

CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION OF
CONSUMER AFFAIRS

Authority

N.J.S.A. 45:14-14.1, 56:8-1 et seq., specifically 56:8-4
and 56:18-19.1.

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

Chapter 45A, Administrative Rules of the Division of Consumer
Affairs, expires on March 21, 2011.

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 by R.2006 d.141, effective March 21, 2006. See: Source and Effective Date. See, also, section annotations.

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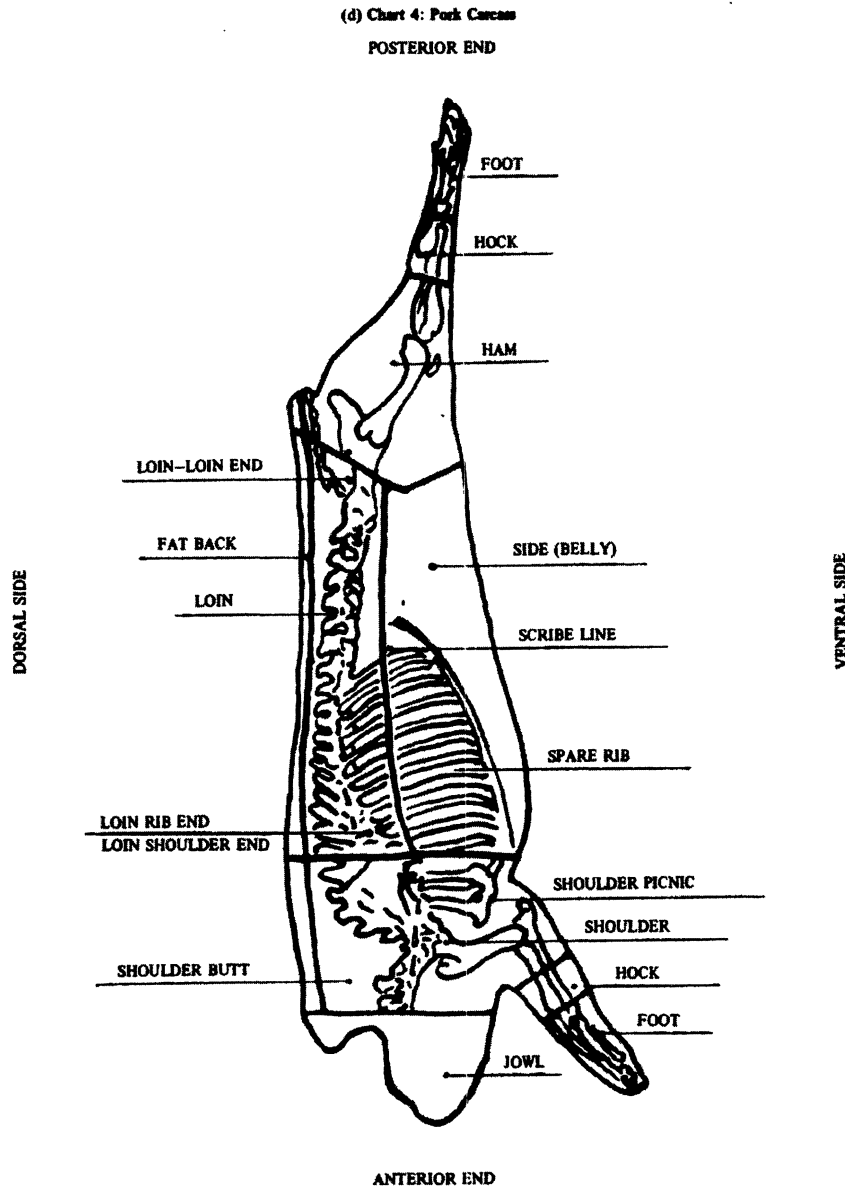
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SUBCHAPTER 4. BANNED HAZARDOUS PRODUCTS

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

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.

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-4.2 Consumer product defined

(a) For purposes of this rule, the term “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 of a permanent or temporary household or residence, a school, in recreation or otherwise.

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.

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.

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

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.

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; and

ii. Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for a reasonable time after giving such notice, for all merchandise with an advertised price greater than \$15 per unit; and

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.

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)11iii excluded merchandise represented to be permanently reduced, and added provision relating to use of the terms "cost" or "wholesale".

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:

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; and

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.

(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.

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 Toy recall notices

(a) As used in this section, the following words shall have the following meanings:

"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.

(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 principal entrance of the store, or in the cash register area, or in a location elsewhere that is readily accessible to the public. 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 publish and disseminate to the public, at least quarter-annually, a summary of toys and other items intended for use by children, which items have been found to be defective or hazardous. The summary shall be drawn from findings of the U.S. Consumer Product Safety Commission and voluntary notices from manufacturers or distributors. In addition, the Director shall alert the public about particular toys or items, as warranted from time to time.

(f) 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.

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