

**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 Enter-  
tainment, 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  
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Kosher Poultry Dealers, were repealed and Subchapter 21, Sale of Kosher  
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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.

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).

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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.

### SUBCHAPTERS 6 THROUGH 8. (RESERVED)

### 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.