised punctuation in "open end lease" and deleted potentially misleading language in definition of "closed-end lease" describing payment options.

Recodified from 13:45A-2.3 and amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26A.4 Bait and switch

(a) The following motor vehicle advertising practices constitute "bait and switch" and are prohibited and unlawful:

1. The advertisement of a motor vehicle as part of a plan or scheme not to sell or lease it or not to sell or lease it at the advertised price.

2. Without limiting other means of proof, the following shall be prima facie evidence of a plan or scheme not to sell or lease a motor vehicle as advertised or not to sell or lease it at the advertised price:

i. Refusal to show, display, sell, or lease the advertised motor vehicle in accordance with the terms of the advertisement, unless the vehicle has been actually sold or leased during the period of publication; in that case, the advertiser shall retain records of that sale or lease for 180 days following the date of the transaction, and shall make them available for inspection by the Division of Consumer Affairs.

ii. Accepting a deposit for an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle, except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

iii. The failure to make delivery of an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle; except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

Recodified from 13:45A-2.4 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26A.5 Advertisements; mandatory disclosure requirements in all advertisements for sale

(a) In any advertisement in which an advertiser offers a new motor vehicle for sale at an advertised price, the following information must be included:

1. The advertiser's business name and business address;

2. A statement that "price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees, and taxes". If this statement appears as a footnote, it must be set forth in at least 10 point type. For purposes of this subsection, "all costs to be paid by a consumer" means manufacturer-installed options, freight, transportation, shipping, dealer preparation, and any other costs to be borne by a consumer except licensing costs, registration fees, and taxes;

3. The manufacturer's suggested retail price as it appears on the Monroney label, clearly denominated by using the abbreviation "MSRP";

4. The year, make, model, and number of engine cylinders of the advertised motor vehicle;

5. Whether the transmission is automatic or manual; whether the brakes and steering mechanism are power or manual; and whether the vehicle has air conditioning, unless those items are standard equipment on the advertised motor vehicle. This provision shall not apply to advertisements for motorcycles;

6. The last eight digits of the vehicle identification number, preceded by the letters "VIN". This provision shall not apply to radio and television broadcasts, or to advertisements for motorcycles;

7. A list of any dealer installed options on the advertised motor vehicle and the retail price of each, as determined by the dealer.

(b) In any advertisement offering for sale a used motor vehicle at an advertised price, the information described in (a) 1, 2, 4, 5 and 6 above must be included, as well as the following additional information:

1. The actual odometer reading as of the date the advertisement is placed for publication; and

2. The nature of prior use unless previously and exclusively owned or leased by individuals for their personal use, when such prior use is known or should have been known by the advertiser.

(c) In any advertisement offering a "demo" for sale, the information listed in (a) above must be included, as well as:

1. Identification as a "demo"; and

2. The actual odometer reading as of the date the advertisement is placed for publication.

SUBCHAPTER 26C. AUTOMOTIVE REPAIRS

13:45A-26C.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Automotive repair dealer” means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on a motor vehicle or the replacement of parts including body parts, but excluding those persons who engage in the business of repairing motor vehicles of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

“Customer” means the owner or any family member, employee or any other person whose use of the vehicle is authorized by the owner.

“Director” means the Director of the Division of Consumer Affairs.

“Motor vehicle” means a passenger vehicle that is registered with the Division of Motor Vehicles of New Jersey or

of any other comparable agency of any other jurisdiction, and all motorcycles, whether or not registered.

“Repair of motor vehicles” means all maintenance and repairs of motor vehicles performed by an automotive repair dealer but excluding changing tires, lubricating vehicles, changing oil, installing light bulbs, batteries, windshield wiper blades and other minor accessories and services. No service or accessory to be installed shall be excluded for purposes of this rule if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

Recodified from 13:45A-7.1 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

“Automotive repair dealer” defined. Levin v. Lewis, 179 N.J.Super. 193, 431 A.2d 157 (App.Div.1981).

Broad sweep of regulations brought respondent restorer of antique and classic cars within the definition of automotive repair dealer. Levin v. Lewis, 6 N.J.A.R. 85 (1980) affirmed 179 N.J.Super. 193, 431 A.2d 157 (App.Div.1981).

2. Refer the matter to the WLLU for dispute resolution;
or

3. File an action in the Superior Court of New Jersey. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Wheelchair Lemon Law shall mail a copy of the initial or response pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

Amended by R.2000 d.460, effective November 20, 2000.

See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

In (a)1, substituted "mail," for "certified mail, return receipt requested," following "nonconformity by".

13:45A-26E.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer shall provide the following items to the WLLU by certified mail, return receipt requested:

1. A completed Application for Dispute Resolution which can be obtained from the WLLU; and
2. Photocopies of the consumer's written notification(s) of the nonconformities to the manufacturer sent prior to the expiration of the manufacturer's warranty.

(b) If application forms are not available, a consumer may file a written request for dispute resolution which shall be accepted by the WLLU if that written request contains all information, items and statements listed in N.J.A.C. 13:45A-26E.7.

13:45A-26E.7 Application

(a) Application for Dispute Resolution shall require submission of the following:

1. The name, address and telephone number of the consumer as well as the lienholder, if any;
2. The date of the original delivery of the motorized wheelchair to the consumer;
3. A written account of the events resulting in the dispute including description(s) of the claimed nonconformity(ies) and a chronology of the repair attempts;
4. Photocopies of the statements of repair given to the consumer by the manufacturer through its dealer, each time a motorized wheelchair is returned from being examined or repaired; and
5. Photocopies of the agreement of sale or lease, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including, but not limited to:
 - i. Sales tax;

ii. Finance charges;

iii. Rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period when the consumer's motorized wheelchair was out of service due to a nonconformity;

iv. Prescription for the wheelchair from a licensed medical professional if the consumer purchased or leased the wheelchair by prescription;

v. Documents from third-party payors; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes that the motorized wheelchair's use, market value or safety is substantially impaired by the nonconformity(ies) complained of;

2. That the nonconformity(ies) complained of is (are) not the result of abuse, neglect or unauthorized modifications of the motorized wheelchair by anyone other than the manufacturer or its dealer;

3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least three attempts to correct the same substantial defect, or the motorized wheelchair was out of service by reason of repair for at least an aggregate of 20 days;

4. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts to repair substantially the same nonconformity and the nonconformity continues to exist; or

ii. The motorized wheelchair was out of service by reason of repair for one or more nonconformities for an aggregate total of 20 or more days since the original delivery of the motorized wheelchair, and the nonconformity(ies) continues to exist; and

5. Whether the consumer wishes to appear at the hearing in person or instead will allow a decision to be rendered by the OAL on the papers submitted by both parties. This option will be available only in the event the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A-26E.10(f).

Administrative Correction.

See: 28 N.J.R. 4105(a).

13:45A-26E.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs." The filing fee shall be nonrefundable.

(b) The filing fee shall be requested by the WLLU when it has determined that the consumer's application is complete, that it complies with this subchapter and the Wheelchair Lemon Law and that it is eligible for the WLLU's Dispute Resolution System.

Administrative Correction.
See: 28 N.J.R. 4105(a).

13:45A-26E.9 Processing of applications

(a) Submitted applications shall be reviewed by the WLLU for completeness and compliance with the Wheelchair Lemon Law and this subchapter.

1. Incomplete applications shall be returned to the consumer for completion.

2. Applications not in compliance with this subchapter and the Wheelchair Lemon Law shall be rejected and the WLLU shall notify the consumer of the reason for the rejection. However, no judgment shall be made by the WLLU as to whether the claimed defect is substantiated by the evidence or whether the defect substantially impairs the use, market value or safety of a motorized wheelchair.

(b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A-26E.10 Notification and scheduling of hearings

(a) Each manufacturer of motorized wheelchairs sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Wheelchair Lemon Law Unit, the name, address, telephone and telefax number of the person designated by the manufacturer to receive notices under this dispute resolution process. It shall be the duty of the manufacturer to update this information, as necessary.

(b) On the day that an application is accepted for resolution, the WLLU shall send a notice by certified mail, return receipt requested to the consumer and the manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted and shall provide general information about the resolution process.

(c) The WLLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the WLLU simultaneously with the notice of acceptance of the application, to the manufacturer or the manufacturer's designee. Within 10 days of receipt of the notice of acceptance of the consumer's application for dispute resolution, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer application. The response shall also state whether the manufacturer objects to a proceeding on the papers if requested by the consumer.

(g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), deleted the August 29, 1996 deadline.

Cross References

Motorized wheelchair dispute resolution, applications, proceeding on the papers, see N.J.A.C. 13:45A-26E.6.

13:45A-26E.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4 of the Wheelchair Lemon Law, whether through the Division of Consumer Affairs motorized wheelchair dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase price of the wheelchair including finance charges, sales tax or, in the case of a lease, the total sum of lease payments made, including any down payment,

2. The cost of any necessary modifications arranged, installed or made by the manufacturer or its dealer within one year after the original date of delivery,

3. Other charges or fees, including, but not limited to, actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period during which the consumer's motorized wheelchair was out of service due to a nonconformity.

(b) From the total sum of items in (a) above, a deduction shall be made, representing an allowance for use. This deduction shall be calculated as follows: the full purchase price of the motorized wheelchair shall be multiplied by a fraction, the denominator of which is 1,825 and the numerator of which is equal to the number of days that the wheelchair was used before the consumer first reported the problem to the dealer or the manufacturer.

Administrative Correction.
See: 28 N.J.R. 4105(a).

13:45A-26E.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision or its intent to appeal the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

13:45A-26E.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of the Superior Court by filing a notice of appeal with the court as well as the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 45A-26E.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2,500 for anticipated attorney's fees and other costs;
2. Which sum shall be secured by cash or its equivalent; and
3. Payable to the consumer.

13:45A-26E.14 Manufacturer's informal dispute resolution system

(a) The WLLU shall compile a roster of American and foreign manufacturers of motorized wheelchairs sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an in-house customer assistance mechanism, private arbitration, private buy-back program, or any other type of dispute resolution system shall:

1. Advise the WLLU of the existence of its procedure mentioned in (b) above; and

2. Send the WLLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure and shall include all necessary addresses and phone numbers.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), deleted the September 18, 1996 deadline.

13:45A-26E.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of motorized wheelchair disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The index and statistical record of compliance shall be made available to the public.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), deleted "initial" and "on January 1, 1997 and every 12 months thereafter".

SUBCHAPTER 26F. UNFAIR TRADE PRACTICES— USED MOTOR VEHICLES—SALE AND WARRANTY

13:45A-26F.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 56:8-67 et seq., commonly known as the Used Car Lemon Law. The subchapter specifies which used motor vehicles are subject to the Act; the purchaser's as well as the dealer's obligations under the Act; the warranties which the dealer must provide; the conditions which must be met before a purchaser may waive a warranty; and the dealer's bonding and reporting requirements. In addition, the subchapter establishes a dispute resolution program within the Division of Consumer Affairs in conjunction with the Office of Administrative Law.

(b) This subchapter applies to:

1. Dealers (as defined in N.J.A.C. 13:45A-26F.2), who sell used motor vehicles in the State of New Jersey; and

2. All consumers (as defined in N.J.A.C. 13:45A-26F.2), of used motor vehicles in the State of New Jersey.

Case Notes

Consumer was not entitled to a refund under the New Jersey Used Car Lemon Law, N.J.S.A. 56:8-67 et seq., where the dealer repaired the material defect by replacing the vehicle's engine with an engine from a totaled vehicle; the consumer had communicated with the dealer about replacement of the engine and the consumer's concerns over the repaired vehicle's safety were based on conjecture. *Rosenberry v. Signature Motor Cars, LLC*, OAL Dkt. No. CMA 8223-07, 2007 N.J. AGEN

LEXIS 821, Initial Decision (December 26, 2007, deemed adopted, 2008 N.J. AGEN LEXIS 247 (January 25, 2008)).

Initial Decision (2006 N.J. AGEN LEXIS 339) adopted, which concluded that a transmission under warranty constituted a material defect under the New Jersey Used Lemon Law, N.J.S.A. 56:8-67 et seq., where it continued to pose problems despite being presented for work on three occasions and undergoing extensive repairs. *Mudrinic v. Auto Toy Store of New Jersey, Inc.*, OAL Dkt. No. CMA 02403-06, 2006 N.J. AGEN LEXIS 525, Final Decision (May 24, 2006).

13:45A-26F.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

“As is” means a used motor vehicle sold by a dealer to a consumer without any warranty, either express or implied, and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

“Consumer” means the purchaser or prospective purchaser, other than for the purpose of resale, of a used motor vehicle normally used for personal, family or household purposes.

“Covered item” means and includes the following components of a used motor vehicle: Engine—all internal lubricated parts, timing chains, gears and cover, timing belt, pulleys and cover, oil pump and gears, water pump, valve covers, oil pan, manifolds, flywheel, harmonic balancer, engine mounts, seals and gaskets, and turbo-charger housing; however, housing, engine block and cylinder heads are covered items only if damaged by the failure of an internal lubricated part. Transmission Automatic/Transfer Case—all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets. Transmission Manual/Transfer Case—all internal lubricated parts, transmission mounts, seals and gaskets, but excluding a manual clutch, pressure plate, throw-out bearings, clutch master or slave cylinders. Front-Wheel Drive—all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets. Rear-Wheel Drive—all internal lubricated parts, propeller shafts, supports and U-joints, axle shafts and bearings, seals and gaskets.

“Dealer” means any person or business which sells, or offers for sale, a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period.

“Deduction for personal use” means the mileage allowance set by the Federal Internal Revenue Service for business usage of a motor vehicle in effect on the date a used motor vehicle is repurchased by a dealer in accordance with N.J.S.A. 56:8-71, multiplied by the total number of miles a used motor vehicle is driven by a consumer from the date of purchase of that vehicle until the time of its repurchase.

“Director” means the Director of Consumer Affairs in the Department of Law and Public Safety.

“Excessive wear and tear” means wear or damage to a used motor vehicle beyond that expected to be incurred in normal circumstances.

“Material defect” means a malfunction of a used motor vehicle, subject to a warranty, which substantially impairs its use, value or safety.

“Model year” means the calendar year beginning January 1 and ending December 31 of the year listed on the motor vehicle’s title or certificate of ownership and *vehicle identification number*.

“Repair insurance” means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specified mileage and provided at an extra charge beyond the price of the used motor vehicle.

“Sale” means the transfer of title of a used motor vehicle from the owner-seller to the purchaser-consumer and does not include those transactions in which the owner-seller has obtained title to, or is granted the right to sell, a used motor vehicle by operation of law (for example, pursuant to N.J.S.A. 2C:64-7 or 54:49-13a), or in which the seller is a public entity or governmental unit.

“Service contract” means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specific mileage or provided at an extra charge beyond the price of the used motor vehicle.

“Used motor vehicle” means a passenger motor vehicle, excluding motorcycles, motor homes and off-road vehicles, title to, or possession of which has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to become what is commonly known as “secondhand,” within the ordinary meaning thereof but does not mean a passenger motor vehicle, subject to a motor vehicle lease agreement which was in effect for more than 90 days, which is sold by the lessor to the lessee, or to a family member or employee of the lessee upon the termination of the lease agreement.

“Warranty” means any undertaking, in writing and in connection with the sale by a dealer of a used motor vehicle, to refund, repair, replace, maintain or take other action with respect to the used motor vehicle, and which is provided at no extra charge beyond the price of the used motor vehicle.

Petition for Rulemaking.
See: 33 N.J.R. 1478(c).

13:45A-26F.3 Dealer warranty; form; scope; purchaser’s obligations

(a) Upon the sale of a used motor vehicle in the State of New Jersey, the dealer shall furnish the consumer with a written warranty which meets the requirements of (c) below, unless:

1. The purchase price of the used motor vehicle is less than \$3,000;
2. The used motor vehicle is over seven model years old;
3. The used motor vehicle has been declared a total loss by an insurance company and the consumer has been notified in writing of that fact at, or prior to, sale;
4. The used motor vehicle has more than 60,000 miles and the consumer elects to waive the warranty in writing pursuant to N.J.A.C. 13:45A-26F.4; or
5. The used motor vehicle has more than 100,000 miles.

(b) The written warranty shall be in the same format, and contain all of the information in, the "Used Motor Vehicle Limited Warranty" form which is appended hereto as Appendix A, incorporated herein by reference, and have at least the following minimum durations:

1. If the used motor vehicle has 24,000 miles or less, the warranty shall be, at a minimum, 90 days or 3,000 miles, whichever comes first;
2. If the used motor vehicle has more than 24,000 miles but less than 60,000 miles, the warranty shall be, at a minimum, 60 days or 2,000 miles, whichever comes first; or
3. If the used motor vehicle has 60,000 miles or more, the warranty shall be, at a minimum, 30 days or 1,000 miles, whichever comes first, unless the consumer elects to waive this warranty pursuant to the terms of N.J.A.C. 13:45A-26F.4.

(c) The written warranty shall require the dealer, during the term of the warranty, to correct the failure or malfunction of a covered item as defined in N.J.A.C. 13:45A-26F.2, provided the used motor vehicle is delivered to the dealer, at the dealer's regular place of business and subject to a deductible amount of \$50.00 to be paid by the consumer for each repair of a covered item. This written warranty shall exclude repairs covered by any manufacturer's warranty or recall program, as well as repairs of a covered item required because of collision, abuse, or the consumer's failure to properly maintain such used motor vehicle in accordance with the manufacturer's recommended maintenance schedule, or from damage of a covered item caused as a result of any commercial use of the used motor vehicle, or operation of such vehicle without proper lubrication or coolant, or as a result of any misuse, negligence or alteration of such vehicle by someone other than the dealer.

(d) The warranty periods in (b) above shall be extended by any time period during which the used motor vehicle is waiting for the dealer or his agent to begin or complete repairs of a material defect of the used motor vehicle.

(e) If the dealer fails to provide the consumer with a written warranty required by N.J.S.A. 56:8-69, the dealer nevertheless shall be deemed to have given the warranty as a matter of law, unless a waiver has been signed by the consumer in accordance with N.J.S.A. 56:8-73 and N.J.A.C. 13:45A-26F.4.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a)2, substituted "over seven" for "eight or more".

13:45A-26F.4 Waiver of warranty

(a) A consumer, as a result of a price negotiation for the purchase of a used motor vehicle with over 60,000 miles, may elect to waive the dealer's obligation to provide a warranty on the used motor vehicle provided that:

1. The waiver is in writing;
2. The waiver shall be in the same format and contain all of the information in the "As Is' Disclosure" form and the "Waiver of New Jersey Used Motor Vehicle Limited Warranty" form which are appended hereto as Appendices B and C, respectively, incorporated herein by reference; and
3. The waiver and disclosure forms are signed separate and apart from the contract of sale.

13:45A-26F.5 Bond requirement

To assure compliance with the requirements of N.J.S.A. 56:8-77 et seq., a dealer shall provide a bond in favor of the State of New Jersey in the amount of \$10,000, executed by a surety company authorized to transact business in the State of New Jersey by the Department of Banking and Insurance and to be conditioned on the faithful performance of the provisions of N.J.S.A. 56:8-77 et seq. This bond shall be for the term of 12 months and shall be renewed at each expiration for a similar period. The Director of the Division of Motor Vehicles shall not issue a dealer's license and shall not renew a license of any dealer who has not furnished proof of the existence of such bond.

13:45A-26F.6 Administrative fee

(a) At the time of sale a dealer shall collect an administrative fee of \$0.50 from each consumer who purchases a used motor vehicle in the State of New Jersey.

(b) By the 15th of every January, a dealer shall mail to the Used Car Lemon Law Unit, the following:

1. A check or money order made payable to the "New Jersey Division of Consumer Affairs," in an amount equal to the total sum of administrative fees collected during the preceding calendar year; and
2. A completed "Certification of Administrative Fees" form, which is appended to this subchapter as Appendix D, incorporated into this rule by reference, indicating the number of used cars sold each month by the dealer during the preceding calendar year.

(c) The Director may conduct random audits of dealers' records to assure compliance with the Act and this subchapter.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), deleted "which transaction is subject to the Act and this subchapter, including a consumer who elects to waive the warranty pursuant to N.J.A.C. 13:45A-26F.4"; in introductory paragraph (b), changed deadline from the 15th of every January, April, July and October to "By the 15th of every January; in (b)1, substituted "calendar year" for "three-month period"; rewrote (b)2.

13:45A-26F.7 Procedures regarding repair of material defect

(a) When a consumer believes that a used motor vehicle does not conform to an applicable warranty the consumer shall:

1. Notify the dealer of a material defect ; and
2. Make the used motor vehicle available for repair by delivering the motor vehicle to the dealer at the dealer's regular place of business before the appropriate warranty period expires.

(b) If, within the terms of the warranty applicable to the used motor vehicle, the same material defect has been subject to repair three or more times by the dealer or the dealer's agent and the material defect continues to exist, or the used motor vehicle has been out of service a cumulative total of 20 or more days during the warranty period because the dealer has yet to begin or complete repair of the material defect, and the dealer fails to refund the full purchase price of the used motor vehicle excluding all sales taxes, title and registration fees, or any similar governmental charges and less a reasonable allowance for excessive wear and tear and less a deduction for personal use of the motor vehicle, then the consumer may seek resolution:

1. Through the Division of Consumer Affairs dispute resolution program in conjunction with the Office of Administrative Law;
2. Through the Division of Consumer Affairs alternative dispute resolution procedure in which both parties agree to participate in informal settlement discussions with an independent third party who works to assist the participants in reaching a mutually satisfactory settlement;
3. By filing an action in the Superior Court of New Jersey. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Used Car Lemon Law shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the Director and to the Used Car Lemon Law Unit within 10 days after filing the pleading with the court; or
4. Through the dealer's informal dispute resolution procedures pursuant to N.J.A.C. 13:45A-26F.16, if available.

(c) A consumer who selects options (b)2 or 4 above and who fails to achieve a satisfactory result may seek resolution from among the remaining options.

13:45A-26F.8 Used Car Lemon Law Unit; duties; address

(a) There is established within the Division of Consumer Affairs a section which shall process Used Car Lemon Law matters, to be known as the Used Car Lemon Law (UCLL) Unit which shall:

1. Upon request, provide consumers with a brochure setting forth:
 - i. Information regarding a consumer's rights and remedies under the relevant law; and
 - ii. The procedures to be followed in order to participate in the various dispute resolution systems;
2. Review and process applications received for dispute resolution;
3. Compile a roster of motor vehicle dealers who sell used motor vehicles in New Jersey; and
4. Perform such other duties as the Director may from time to time assign.

(b) All correspondence to the Division of Consumer Affairs regarding Used Car Lemon Law matters shall be directed to the attention of the UCLL Unit as follows:

Division of Consumer Affairs
Used Car Lemon Law Unit
PO Box 45039
124 Halsey Street
Newark, New Jersey 07101

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), changed PO Box number and zip code.

13:45A-26F.9 Procedures for resolving a complaint

(a) To be eligible to have a dispute resolved in one of the forums set forth in N.J.A.C. 13:45A-26F.7, a consumer shall provide the following items to the UCLL Unit by certified mail, return receipt requested:

1. A completed application for dispute resolution (see N.J.A.C. 13:45A-26F.10) which can be obtained from the UCLL Unit or the dealer; and
2. Photocopies of all relevant supporting documentation.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a)1, corrected a typographical error.

13:45A-26F.10 Application for dispute resolution

(a) The application for dispute resolution shall contain the following:

1. The name, address and telephone number of the consumer and lien-holder, if any;
2. The date the used motor vehicle was purchased by the consumer from the dealer;
3. The number of miles the motor vehicle had been driven prior to the date of purchase;

4. A written account of the events resulting in the dispute, including description(s) of the claimed material defect(s) and a chronology of the repair attempts;

5. A photocopy of proof of payment of the \$50.00 deductible by the consumer to the dealer for each repair of a covered item required by N.J.S.A. 56:8-70;

6. Photocopies of the statements of repair given to the consumer by the dealer or the dealer's agent, each time the used motor vehicle was examined or repaired; and

7. Photocopies of the agreement of sale, the written warranty and any other documents related to the dispute.

(b) The application shall also contain a statement to the effect:

1. That the consumer believes that the used motor vehicle's use, value, or safety is substantially impaired by the defect(s) complained of;

2. That the material defect(s) complained of is(are) not the result of abuse, neglect or unauthorized modification or alteration of the used motor vehicle by anyone other than the dealer or its agent;

3. That within the applicable warranty period:

i. The consumer gave the dealer or its agent at least three opportunities to repair the material defect, and the material defect continues to exist; or

ii. The used motor vehicle has been out of service by reason of waiting for the dealer to begin or complete repair of the defective covered item for a cumulative total of 20 or more days since the date of purchase of the used motor vehicle by the consumer, and the material defect continues to exist; and

4. Whether the consumer wishes to participate in:

i. The Division of Consumer Affairs' UCLL dispute resolution program in conjunction with the Office of Administrative Law; or

ii. The Division of Consumer Affairs' alternative dispute resolution procedure.

13:45A-26F.11 Processing of applications

(a) An application which has been submitted shall be reviewed by the UCLL Unit for completeness and compliance with the Used Car Lemon Law and this subchapter.

1. An incomplete application shall be returned to the consumer for completion.

2. An application which does not comply with this subchapter and the Used Car Lemon Law shall be rejected and the UCLL Unit shall notify the consumer of the reason for the rejection without making any determination as to whether the claimed defect is substantiated by the evidence

or whether the defect substantially impairs the use, value or safety of the used motor vehicle.

3. An application which is accepted shall be date stamped to indicate acceptance and shall be directed to the Division's UCLL program or the Division's alternate dispute resolution procedure.

13:45A-26F.12 Notification of scheduling of hearings

(a) Used motor vehicle dealers in New Jersey shall forward to the Division of Consumer Affairs, UCLL Unit, the name, address, telephone and telefax number of the person designated by the dealer to receive notices under the dispute resolution process. It shall be the duty of the dealer to update this information, as necessary.

(b) Upon acceptance of an application, the UCLL Unit shall send a notice by certified mail, return receipt requested, to the consumer and the dealer's designee.

(c) The UCLL Unit shall promptly thereafter refer an accepted application for dispute resolution to the Office of Administrative Law (OAL) or the Division's alternative dispute resolution procedure. The matter shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Notice of the date, time and location of the hearing shall be mailed by OAL to both parties.

(e) Simultaneously with the notice of acceptance of the application, the UCLL Unit shall send a copy of the application materials to the dealer or the dealer's designee. Within 10 days of receipt of the notice of acceptance of the consumer's application for dispute resolution, the dealer shall mail by certified mail, return receipt requested, to the consumer at his or her address and to the Clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer application. The response shall also state whether the dealer objects to a proceeding on the papers if requested by the consumer.

(f) Applications for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), deleted February 11, 1999 deadline.

13:45A-26F.13 Final decision

(a) The Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL.

(b) In instances in which the matter is resolved in favor of the consumer, the dealer shall advise the Director as to its compliance with the final decision no later than 10 days

following the date stated for completion of all awarded remedies.

13:45A-26F.14 Computation of refund

(a) The refund claimed by a consumer pursuant to N.J.S.A. 56:8-71 of the Used Car Lemon Law, whether through a dealer's informal dispute resolution process, the Division's alternate dispute resolution procedure or the Division's UCLL dispute resolution program, shall include:

1. The total purchase price of the used motor vehicle excluding:
 - i. All sale taxes;
 - ii. Title and registration fees or any similar governmental charges;
 - iii. A reasonable allowance for excessive wear and tear if any; and
 - iv. A deduction for personal use (as that term is defined at N.J.A.C. 13:45A-26F.2) of the used motor vehicle by the consumer.

Petition for Rulemaking.

See: 33 N.J.R. 1478(c), 33 N.J.R. 1479(a).

13:45A-26F.15 Appeals

A dealer or consumer may appeal a final decision to the Appellate Division of the Superior Court no later than 45 days after the date of the final decision. A copy of the notice of appeal must also be filed with the Director.

13:45A-26F.16 Dealer's informal dispute resolution procedures

(a) Dealers who establish or participate in an informal dispute settlement procedure shall:

1. Advise the UCLL Unit of the existence of its informal dispute resolution procedure; and

2. Send the UCLL Unit an outline of the steps that a consumer must take in order to participate in the dealer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In introductory paragraph (a), deleted March 3, 1999 deadline.

13:45A-26F.17 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all used motor vehicle disputes by make, model, dealer and such other information as the Director requires, and shall compile and maintain statistics indicating the record of dealer compliance with any judgments or settlements.

(b) The index and statistical record of compliance shall be made available to the public.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), deleted "on February 1, 2000 and every six months thereafter".

13:45A-26F.18 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

(b) A vendor may produce NJPB pads for a group practice with the name and license number of more than one licensed prescriber, consistent with the requirements of N.J.A.C. 13:45A-27.8, provided that:

1. The request for NJPBs is in writing and contains the original signatures of all the licensed prescribers listed on the NJPB; and
2. The written request designates one licensed prescriber for receipt of the NJPB shipment.

(c) Vendors shall ensure the identity and authority of the prescriber or healthcare facility to utilize NJPBs prior to **printing or delivering** any order for NJPBs.

(d) Vendors shall deliver NJPBs within 14 days of receipt of an initial order, or seven days for a reorder, in sealed packets in minimum quantities of 500. Such deliveries shall be made to the address of record on file with a Division via a secure delivery service which is capable of tracking the shipment. Delivery of healthcare facility NJPBs shall be made only to the healthcare facility official designated as the responsible party when the order was placed, and only to the healthcare facility address. If a discrepancy exists between the order delivery information and the address which appears on file with the Division, the vendor shall verify the prescriber address information with the prescriber's licensing board. If a vendor is unable to deliver the NJPBs within the time specified above, the vendor shall immediately notify the licensed prescriber or the healthcare facility of the delay in the processing of the order.

(e) A licensed prescriber may pick up NJPBs at a vendor's place of business provided that:

1. The licensed prescriber provides documentation verifying his or her identity and licensure;
2. The vendor verifies the licensed prescriber's signature; and
3. The vendor remains responsible for the security of the NJPBs delivered in this manner.

(f) Vendors shall be capable of producing NJPBs in the following forms:

1. A single non-erasable and non-reproducible NJPB form; and
2. A two-part carbonless NJPB form;
 - i. The top copy shall comply with the requirements of N.J.A.C. 13:45A-27.8;
 - ii. The second copy shall be yellow and may contain the prescriber information required pursuant to N.J.A.C. 13:45A-27.8;
3. Micro-perforated four inches by five and one half inches computer ready NJPBs imprinted with all the prescriber information required pursuant to N.J.A.C. 13:45A-

27.8, which are capable of being computer printed from a laser printer; and

4. Micro-perforated four inches by five and one half inches continuous pin-fed NJPBs imprinted with all the prescriber information required pursuant to N.J.A.C. 13:45A-27.8, which are capable of being computer printed through the use of dot-matrix or ink-jet printers.

(g) Vendors shall assign and maintain a unique NJPB batch number for each order of NJPBs from a licensed prescriber or licensed healthcare facility. Re-orders of NJPBs shall contain batch numbers sequentially greater than the batch number assigned to any previous order. Batch numbers shall consist of:

1. An alphabetic prefix assigned by the Division which represents the identity of the vendor;
2. The date of printing in the following order: year, month, and day; and
3. A number sequentially assigned by the vendor.

(h) Vendors shall maintain an on-site computerized database, which shall:

1. Include the following data fields for each licensed prescriber and healthcare facility:
 - i. Name;
 - ii. Name of the organization;
 - iii. Name of the person designated to receive shipment;
 - iv. Address;
 - v. License number;
 - vi. Batch number;
 - vii. National Provider Identifier (NPI) number, if the licensed prescriber or healthcare facility has obtained an NPI number;
 - viii. Quantity ordered;
 - ix. Date ordered; and
 - x. Date shipped and delivery service utilized; and
2. Be made available upon request by the Division on an ASCII format digital file.

Amended by R.2010 d.043, effective February 16, 2010.

See: 41 N.J.R. 2624(a), 42 N.J.R. 592(a).

In (f)1, inserted "and non-reproducible"; in the introductory paragraph of (h), inserted a comma following "database"; added new (h)1vii; and recodified former (h)1vii through (h)1ix as (h)1viii through (h)1x.

13:45A-27.10 Vendor security requirements

(a) Vendors shall maintain secure production, storage, and distribution facilities. Security provisions shall include, at a minimum, the following:

1. All NJPBs are to be produced under tight security, in secure plants with access limited to authorized personnel. Any unfinished work related to the production of the NJPBs shall be stored under secure, controlled conditions.

2. NJPBs and materials used to produce NJPBs, including all disks, plates, negatives, and inventory goods, shall be stored at the vendor production site in a secure manner which protects against theft or loss;

3. Vendors shall not subcontract or assign any portion of the production of NJPBs without the prior approval of the Division;

4. If an applicant intends to subcontract any portion of NJPBs, the applicant shall provide the subcontractor company name, address, telephone number, ownership, and equipment list as part of the vendor's NJPB program application to the Division;

5. The subcontractor shall provide to the Division details regarding its production of any portion of the NJPBs and the security which will be provided. The vendor and the subcontractor shall sign and submit a completed form supplied by the Division which states that the parties understand and agree to the contract specifications and the regulations of this subchapter.

6. Vendors shall not add, transfer or discontinue the services of a subcontractor without prior approval by the Division. Vendors shall notify the Division of such changes in writing by mail, return receipt requested. Within 14 days of the discontinuance of the services of a subcontractor, an approved vendor shall retrieve all NJPB materials from the subcontractor and shall submit a certification to the Division verifying the retrieval;

7. Vendors shall assure that damaged NJPBs are destroyed and shall maintain records indicating the date and method of destruction; and

8. Vendors shall report to the Division any theft, loss, damage, alteration, or unauthorized use of NJPBs as soon as possible but no later than 72 hours of discovery.

(b) Vendors shall produce NJPB exemplar samples for review by the Division upon request.

13:45A-27.11 Confidentiality

(a) Vendors shall maintain the confidentiality of all data, documents, files and computer records received from, or access through, the Division, relating to the production, storage and distribution of NJPBs.

(b) Vendors shall certify, prior to being granted approved vendor status, that they will protect the confidentiality of all data related to prescribers and healthcare facilities for whom they print NJPBs, and all data collected in order to accomplish any NJPB related function.

(c) Vendors shall return all documents, files and records supplied by the Division, and all copies thereof, upon the

vendor's termination or voluntary withdrawal from the NJPB program.

13:45A-27.12 Enforcement

(a) Vendors shall permit the Division or its authorized representative to inspect any facility utilized in the production, storage, or distribution of NJPBs. Inspections may be conducted for a period of five years following the withdrawal or termination of a vendor from the NJPB program.

(b) Vendors shall provide the Division or its authorized representative access to all records relating to the printing and distribution of NJPBs, including financial records. Such records shall be maintained for five years following a vendor's termination or voluntary withdrawal from the NJPB program.

(c) Failure to comply with any of the requirements of this subchapter or the contract specifications may result in suspension, the placement of conditions on, or the permanent termination of the vendor from the NJPB program consistent with the requirements of N.J.A.C. 13:45A-27.7.

13:45A-27.13 Renewal of approved vendor status

Vendors shall submit an application for renewal of approved vendor status, on a form supplied by the Division on a triennial basis.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Deleted " , by September 19, 2004 and, thereafter, vendors shall apply for renewal of approved vendor status".

SUBCHAPTER 28. MOTOR VEHICLE LEASING

13:45A-28.1 through 13:45A-28.7 (Reserved)

13:45A-28.8 Credit check of lessee; right to review contract

(a)-(c) (Reserved)

(d) A lessee may waive his or her right to review the contract under N.J.S.A. 56:12-67b(1) provided the lessee obtains a waiver from the lessor which appears in 12-point Times Roman print (except for the document title "WAIVER" which shall appear in 14-point Times Roman print) and contains the following:

WAIVER

I HAVE BEEN ADVISED THAT UNDER THE NEW JERSEY CONSUMER PROTECTION LEASING ACT, N.J.S.A. 56:12-60 et seq., I AM ENTITLED TO REVIEW THE LEASE CONTRACT FOR ONE 24-HOUR BUSINESS DAY BEFORE SIGNING. I CHOOSE TO WAIVE THAT RIGHT AND SIGN THE LEASE NOW.

Reduction, includes:
 \$ ___ Initial Cash Payment (Lessee's and Lessor's Initials)
 \$ ___ Trade-in Credit
 \$ ___ Rebates
 \$ ___ Total Capitalized Cost/Adjusted Capitalized Cost
 \$ ___ Residual Value (Lessee's and Lessor's Initials)
 \$ ___ Per Mile Over ___ Miles
 \$ ___ Amount of Periodic Payment (For leases with purchase option): How I may purchase this vehicle at the end of the lease has been explained to me.
 ___ Total Number of Periodic Payments
 \$ ___ Total Fixed Cost of Lease (No Option to Purchase Vehicle) or
 \$ ___ Total Cost of Lease (With Option to Purchase) (Lessee's and Lessor's Initials)

I UNDERSTAND THAT THIS IS A LEASE AGREEMENT AND NOT A PURCHASE AGREEMENT, THAT THE PROPERTY BEING LEASED MAY NOT HAVE ANY EQUITY OR OWNERSHIP VALUE TO ME AT THE END OF THE LEASE AND THAT THE LEASED PROPERTY BELONGS TO THE LESSOR.

Dated _____

 Lessee's (Consumer's) Signature

 Co-Lessee's Signature

 Lessor's Signature

1. The waiver shall be completed in full without any blank spaces to be filled in after the waiver has been signed by the lessee. Any item which is inapplicable may be marked "not applicable" or "NA".
2. The waiver shall be retained by the lessor for the duration of the lease and a copy shall be given to the lessee upon signing.
3. A copy of the waiver shall be provided to the Division of Consumer Affairs upon request.

Administrative correction.
 See: 28 N.J.R. 1860(a).

SUBCHAPTER 29. PROPERTY CONDITION DISCLOSURE

13:45A-29.1 Property Condition Disclosure Form

(a) This section implements the provisions of P.L. 1999, c.76, N.J.S.A. 56:8-19.1, concerning the exemption of real estate brokers, broker-salespersons and salespersons from

provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

(b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

"Real estate licensee" means a real estate broker, broker-salesperson or salesperson licensed under N.J.S.A. 45:15-1 et seq.

"Property condition disclosure statement" means a writing, as set forth in (d) below, signed by the seller and containing information on the condition of the property being sold.

(c) A real estate licensee shall not be subject to punitive damages, attorneys fees, or both under N.J.S.A. 56:8-19 for the communication of any false, misleading or deceptive information to a buyer which had been provided to the real estate licensee by or on behalf of the seller of real estate located in the State of New Jersey if the real estate licensee:

1. Had no actual knowledge of the false, misleading or deceptive character of the information; and
2. Made a reasonable and diligent inquiry to ascertain whether the information is of a false, misleading or deceptive character. A real estate licensee will have been deemed to have made a "reasonable and diligent inquiry" in circumstances including, but not limited to, those in which the false information communicated to the buyer can be shown to have been:

- i. Provided in a report or upon a representation by a person, licensed or certified by the State of New Jersey, including, but not limited to, an appraiser, engineer, architect, home inspector, plumber or electrical contractor, of a particular physical condition pertaining to the real estate derived from inspection of the real estate by that person;
- ii. Provided in a report or upon a representation by any governmental official or employee, if the particular information of a physical condition is likely to be within the knowledge of that governmental official or employee; or
- iii. Obtained from the seller in a property condition disclosure statement as set forth in (d) below, so long as the buyer is informed by the real estate licensee that the seller is the source of the information, and that prior to advising the buyer that the seller is the source of information, the real estate licensee visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller.

(d) The property condition disclosure statement shall be in the following form and contain, at a minimum, the following information. Additional information may be requested if, in the opinion of the real estate licensee, and under the facts and

circumstances of a particular real estate transaction, it would be appropriate to do so.

SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

Property Address: _____

Seller: _____

The purpose of this Disclosure Statement is to disclose, to the best of Seller's knowledge, the condition of the Property, as of the date set forth below. The Seller is aware that he or she is under an obligation to disclose any known material defects in the Property even if not addressed in this printed form. Seller alone is the source of all information contained in this form. All prospective buyers of the Property are cautioned to carefully inspect the Property and to carefully inspect the surrounding area for any off-site conditions that may adversely affect the Property. Moreover, this Disclosure Statement is not intended to be a substitute for prospective buyer's hiring of qualified experts to inspect the Property.

If your property consists of multiple units, systems and/or features, please provide complete answers on all such units, systems and/or features even if the question is phrased in the singular, such as if a duplex has multiple furnaces, water heaters and fireplaces.

OCCUPANCY

Yes No Unknown
[] [] []

- 1. Age of House, if known _____
- 2. Does the Seller currently occupy this property? If not, how long has it been since Seller occupied the property? _____
- 3. What year did the seller buy the property? _____
- 3a. Do you have in your possession the original or a copy of the deed evidencing your ownership of the property? If "yes," please attach a copy of it to this form.

[] []

[] []

ROOF

Yes No Unknown
[] [] []

- 4. Age of roof _____
- 5. Has roof been replaced or repaired since seller bought the property?
- 6. Are you aware of any roof leaks?
- 7. Explain any "yes" answers that you give in this section:

[] []

[] []

ATTIC, BASEMENTS AND CRAWL SPACES (Complete only if applicable)

Yes No Unknown

[] []

[] []

[] []

[] []

[] []

[] []

[] []

[] []

[] []

- 8. Does the property have one or more sump pumps?
- 8a. Are there any problems with the operation of any sump pump?
- 9. Are you aware of any water leakage, accumulation or dampness within the basement or crawl spaces or any other areas within any of the structures on the property?
- 9a. Are you aware of the presence of any mold or similar natural substance within the basement or crawl spaces or any other areas within any of the structures on the property?
- 10. Are you aware of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? If "yes," describe the location, nature and date of the repairs:

- 11. Are you aware of any cracks or bulges in the basement floor or foundation walls? If "yes," specify location.

- 12. Are you aware of any restrictions on how the attic may be used as a result of the manner in which the attic or roof was constructed?
- 13. Is the attic or house ventilated by:
_____ a whole house fan?
_____ an attic fan?
- 13a. Are you aware of any problems with the operation of such a fan?
- 14. In what manner is access to the attic space provided?
_____ staircase
_____ pull down stairs
_____ crawl space with aid of ladder or other device
_____ other
- 15. Explain any "yes" answers that you give in this section:

