CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS

Authority

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

Source and Effective Date

R.1990 d.606, effective November 9, 1990.
See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Executive Order No. 66(1978) Expiration Date

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, will expire on November 9, 1995.

Chapter Historical Note

Chapter 45A, Administrative Rules of the Division of Consumer Affairs was originally filed July 2, 1973, as R.1973 d.176, effective August 1, 1973. See: 5 N.J.R. 151(b), 5 N.J.R. 290(a). Petition for Rulemaking of prescription drug pricing, see: 22 N.J.R. 3166(b). Chapter 45A was readopted pursuant to Executive Order No. 66(1978) as R.1990 d.606, effective November 9, 1990. See: Source and Effective Date.

See subchapter and section annotations for specific rulemaking activity.

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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.

(b) It is a deceptive practice in the sale or offering for sale of consumer goods for a person (including any business entity) conducting a mail order or catalog business in or from the State of New Jersey or advertising a State of New Jersey mailing address to accept money through mails from a consumer for merchandise ordered by mail or telephone and then permit six weeks to elapse without either:

1. Delivering or mailing the merchandise order; or
2. Making a full refund; or

3. Sending the customer a prior letter or notice advising him of the duration of an expected delay or the substitution of merchandise of equivalent or superior quality, and offering to send him a refund within one week if he so requests. If the vendor proposes to substitute merchandise, he shall describe it in detail, indicating how it differs from the merchandise ordered; or

4. Sending the consumer substituted merchandise of equivalent or superior quality, together with:

i. A written notice offering, without reservation, to accept the return of the merchandise at the seller's expense within 14 days of delivery. The consumer would be entitled, at his option, to a refund of cash paid, including the amount of postage to return the item, or a credit; and

ii. A postage-paid letter or card on which the consumer may indicate whether he wishes the purchase price to be refunded or credited to his account within 14 days of receipt of the merchandise by the seller. The customer's request entered on such a letter or card must be honored by the seller;

iii. The written notice and letter or card, as stated in (b)4i and ii above, need not be sent with the merchandise, if in lieu thereof, a statement that the seller will accept the return of the merchandise for a period of at least 14 days without reservation is printed in the catalog itself.

(c) For purposes of (b)3 and 4 above, merchandise may not be considered of "equivalent or superior quality" if it is not substantially similar to the goods ordered or not fit for the purposes intended, or if the seller normally offers the substituted merchandise at a price lower than the price of the merchandise ordered.

(d) Subsection (b) above does not apply:

1. To merchandise ordered pursuant to an open-end credit plan as defined in the Federal Consumer Credit Protection Act or any other credit plan pursuant to which the consumer's account was opened prior to the mail order in question, and under which the creditor may permit the customer to make purchases from time to time from the creditor or by use of a credit card; or

2. When all advertising for the merchandise contains a notice (which, in the case of printed advertising, shall be in a type size at least as large as the price) that delay may be expected of a specified period. In such cases, one of the events described in (b) above must occur no later than one week after expiration of the period specified in the advertisement; or

3. To merchandise, such as quarterly magazines, which by their nature are not produced until a future date and for that reason cannot be stocked at the time of order; or

4. To installments other than the first of merchandise, such as magazine subscriptions, ordered for serial delivery.

(e) It is a deceptive practice in the sale or offering for sale of consumer goods for a person (including any business entity) conducting a mail order or catalog business in or from the State of New Jersey or advertising a State of New Jersey mailing address to fail to disclose in all advertising or other promotional materials containing a post office box address, including order blanks and forms, the legal name of the company and the complete street address from which the business is actually conducted.

Case Notes

Franchise arrangement; application of New Jersey Consumer Fraud Act. J & R Ice Cream Corp. v. California Smoothie Licensing Corp., C.A.3 (N.J.)1994, 31 F.3d 1259.

Multi-million dollar transaction between large corporations not covered by Consumer Fraud Act. BOC Group, Inc. v. Lummus Crest, Inc., 251 N.J.Super. 271, 597 A.2d 1109 (L.1990).

Action against gas company for misuse of Purchased Gas Adjustment Clause was not cognizable under the Consumer Fraud Act; Public Utilities Commission has exclusive jurisdiction over misuse of such clauses. Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 390 A.2d 566 (1978).

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).

SUBCHAPTER 2. MOTOR VEHICLE ADVERTISING PRACTICES

Source and Effective Date

R.1989 d.253, effective May 15, 1989.
See: 21 N.J.R. 115(a), 21 N.J.R. 1368(a).

Historical Note

Subchapter 2 "Motor Vehicle Advertising Practices" became effective July 15, 1973 as R.1973 d.183. See: 5 N.J.R. 191(a), 5 N.J.R. 290(d). Revisions to subchapter 2 became effective November 17, 1986 as R.1986 d.362. See: 8 N.J.R. 235, 8 N.J.R. 563(b). Subchapter 2 was repealed and new rules adopted effective August 17, 1987 as R.1987 d.341. See: 19 N.J.R. 1056(a), 19 N.J.R. 1562(c). Subchapter 2 was repealed and new rules adopted effective May 15, 1989 as R.1989 d.253. See: 21 N.J.R. 115(a), 21 N.J.R. 1368(a).

13:45A–2.1 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.

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–2.2 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, published, 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.

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–2.3 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, "1990 Metros for sale—$6,999 to $9,999," or "Lease a new Olds for $298 a month 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.

13:45A–2.4 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.

13:45A–2.5 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.

(d) It shall be an unlawful practice to fail to include the information required by this section.

13:45A–2.6 Advertisements; mandatory disclosure requirements in advertisements for lease

(a) In any advertisement offering a new motor vehicle for lease, at an advertised price, the following information must be included:

1. The advertiser's business name and business address;

2. Identification of the transaction as a lease, with a statement to that effect or the word "lease" appearing immediately adjacent to the monthly payment price; alternatively, the statement may appear in a footnote, in no smaller than 10 point type, if all the advertised motor vehicles are for lease;

3. If the advertised price refers solely to a business lease, that fact must be stated;

4. Whether it is an open-end or closed-end lease, the number, amounts, due dates or periods of scheduled payments and the total of such payments under the lease; the advertised price shall include the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, which shall be itemized, or that no such payments are required;

5. The manufacturer's suggested retail price as it appears on the Monroney label, clearly denominated by using the abbreviation "MSRP";

6. A statement contained in the description of the motor vehicle or in a footnote that "Price(s) include(s) all costs to be paid by a consumer, except for licensing, registration, 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 the consumer except for licensing costs, registration fees, and taxes;

7. Whether or not the lessee has the option to purchase the advertised motor vehicle and at what price and time; the method of determining the price may be substituted for disclosure of the price;

8. The amount (including termination charge, if any) or method of determining any liability imposed upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased motor vehicle and its realized value at the end of the lease term, if the lessee has such liability;

9. 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 motorcycles;

10. The year, make, model, and the number of engine cylinders of the advertised motor vehicle; and

11. 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.

(b) In any advertisement offering a used motor vehicle for lease at an advertised price, the information in (a)1 through 4 and 6 through 11 above shall be included, as well as the following additional information:

1. The actual odometer reading as of the date of placing the advertisement 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) All advertisements offering new or used motor vehicles for lease, even if they do not state an advertised price, shall contain the business name and business address of the advertiser.

(d) In any advertisement offering a "demo" for lease, 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.

(e) It shall be an unlawful practice to fail to include the information required by this section.

13:45A–2.7 Unlawful advertising practices

(a) In any type of motor vehicle advertising, the following practices shall be unlawful:

1. The use of any type size, location, lighting, illustration, graphic depiction or color so as to obscure or make misleading any material fact;

2. The setting forth of an advertised price which has been calculated by deducting a down payment, trade-in allowance or any deductions other than a manufacturer's rebate and dealer's discount;

3. The setting forth of an advertised price which fails to disclose, adjacent to the advertised price, that it has been calculated by deducting a manufacturer's rebate or dealer's discount;

4. The failure to state all disclaimers, qualifiers, or limitations that in fact limit, condition, or negate a purported unconditional offer (such as a low APR or high trade-in amount), clearly and conspicuously, next to the offer and not in a footnote identified by an asterisk. Such disclosure shall be made verbally in a radio or television advertisement. Identical information pertaining to all motor vehicles in a group of advertised motor vehicles, however, may appear in a footnote, provided the type is no smaller than 10 point;

5. The failure to state the applicable time period of any special offer, in at least 10–point type immediately adjacent to the special offer, unless the special offer is a manufacturer's program;

6. The use of the word "free" when describing equipment or other item(s) to be given to the purchaser or lessee of a motor vehicle, if the "free" item has a value which has increased the advertised price. In using the word "free" in advertising, the advertiser shall comply with the Federal Trade Commission Rule, 16 CFR § 251, and any amendments thereto;

7. The failure to disclose that the motor vehicle had been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by the advertiser; for the purposes of this subsection, "substantial repair or body work" shall mean repair or body work having a retail value of $1,000 or more;

8. The use of the terms "Public Notice", "Public Sale", "Liquidation", "Liquidation Sale", or terms of similar import, where such sale is not required by court order or by operation of law or by impending cessation of the advertiser's business;

9. The use of terms such as "Authorized Sale", "Authorized Distribution Center", "Factory Outlet", "Factory Authorized Sale", or other term(s) which imply that the advertiser has an exclusive or unique relationship with the manufacturer;

10. The use, directly or indirectly, of a comparison to the dealer's cost, inventory price, factory invoice, floor plan balance, tissue, or terms of similar import; or the claim that the advertised price is "wholesale" or "at no profit";

11. The use of the terms "guaranteed discount", "guaranteed lowest prices" or other term of similar import unless the advertiser clearly and conspicuously discloses the manner in which the guarantee will be performed and any conditions or limitations controlling such performance; this information shall be disclosed adjacent to the claim and not in a footnote;

12. The use of the statement "We will beat your best deal", or similar term or phrase if a consumer must produce a contract that the consumer has signed with another dealer or lessor in order to receive the "better" deal;

13. The use of such terms or phrases as "lowest prices", "lower prices than anyone else" or "our lowest prices of the year", or similar terms or phrases if such claim cannot be substantiated by the advertiser.

13:45A–2.8 Certain credit and installment sale advertisements

(a) The following information must be stated in any credit and installment sale advertising. It must appear adjacent to the description of the advertised motor vehicle and not in a footnote or headline unless the information is the same for all motor vehicles advertised. If in a footnote, it must be in at least 10–point type. Failure to include this information shall be an unlawful practice.

1. The total cost of the installment sale, which shall include the down payment or trade-in or rebate, if any, plus the total of the scheduled periodic payments;

2. The annual percentage rate;

3. The monthly payment figure and the number of required payments; and

4. The amount of any down payment or trade-in required or a statement that none is required.

(b) The following motor vehicle advertising practices concerning credit and installment sale advertisements shall be unlawful:

1. The advertising of credit, including but not limited to such terms as "easy credit" or "one-day credit", other than that actually provided by the advertiser on a regular basis in the ordinary course of business;

2. The use or statement of an installment payment on any basis other than a monthly basis.

13:45A–2.9 On-site disclosures

(a) The following information relating to an advertised motor vehicle must be provided at the main entrance(s) to the business premises where the motor vehicle is displayed or in proximity to the vehicle or on the vehicle itself:

1. A copy of any printed advertisement that quotes a price for the sale or lease of that vehicle; alternatively, a tag may be attached to the motor vehicle(s) stating the advertised price as well as the other information required in N.J.A.C. 13:45A–2.5 or 2.6;

2. A fuel economy label, if required by the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2006; and

3. The Used Car Buyers Guide, if required by the Federal Trade Commission's Used Car Rule, 16 C.F.R. Part 455.2.

(b) A dealer shall not advertise a new motor vehicle which does not have the Monroney label, if required by the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231–1233.

(c) It shall be an unlawful practice to fail to comply with the disclosures required by this section.

13:45A–2.10 Record of transactions

(a) An advertiser shall have a motor vehicle advertised for sale on premises and available for sale at the advertised price during the period of publication, or a record of the sale of that vehicle at the advertised price or less during that period. An advertiser shall have a motor vehicle advertised for lease available for lease at the advertised price during the period of publication, or a record of the lease of that vehicle at the advertised price or less during that period. Such record shall consist of all applicable advertisements and a copy of the executed contract with the purchaser or lessee of the vehicle; this documentation shall be maintained for 180 days after the transaction and shall be made available for inspection by the Division of Consumer Affairs.

(b) If the motor vehicle is sold or leased during the period of publication, the advertiser must so notify consumers who inquire by telephone or in person.

(c) It shall be an unlawful practice to fail to comply with the requirements of this section.

SUBCHAPTER 3. SALE OF MEAT AT RETAIL

Authority

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority delegated at N.J.S.A. 56:8–4 and were filed June 22, 1973, as R.1973 d.169 to become effective January 1, 1974. See: 5 N.J.R. 154(a), 5 N.J.R. 239(b).

13:45A–3.1 Definitions

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

"Back ribs" means ribs derived from the rib area of pork loin.

"Bottom sirloin butt" means meat derived from the posterior portion of the loin of cattle after removal of the short loin and which is the lower portion (ventral side) of the sirloin after removal of the top sirloin butt (dorsal side) by a cut following the natural muscle seam (blue tissue).

"Club steak" means meat derived from the anterior end (rib end) of the short loin of cattle or the posterior end (loin end) of the rib. Any labeling of or advertising for "club steak" shall indicate short loin or rib, whichever is appropriate.

"Delmonico steak" means boneless meat derived from the anterior end (rib end) of the short loin of cattle or the posterior end (loin end) of the rib. Any labeling of or advertising for "delmonico steak" shall indicate short loin or rib, whichever is appropriate.

"Filet mignon" means meat derived from the tenderloin (psoas muscle) of cattle.

"Ground beef", "ground veal", "ground lamb" or "ground pork" means chopped, fresh and/or frozen meat, other than from the heart, esophagus, the tongue or cheeks, of the species indicated without the addition of fat as such and shall not contain more than 30 per cent of fat and shall not contain added water, binders or extenders.

"Hamburger" means chopped fresh and/or frozen beef, other than from the heart, esophagus, tongue or cheeks, with or without the addition of beef fat as such and/or seasoning and shall not contain more than 30 per cent of fat and shall not contain added water, binders or extenders.

"Hanging tender" means meat derived from the thick, muscular dorsal attachment (pillar) of the diaphragm of cattle. Whenever such meat is labeled or advertised for sale at retail, the term "hanging tender", and only said term, shall be used in said labeling or advertising and then only if in conjunction with the term "pillar of diaphragm".

"Meat" means the edible part of the muscle of cattle, swine or sheep which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying or overlying fat and portions of bone, skin, nerve and blood vessels which normally accompany the muscle tissue and which are separated from it in the process of dressing. It does not include the muscle found in the lips, snout or ears.

"Porterhouse steak" means meat derived from the short loin of cattle and which exhibits not less than 1¼ inch in diameter of tenderloin (psoas muscle).

"Sale at retail" means a transaction wherein a person sells meat to the consumer, whether at the place of business of such person or whether such sale is consummated by mail, by telephone or in writing at a place other than at the place of business. Places of business carrying on the aforesaid transaction include, but are not limited to, supermarkets, grocery stores, butcher shops, food freezer dealers and food plan companies.

"Short loin" is the anterior portion of the loin of cattle remaining after the removal of the posterior portion (sirloin) of the loin and is obtained by a straight cut perpendicular to the contour of the outer skin surface and perpendicular to the split surface of the lumbar vertebrae and which passes through the ilium (pelvic bone) leaving a small part of hip bone in the short loin.

"Sirloin" is the posterior portion of the loin of cattle and is obtained by a straight cut made perpendicular to the contour of the outer skin surface and perpendicular to the split surface of the lumbar vertebrae and which passes flush with the ilium (pelvic bone) leaving a small part of hip bone in the short loin.

"Sirloin knuckle" or "sirloin tip" means meat derived from the beef round by a straight cut from the knee cap parallel to and along the femur on the inside of the round and the natural seam of the outside of the round.

"Sirloin steak" means meat derived from the posterior portion of the loin of cattle after removal of the short loin.

"Skirt steak" means meat derived from the diaphragm of cattle.

"Stew beef" means meat, other than from the heart, esophagus, tongue or cheeks, which is derived from cattle, sliced into cubes and commonly used for stewing.

"Strip loin steak" or "shell steak" means meat derived from that portion of the short loin of cattle remaining after the tenderloin (psoas muscle) has been removed.

"Spare ribs" means ribs which are removed from the belly portion of the pork carcass mid-section extending from the scribe line at the fat back side of the belly to and including portions of the rib cartilages, with or without a portion of the split breast bone and with or without the skirt (diaphragm) remaining. Use of such term shall be confined to labeling or advertising the said meat as herein defined.

"T-bone steak" means meat derived from the short loin of cattle and which exhibits not less than ½ inch diameter of tenderloin (psoas muscle).

"Tenderloin" means meat derived from the psoas muscle of cattle, sheep or swine.

"Top sirloin butt" means meat derived from the posterior portion of the loin of cattle after removal of the short loin and which is the thick upper portion (dorsal side) of the sirloin after removal of the bottom sirloin (ventral side) by a cut following the natural muscle seam (blue tissue).

"True name" means the species of animal, that is, beef, veal, lamb or pork, and the primal source or area of the animal carcass from which meat is derived and shall consist of one, but not more than one, of the following:

1. For beef—cheeks, tongue, gullets or esophagus, heart, neck, shoulder, brisket or breast, foreshank, chuck, diaphragm, rib, plate, hind shank, round, rump, loin, flank or pillar of diaphragm:

   i. As used in relation to beef herein and as set forth in Chart 1 herein.

"Brisket" or "breast" is derived from the area of the chuck which includes part of ribs one through five and the sternum (breast bone).

"Chuck" is derived from that area of the forequarter containing ribs one through five without the neck, brisket and foreshank.

"Diaphragm" is derived from the forequarter and includes the muscles and tendon attachments which separate the thoracic (chest) cavity from the abdominal cavity.

"Flank" is derived by stripping the serous membrane from over the abdominis muscles (flank steak) by pulling the abdominis muscles from the thick membrane which lies underneath.

"Foreshank" is derived from the upper portion of the foreleg and contains the upper shank bone.

"Hind shank" is derived by cutting through the stifle joint severing the shank meat and shank bone from the round.

"Loin" is located between the rib and the round and is removed by a cut between the 12 and 13 ribs (posterior end of the rib) and contains the 13 ribs vertebrae, six lumbar vertebrae and five sacral vertebrae.

"Neck" is derived from the area of the chuck containing atlas bone through the fifth cervical vertebrae.

"Plate" is derived from the forequarter and includes the sixth through 12th ribs after removal of the plate approximately ten inches from the chime bone.

"Plate" is derived from the forequarter and includes the sixth through 12 ribs cut approximately ten inches from the chime bone.

"Rib" is derived from the forequarter and includes the sixth through the 12 ribs after removal of the plate approximately ten inches from the chime bone.

"Round" is separated from the full beef loin by a straight cut which starts at a point on the backbone at the juncture of the last (fifth) sacral vertebrae and the first tail (caudal) vertebrae, passes through a second point which is immediately anterior to the protuberance of the femur bone and exposes the ball of the femur and then continues in the same straight line beyond the second point to complete the cut.

"Rump" is derived from the round and is removed therefrom by a straight cut perpendicular to the outer skin surface immediately posterior to, and parallel with, the long axis of the exposed surface of the aitch bone.

"Shoulder" is derived from the area of the chuck which includes clod, forearm, brisket muscle and arm bone and may include cross sections of the ribs:

2. For veal—cheeks, tongue, gullets or esophagus, heart, neck, shank, breast, shoulder, rib, loin, sirloin, rump or leg:

i. As used in relation to veal herein and as set forth in Chart 2 herein.

"Breast" is derived by a cut perpendicular to the outer surface which passes through the cartilaginous juncture of the first rib and anterior extremity of the sternum and perpendicular to the long axis of the 12th rib approximately four inches from the eye of the rib, and contains the sternum, first 12 ribs and all overlaying muscle, except the foreshank.

"Leg" is removed from the sirloin and rump by a straight line cut perpendicular to the outer skin surface immediately posterior to and parallel with the long axis of the exposed surface of the aitch bone, leaving no part of the aitch bone in the leg. The separation of the sirloin and rump.

"Loin" is located between the sirloin and rib and is removed from the rib by a cut between the 12th and the 13th ribs and from the sirloin by a cut perpendicular to the outer surface immediately anterior to and flush with the ilium (pelvic bone) leaving no part of the hip bone in the loin and includes the 13th rib vertebrae and five lumbar vertebrae.

"Neck" is derived from the shoulder by a straight line cut in front of the blade bone approximately between the fourth and fifth cervical vertebrae and parallel to the rib end of the shoulder.

"Ribs" is removed from the shoulder by cutting between the fifth and sixth ribs and contains featherbone, chime bone and rib bones.

"Rump" is removed from the leg as aforesaid and is removed from the loin by a cut perpendicular to the outer skin surface and perpendicular to the backbone at the anterior end of the hip bone leaving all the hip bone in the rump.

"Shank" is derived from the leg bone (tibia) or the arm bone (radius).

"Shoulder" is the section remaining after removal of the foreshank breast and neck and contains the first through the fifth ribs.

"Sirloin" is derived from the anterior end of the rump by a cut perpendicular to the dorsal side starting at any point on the backbone between the juncture of the last (fifth) lumbar vertebrae:

3. For lamb—cheeks, tongue, gullets or esophagus, heart, neck, shank, breast, shoulder, rib, loin or leg:

i. As used in relation to lamb herein and as set forth in Chart 3 herein.

"Breast" is cut from the loin, neck and shoulder starting at the cod or udder to and through the shank just above the elbow.

"Leg" is the portion remaining after the loin has been removed as aforesaid.

"Loin" is separated from the leg by cutting just in front of the hip bone.

"Neck" is derived from the anterior area of the shoulder and contains the atlas and cervical vertebrae.

"Rib" is separated from the loin by cutting between the last two ribs.

"Shoulder" is separated from the ribs by cutting between the fifth and sixth ribs.

4. For pork—cheeks, tongue, gullets or esophagus, heart, tail, jowl, shoulder, shoulder picnic, shoulder butt, feet, side, spareribs, loin, loin-shoulder end or loin-rib end, loin-center cut, loin-loin end, fat back, ham or hock:

i. As used in relation to pork herein and as set forth in Chart 4 herein.

"Fat Back" is the section remaining after removal of the loin and side.

"Ham" is the posterior portion of the hog side removed by a cut 2¼ to 2¾ inches anterior to the knob end of the aitch bone. The cut shall be at right angles to an imaginary line from the tip of the aitch bone through the center of the ham and shank. At the flank pocket the cut shall divert at a 45 degree angle posteriorly.

"Jowl" shall be removed closely to the body of the shoulder on a line approximately parallel to the opposite straight cut side of the shoulder, starting behind the "ear dip" which must remain on the jowl, and continuing the cut so as to remove the entire jowl.

"Loin" is removed from the middle portion by a cut (scribe) extending from a point on the first rib of the loin which is not more than 1¾ inches from the junction of the foremost rib and the foremost thoracic vertebrae to a point on the ham end which is immediately adjacent to the major tenderloin muscle. The loin shall be removed from the fat back and shall contain 11 or more ribs, seven lumbar vertebrae and at least three sacral vertebrae.

"Loin-center cut" is derived from the pork loin after the shoulder end has been removed by cutting crosswise to the length of the loin at a point posterior to the edge of the scapular cartilage and from which the ham end of the loin has been removed by cutting crosswise to its length anterior to the cartilage on the tuber coxae.

"Loin-loin end" is derived from the posterior end of the loin by a cut perpendicular to the length of the loin flush with the last rib and usually includes the hip (pelvic) bone.

"Loin-shoulder end" or "loin-rib end" is derived from the anterior end of the loin by a cut perpendicular to the length of the loin flush with the last rib and usually includes the blade bone.

"Shoulder" includes the shoulder picnic and shoulder butt and is derived by a cut starting at a point in the armpit that is not more than one inch posterior to the elbow joint, but does not expose the elbow joint, and continues reasonably straight across the hog hide. The foot, ribs and related cartilages, breast bone, intercostal meat, breast flap, and neckneck bones shall be excluded.

"Shoulder picnic" is separated from the "shoulder butt" by a cut which is reasonably straight and perpendicular to the outside skin surface (not slanted or under cut) and approximately parallel to the breast side of the shoulder leaving all the major shoulder bone (humerus) and not less than one nor more than two inches of the blade bone (scapula) in the shoulder picnic.

"Side" (belly) shall be separated from the fat back on a straight line not more than ¾ inch beyond the outermost curvature of the scribe line. The belly must be boneless and the major cartilages of the sternum and the ribs must be closely and smoothly removed without deep scoring. Any enlarged soft, porous, or seedy mammary tissue and the pizzle recess of barrow bellies must be removed.

5. The true name for pork chops shall consist of one of the following primal sources: shoulder or blade, rib, loin, center, or loin end or sirloin.

"Veal cutlet" means a single slice of veal derived from the leg and contains top, bottom, eye and sirloin tip and cross section of the leg bone. If the word "cutlet" is used in labeling or advertising a single slice of meat derived other than from the leg of veal, the species of animal and primal source from which such meat is derived shall precede the word "cutlet" in at least the same size and style lettering and on the same background as the word "cutlet", for example:

VEAL SHOULDER CUTLET.

13:45A–3.2 Labeling and advertising requirements

(a) Except as otherwise exempted in this rule, no person shall produce, prepare, package, advertise, sell or offer for sale at retail any meat unless it is clearly and conspicuously labeled or advertised, as the case may be, as to its true name.

(b) This Section shall not require the labeling of meat cut to the order of the retail customer.

13:45A–3.3 Exemption for certain meats

The provisions of N.J.A.C. 13:45A–3.2(a) shall not apply to bacon, filet mignon, ground beef, ground veal, ground lamb, ground pork, hamburger, porterhouse steak, sirloin steak, stew beef, T-bone steak, beef tenderloin, pork tenderloin or veal cutlet provided, in the case of any one of these meats, it is clearly and conspicuously labeled or advertised as to its name set forth in this Section.

13:45A–3.4 Exemptions for meat inspected under United States Department of Agriculture

(a) The provisions of this rule shall not apply to meat which is produced, prepared or packaged for sale at retail within the State of New Jersey under meat inspection of the United States Department of Agriculture until after such meat leaves the premises of a United States Department of Agriculture official establishment for distribution.

(b) The provisions of this rule shall not apply to meat which is produced, prepared or packaged under meat inspection of the United States Department of Agriculture for sale at retail outside the States Department of Agriculture for sale at retail outside the State of New Jersey.

13:45A–3.5 Name in addition to the species and primal cut

(a) A name in addition to the species and primal cut of a meat as set forth in Section 1 of this Subchapter may be used in labeling such meat provided that the requirements of this rule are complied with and that any such additional name or labeling appears contiguous to the species and primal cut name in letters of the same size and style, for example:

SANDWICH STEAK

BEEF TOP ROUND

(b) Such name shall not be false, misleading, deceptive or confusing in any way.

13:45A–3.6 Advertising when additional name used

(a) If a name in addition to the species and primal cut as set forth in Section 5 (Name in addition to the species and primal cut) of this Subchapter is used in advertising meat, the species and primal cut of the meat shall be prominently displayed contiguous to the additional name and be shown in the same style lettering and on the same background as the addition name and meet the following requirements as to size:

1. If the additional name is one inch or more in height, the species and primal cut shall be at least ¼ the size of the additional name in height.

2. If the additional name is less than one inch in height, the species and primal cut shall be at least ⅓ the size of the additional name in height.

13:45A–3.7 Use of United States Department of Agriculture grading terms

United States Department of Agriculture grading terms, for example, "prime", "choice" and the like, shall not be used in labeling or advertising meat unless the carcass or part thereof from which such meat is derived has been so marked by the United States Department of Agriculture.

13:45A–3.8 Use of United States Department of Agriculture grading terms for pork

United States Department of Agriculture grading terms, for example, "prime", "choice" and so forth shall not be used in labeling or advertising pork.

13:45A–3.9 Labeling or advertising when certain United States Department of Agriculture grading terms used

If meat is advertised, sold or offered for sale at retail and the carcass or part thereof from which such meat is derived has been marked with a United States Department of Agriculture grade other than "prime" or "choice", the trading term or recognized abbreviation thereof of such meat shall appear contiguous to the true name of such meat and be at least as equal in size to and as prominent as the true name, for example:

BEEF ROUND

UNITED STATES COMMERCIAL

13:45A–3.10 Labeling of certain meat food products

(a) Any meat food product in the form of chopped and shaped steaks, patties, loaves, loaf mixes, and so forth which is uncooked and contains fat, extenders and/or added water, flavorings, batter, breading, and so forth shall display a label clearly and conspicuously exhibiting the product name, qualifying statement, if appropriate, and ingredient statement.

(b) The ingredients in such meat food product shall be listed by their common usual names in the descending order of the amount of each ingredient used in formulating the product together with the percentage of each such ingredient contained therein, for example:

"BEEF PATTY, Beef fat and cereal added"

Ingredients: Beef 77%, Beef Fat added 8%,

Cereal 7%, Added water 6%, Flavoring 1%,

Monosodium Glutamate 1%, total fat not in excess of 30%

or

"BREADED VEAL STEAK, Beef fat added,

chopped and shaped"

Veal 61%, Breading and Batter not in

excess of 30% (Flour, Water, Salt,

Nonfat Dry Milk, Baking Powder, Dry

Eggs, Monosodium Glutamate, Dextrose,

Flavorings,) Beef fat added 8%,

Monosodium Glutamate 1%. Total fat not

in excess of 30%.

(c) Any meat food product to which this Section is applicable shall not contain more than 30 per cent fat and the label for such product shall so indicate.

(d) The amount of batter and breading used as a coating for breaded product shall not exceed 30 per cent of the weight of the finished breaded product and the label for such product shall so indicate.

13:45A–3.11 Fabricated steak

Fabricated beef steaks, veal steaks, beef and veal steaks, or veal and beef steaks, and similar products, such as those labeled "Beef Steak, Chopped, Shaped, Frozen," "Veal Steaks, Beef Added," Chopped—Molded—Cubed—Frozen, Hydrolized Plant Protein and Flavoring shall be prepared by comminuting and forming the product from fresh and/or frozen meat; with or without added fat, of the species indicated on the label. Such products shall not contain more than 30 per cent fat and shall not contain added water, binders or extenders.

13:45A–3.12 Supply of meat advertised

No person shall advertise meat for sale at retail unless such person shall have available at all outlets listed in the advertisement a sufficient quantity of the advertised meat to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.

13:45A–3.13 Frozen meat

All meat other than that which is used in hamburger, ground beef, ground pork, ground veal or ground lamb which has been frozen at any time prior to such meat being offered or exposed for sale at retail shall be clearly and conspicuously labeled or advertised as "Frozen" or "Frozen and thawed", whichever is appropriate, and such term shall be contiguous to and in the same size and style lettering and on the same background as the product name.

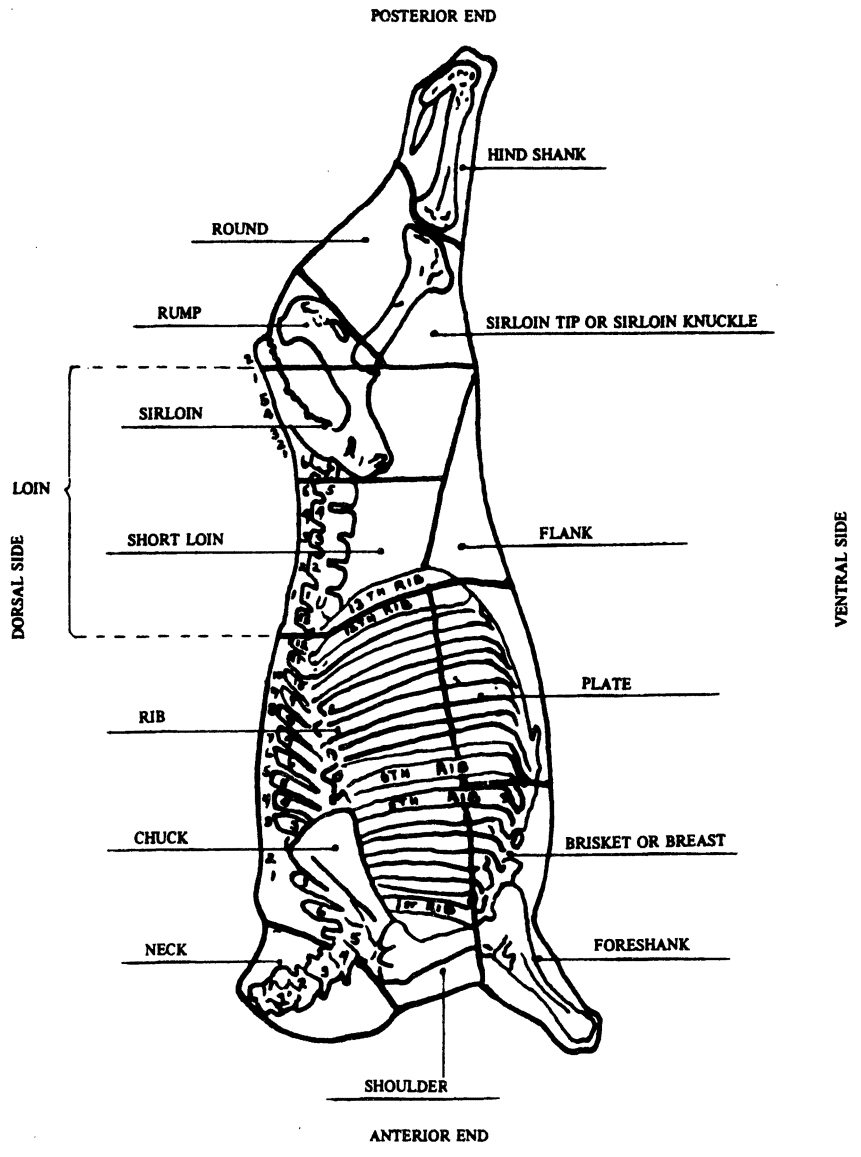
13:45A–3.14 Violations

Without limiting 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.

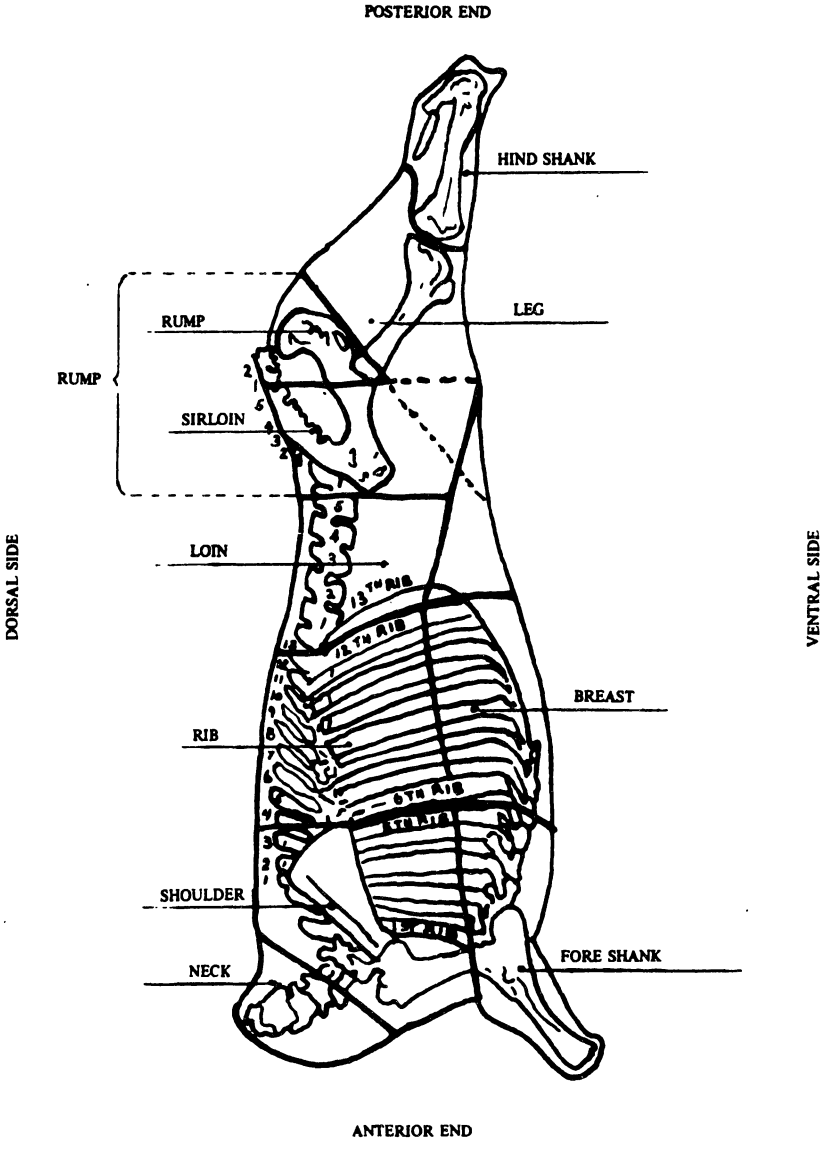
13:45A–3.15 Meat charts

(a) The meat charts referred to in this rule are as follows:

(a) Chart 1: Beef Carcass

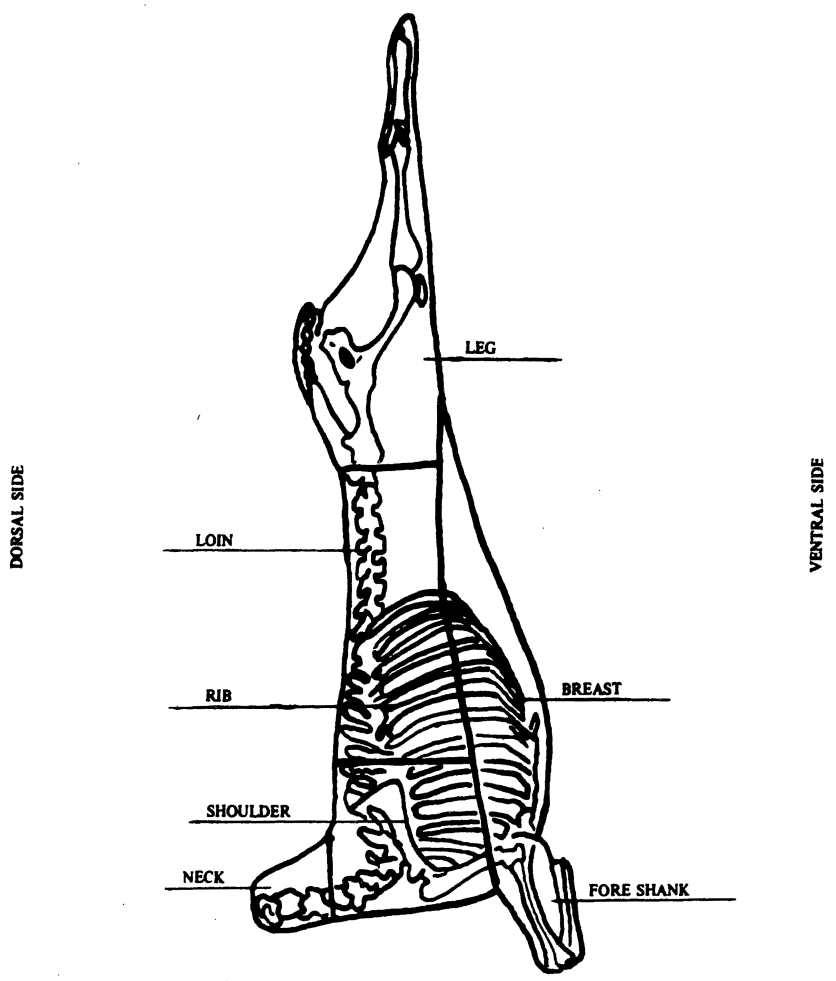


(b) Chart 2: Veal Carcass



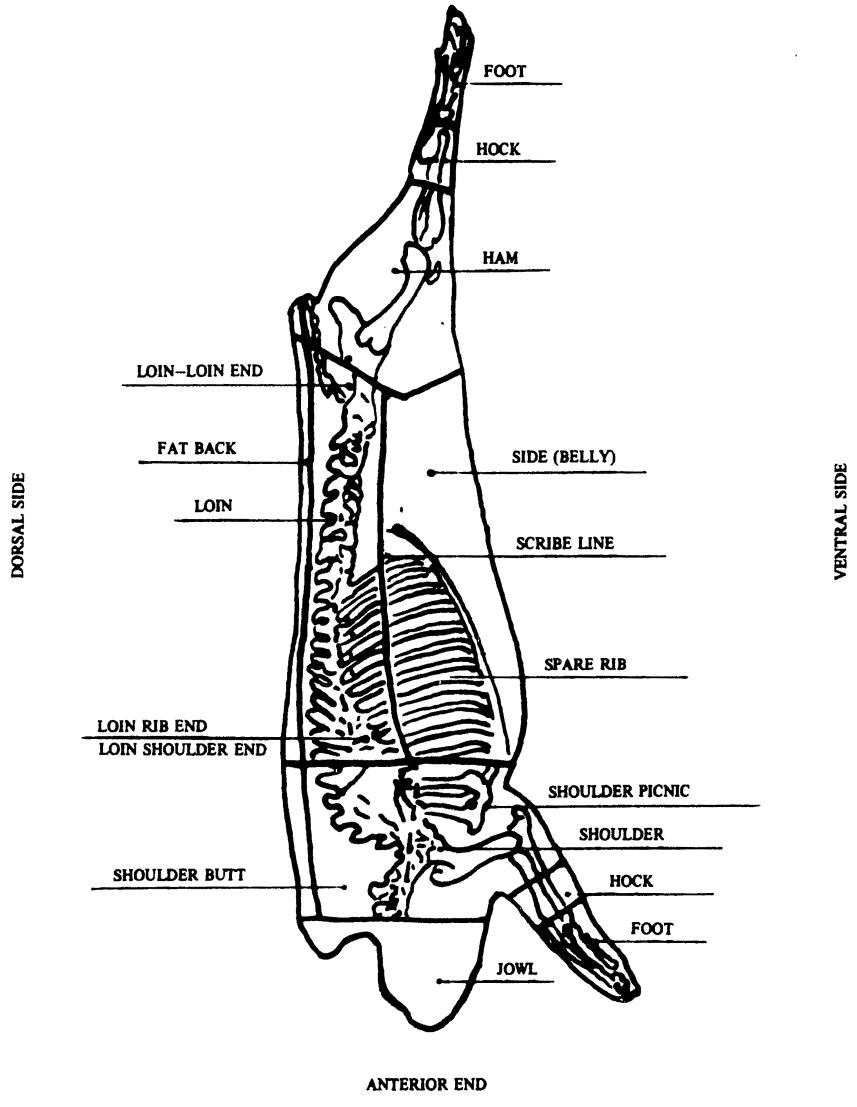
(c) Chart 3: Lamb Carcass

POSTERIOR END



ANTERIOR END

(d) Chart 4: Pork Carcass



SUBCHAPTER 4. BANNED HAZARDOUS PRODUCTS

Authority

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority delegated at N.J.S.A. 56:8–4 and were filed August 10, 1973, as R.1973 d.222 to become effective August 15, 1973. See: 5 N.J.R. 229(d), 5 N.J.R. 317(c).

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 or sell any consumer product contrary to any order of the Consumer Product Safety Commission, pursuant to 15 U.S.C. § 2051 *et seq.*

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.

SUBCHAPTER 5. DELIVERY OF HOUSEHOLD FURNITURE AND FURNISHINGS

Authority

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority of N.J.S.A. 56:8–4 and were filed September 14, 1973, as R.1973 d.262 to become effective January 1, 1974.

13:45A–5.1 Deceptive practices; generally

(a) It shall be a deceptive practice in connection with the sale of household furniture, for which contracts of sale or sales orders are used for merchandise ordered for future delivery, to consumers resident in New Jersey and by persons engaged in business in New Jersey, unless, when the promised delivery date has been reached, the person (including any business entity) who is the seller either:

1. Delivers the promised merchandise; or

2. Notifies the consumer of the impossibility of meeting the promised delivery date by written notice, mailed on or prior to the delivery date, offering the consumer the option to cancel with a prompt, full refund of any payments already received; or

3. Notifies the consumer of the impossibility of meeting the promised delivery date by written notice, mailed on or prior to the delivery date, offering the consumer the option of accepting delivery at a specified later time.

(b) For purposes of this rule, "household furniture" includes but is not limited to furniture, major electrical or gas appliances, and such items as carpets and draperies.

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 used by the seller shall show the date of the order placed by buyer 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 delivery date shall be filled in by the seller 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").

13:45A–5.3 Contract form; delayed delivery

The contract forms or sales documents used by the seller shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with Section 1 of this Subchapter and shall contain 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) cancelling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.**

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. DECEPTIVE PRACTICES CONCERNING AUTOMOTIVE SALES PRACTICES

Authority

N.J.S.A. 56:8–4.

Source and Effective Date

R.1984 d.526, filed October 24, 1984.
See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a).

Historical Note

All provisions of this subchapter were filed and became effective October 1, 1979 as R.1979 d.392. See: 11 N.J.R. 386(a), 11 N.J.R. 580(e). Readoption was filed October 24, 1984 as R.1984 d.526. See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a). See chapter and section levels for further amendments.

13:45A–6.1 Definitions

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

"Automotive dealer" 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 of motor vehicles at retail or who in the course of any 12 month period offers more than 3 motor vehicles for sale, lease, or rental, or who is engaged in the brokerage of motor vehicles whether for sale, lease, or rental;

"Documentary service fee" means any monies or other thing of value which an automotive dealer accepts from a consumer in exchange for the performance of certain documentary services which include, but are not limited to, the preparation and processing of documents in connection with the transfer of license plates, registration, or title, and the preparation and processing of other documents relating to the sale of a motor vehicle to said consumer;

"Pre-delivery service fee" means any monies or other thing of value which an automotive dealer accepts from a consumer in exchange for the performance of pre-delivery services upon a motor vehicle, and includes, but is not limited to, items which are often described or labeled as dealer preparation, vehicle preparation, predelivery service, handling and delivery, or any other term of similar import;

"Sales document" means the first document which an automotive dealer utilizes to evidence an order for, deposit towards, or contract for the purchase of a motor vehicle by a consumer, and includes but is not limited to, retail orders, sales invoices, sales contracts, retail installment contracts, and other documents of similar import.

13:45A–6.2 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., the following practices involving the sale of motor vehicles by automotive dealers shall be unlawful thereunder.

1. With respect to pre-delivery service fees:

i. Accepting, charging, or obtaining from a consumer monies, or any other thing of value, in exchange for the performance of any pre-delivery service for which the automotive dealer receives payment, credit, or other value from any person or entity other than a retail purchaser of the motor vehicle;

ii. Accepting, charging, or obtaining from a consumer monies, or any other thing of value, in exchange for the performance of any pre-delivery service without first itemizing the actual pre-delivery service which is being performed and setting forth in writing on the sales document the price for each specific pre-delivery service;

iii. Except in connection with the sale of used motor vehicles, failing to conspicuously place upon the front of the sales document which contains a pre-delivery service fee, in ten-point bold face type, the following statement:

"You have a right to a written itemized price for each specific pre-delivery service which is to be performed. The automotive dealer may not charge for pre-delivery services for which the automotive dealer is reimbursed by the manufacturer."

2. With respect to documentary service fees:

i. Accepting, charging, or obtaining from a consumer monies, or any other thing of value, in exchange for the performance of any documentary service without first itemizing the actual documentary service which is being performed and setting forth in writing on the sale document the price for each specific documentary service; or

ii. Representing to a consumer that a governmental entity requires the automotive dealer to perform any documentary service;

iii. Failing to conspicuously place upon the front of the sales document which contains a documentary service fee, in ten-point bold face type, the following:

"You have a right to a written itemized price for each specific documentary service which is to be performed."

SUBCHAPTER 7. DECEPTIVE PRACTICES CONCERNING AUTOMOTIVE REPAIRS AND ADVERTISING

Authority

N.J.S.A. 56:8–4.

Source and Effective Date

R.1984 d.527, filed October 24, 1984.
See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b).

Historical Note

All provisions of this subchapter were filed and became effective January 1, 1974 as R.1973 d.307. See: 5 N.J.R. 351(b), 5 N.J.R. 390(b). Readoption was filed October 24, 1984 as R.1984 d.527. See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b). See chapter and section levels for further amendments.

13:45A–7.1 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.

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).

13:45A–7.2 Deceptive practices; automotive 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., the following acts or omissions shall be deceptive practices in the conduct of the business of an automotive repair dealer, whether such act or omission is done by the automotive repair dealer or by any mechanic, employee, partner, officer or member of the automotive 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 by which 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, signed by the customer, which states the nature of the repair requested or problem presented and the odometer reading of the vehicle; or

ii. If the customer's vehicle is presented to the automotive repair dealer during other than normal working hours or by one other than the customer, 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 repairs 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 the 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 the right to furnish such estimate within a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnostic 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; or

(3) Providing the customer with a written estimated price to complete a specific repair, for example, "valve job"; or

(4) Obtaining from the customer a written authorization to proceed with repairs not in excess of a specific dollar amount. For the purposes 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 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; or

ii. If the customer's vehicle is presented to the automotive 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 purposes 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 character likely to influence, persuade or induce a customer to authorize the repair, service or maintenance of a motor vehicle.

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 dealer shall make a notation on the repair order and on 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 the total additional cost. The 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 the 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 automotive 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 an automotive repair dealer 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 guarantees, 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);

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;

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 on which the guaranty will be prorated; that is, the time or mileage the part, component or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on a 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 automotive repair dealer is obliged to provide a written estimate when the customer physically presents his motor vehicle to the automotive repair dealer during normal working hours and, in any event, before work is commenced. In addition, copies of any receipt 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 motor vehicle is physically presented during normal working hours and, in any event before work begins, a written estimated price stated either:

(A) PRICE NOT TO EXCEED $..., and given without charge; or

(B) As an exact figure broken down as to 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 vehicle until you sign an authorization stating the nature of the repair or problem and the odometer reading of your vehicle if you physically present the vehicle 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 the guaranty."

12. Nothing in this section shall be construed as requiring an automotive repair dealer to provide a written estimate if the dealer does not agree to perform the requested repair.

13. Any other unconscionable commercial practice prohibited pursuant to N.J.S.A. 56:8–1 et seq.

As amended, R.1979 d.402, eff. October 12, 1979.
See: 11 N.J.R. 255(a), 11 N.J.R. 581(a).

Case Notes

Regulation upheld. Levin v. Lewis, 179 N.J.Super. 193, 431 A.2d 157 (App.Div.1981).

Finding of violation noted in beginning work without written authorization and estimate; Consumer Fraud Act mandates treble damages and attorney fees in a private action. Skeer v. EMK Motors, Inc., 187 N.J.Super. 465, 455 A.2d 508 (App.Div.1982).

Violation found for failure to provide written estimate, obtain estimate waiver or repair authorization, and supplying and charging for work and parts in excess of verbal estimates without consent (also cited as N.J.A.C. 13:45A–7.1). Levin v. Lewis, 6 N.J.A.R. 85 (1980) affirmed 179 N.J.Super. 193, 431 A.2d 157.

SUBCHAPTER 8. TIRE DISTRIBUTORS AND DEALERS

Authority

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 56:8–4 and were filed October 26, 1973, as R.1973 d.309 to become effective December 1, 1973. See: 5 N.J.R. 354(a), 5 N.J.R. 390(e).

13:45A–8.1 General provisions

(a) For purposes of this rule, all terms that are defined in the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. section 1402 (1970), are used as defined therein.

(b) "Tire purchaser" means a person who buys or leases a new or newly retreaded tire, or who buys or leases for 60 days or more a motor vehicle containing a new tire or newly-retreaded tire, for purposes other than resale.

(c) Each motor vehicle dealer who sells a used motor vehicle for purposes other than resale, or who leases a motor vehicle for more than 60 days, that is equipped with new tires or newly-retreaded tires, is considered to be a tire dealer.

(d) Each person selling a new motor vehicle to first purchasers for purposes other than resale that is equipped with tires that were not on the motor vehicle when shipped by the vehicle manufacturer is considered a tire dealer.

13:45A–8.2 Deceptive practices

(a) It shall be a deceptive practice in connection with the sale of tires to consumers resident in New Jersey, or by tire distributors or dealers doing business in New Jersey, unless the tire distributor or dealer who makes the sale provides the retail purchaser with a true copy of the information that the seller, tire distributor or his designee forwards to the manufacturer as required by 49 C.F.R. section 574.8, at the time such information is forwarded.

(b) Such information includes:

1. Name and address of the tire purchaser;

2. Tire identification number molded into or onto the sidewall of the tire sold;

3. Name and address of the tire seller.

13:45A–8.3 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 violations of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 9. MERCHANDISE ADVERTISING

Authority

N.J.S.A. 45:12–4; 45:1–3.2.

Source and Effective Date

R.1985 d.256, effective April 29, 1985.
See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b).

Historical Note

All provisions of this subchapter were filed on January 21, 1974, to become effective March 1, 1974 as R.1974 d.15. See: 5 N.J.R. 422(a), 6 N.J.R. 82(b). Amendments were filed and became effective May 6, 1980 as R.1980 d.200. See: 12 N.J.R. 45(a), 12 N.J.R. 348(b). This subchapter was readopted pursuant to Executive Order 66(1978) effective April 29, 1985 as R.1985 d.256. See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b). See chapter and section levels for further amendments.

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, catalogue or any offering for the sale of a motor vehicle subject to the requirements of N.J.A.C. 13:45A–2.1 et seq., 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 or television broadcast.

"Advertiser" means any person as defined by N.J.S.A. 56:8–1(d), other than a public utility regulated by the Board of Public Utilities, who in the ordinary course of business is engaged in the sale or rental of merchandise at retail and who places, either directly or through an advertising agency, an advertisement before the public.

"Catalogue" 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 catalogue.

"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.

"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, dehumidifiers, dishwashers, dryers, electric blankets, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereophonic 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.

"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.

"Reference price" means a price or price range set forth in a price reduction advertisement for the purpose of establishing an advertised selling price as a reduction from a usual selling price of the advertised merchandise.

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

Case Notes

Held that a franchise or business opportunity venture is "merchandise" within intendment 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.

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; 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.

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.

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

(a) Without limiting the application of N.J.S.A. 56:8–1 et seq., in addition to those practices referred to in N.J.A.C. 13:45A–9.2, the following practices shall be unlawful with respect to price reduction advertisements:

1. The failure to state with specificity the period of time during which the price reduction shall be applicable, except on those advertisements to which N.J.A.C. 13:45A–9.2(a)1 is not applicable.

2. The failure to set forth the retail selling price or price range for all specifically advertised merchandise.

3. For any specifically advertised merchandise items advertised for sale at a price of $100.00 or more, the failure to conspicuously set forth a reference price or price range based upon either:

i. The advertiser's usual selling price or price range for the identical merchandise or for comparable merchandise of like grade or quality; or

ii. A usual selling price charged by competitors in the advertiser's trade area for the identical merchandise or for comparable merchandise of like grade or quality.

4. The failure of the disclosure of the reference price or price range to adhere to the following conditions:

i. The reference price or price range shall be set forth in close proximity to the retail selling price and the advertised item and shall be established on the basis of a substantial number of sales or offers of sale in the regular course of business, made at any time within the most recent 60 days during which the advertised merchandise was available for sale prior to, or to be made in the first 60 days during which the advertised merchandise will be available for sale following, the effective date of the advertisement.

ii. When, and only when, an advertiser operates more than one retail outlet at which advertised merchandise has been or will be available for purchase in the ordinary course of business at different prices, such advertiser may set forth a price range, based on the sales or offers of sale at its retail outlets, as its reference price for a particular item. For example, an advertisement reading: "Regular price $110 to $125—On sale for $100" would comply with this regulation.

iii. When an advertiser advertises two or more items of comparable merchandise as available at reduced prices, such advertiser may set forth a price range, based on the reference prices for the advertised products. For example, an advertisement reading: "Eastinghome 19" color TV's—Regularly $250 to $300. Now $150 to $200" would comply with this regulation.

iv. With regard to the price comparison required by this subsection, the advertisement shall clearly and conspicuously disclose in close proximity to the reference price or price range the basis for such reference as set forth in (a)3 above. 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 reference price.

5. The failure of an advertiser to prove the validity of its claim of a price reduction based on one of the bases therefor as set forth in (a)3 above to the Division or its designee, regardless of whether or not a reference price need be set forth in the advertisement. This substantiation shall adhere to the 60 day periods established by this section.

6. In any advertisement consisting of a general announcement of a price reduction characterized as savings of a particular percentage or a range of percentages (such as "save 20% or 20% to 50% off"), the failure to:

i. State the minimum percentage reduction as conspicuously as the maximum percentage reduction, when applicable; and

ii. Base the advertised percentage reduction on one of the categories set out in (a)3 above, disclosing such basis in the advertisement.

7. The use of the terms "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 therefor, but handling and all overhead or operating expenses shall be excluded.

8. The use or statement of any false, deceptive or misleading reference price comparison. A reference price or price comparison shall be deemed false, misleading, and deceptive where it is not based upon a substantial number of sales or offers of sale which have been or will be made within the advertiser's trade area at that price at any time within the 60 day periods established by this section.

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.

13:45A–9.4 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).

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–9.5 through 13:45A–9.8 (Reserved)

SUBCHAPTER 10. SERVICING AND REPAIRING OF HOME APPLIANCES

Authority

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority delegated at N.J.S.A. 56:8–4 and were filed January 21, 1974, as R.1974 d.16 to become effective March 1, 1974. See: 5 N.J.R. 421(a), 6 N.J.R. 82(c).

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. Home appliances shall include but not be limited to washers, dryers, dishwashers, televisions, refrigerators, ranges, fans, air conditioners and radios.

"Seller" means any person who in the ordinary course of business is engaged in the sale or lease of home appliances.

13:45A–10.2 Required information

(a) Whenever a consumer purchases a home appliance, the seller must 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 must include a clear statement of any:

i. Basic "diagnostic" charges or any other set fee; and

ii. The methods used to determine any additional charge including the charge for labor and parts.

(b) Whenever a consumer requests service on a home appliance from someone other than the one from whom the appliance was purchased, or the dealer from whom the appliance was purchased if there was no service contract agreed upon at the time of purchase, the prospective supplier of services must 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.

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 false or unrealistic promises, groundless estimates and so forth 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.

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

Historical Note

All provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 56:8–4 and became effective November 20, 1975 as R.1975 d.351. See: 7 N.J.R. 231(b), 7 N.J.R. 571(c). The subchapter was repealed and new rules adopted because the Division has become aware of the need for newer and more complete guidelines. The Division originally published a proposal in the June 17, 1987 register at 19 N.J.R. 853(a). This proposal was postponed. The adoption of new rules became effective June 20, 1988 as R.1988 d.271. See: 20 N.J.R. 501(b), 20 N.J.R. 1463(a).

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.

"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.

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 or capable of being registered with an animal pedigree registry organization, 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. 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).

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.

Further, in the event of your animal's death within this 14–day period, except where 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 your choice of equivalent value. In addition, veterinary fees limited to the purchase price, including sales tax, of the animal 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 New Jersey 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 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.

11. 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).

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

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 56:8–4 and were filed and became effective August 3, 1976, as R.1976 d.245. See: 8 N.J.R. 233(b), 8 N.J.R. 439(b).

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 exclusively by the director of a county office of consumer affairs or by a municipal director of consumer affairs until such times as a county director shall be established by the board of chosen freeholders of such county.

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. Required 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.

13:45A–13.5 Termination of authority to exercise delegated authority

(a) The authority to exercise those powers hereinafter delegated to a county or municipal director of consumer affairs may be suspended or revoked for:

1. Failure to comply with the requirements contained in section 4 of this subchapter;

2. Failure to comply with any requirement or limitation regarding the exercise of those powers hereinafter delegated;

3. Failure to administer a county or local office of consumer protection in accordance with such directives as may be issued by the director.

13:45A–13.6 Delegated powers

(a) A county or local director of consumer affairs, subject to the limitations hereinafter set forth may:

1. Initiate investigations whenever it shall appear to such director that a person has engaged in, is engaging in or is about to engage in any act declared unlawful by the act as amended and supplemented or in any act or practice which violates any regulation promulgated by the Attorney General to the act. Such investigations may be commenced either on the complaint of an individual consumer or where, after independent inquiry made by the county or municipal director, it appears that a violation of the act or any regulation adopted pursuant thereto has occurred or may occur in the future.

2. Require any person to file a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person and such other data and information as may be necessary to determine whether a violation of the act or a regulation adopted pursuant thereto has occurred or will occur.

3. Examine under oath any person in connection with the sale or advertisement of any merchandise.

4. Examine any merchandise or sample thereof, record, book, document, account, or paper as may be deemed necessary.

5. Pursuant to an order of the superior court, impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with these regulations, and retain the same until the completion of all proceedings in connection with which the same are produced.

6. Issue subpoenas to any person in aid of any investigation to determine whether a violation of the act or any regulation adopted by the Attorney General thereto has occurred or will occur. A subpoena shall be issued in the name of the county or municipal director in a form substantially identical to that annexed hereto as example 1 and shall be signed by counsel to such director.

i. In the event that any person shall fail to comply with a subpoena issued pursuant to this subsection, the county or municipal director may apply to the superior court for an order granting such relief as authorized by L.1960, c.39 section 6 (N.J.S.A. 56:8–6).

7. Initiate such litigation in the courts in the name of the director seeking such relief as may be authorized by the act. In the event that litigation is to be commenced by a county or municipal director of consumer affairs, notice thereof shall be given to the director by serving a copy of the proposed complaint and any supporting documents to be filed with the court not less than 15 days prior to the filing of such action. Where litigation is to be commenced by seeking a temporary restraining order on an emergent basis, the director shall be notified of such action consistent with the rules of court governing such applications.

13:45A–13.7 Limitations; litigation

Whenever it shall appear to the director that any litigation or any other action authorized by the within regulation is improperly brought or is contrary to the public interest, such action shall, on notice to the county or municipal director, be terminated, suspended or modified as may be directed.

13:45A–13.8 Restrictions; powers

(a) A county or municipal director of consumer affairs shall not:

1. Promulgate substantive regulations governing the sale or advertisement of merchandise or defining unlawful practices; provided, however, nothing herein contained shall be deemed to prohibit the adoption of internal administrative procedures governing the handling and processing of complaints received from consumers.

2. Conduct any administrative hearing of a quasi-judicial nature for the purpose of assessing any civil penalty, ordering any restoration of consumer moneys or directing that any person cease and desist from engaging in any unlawful practices, provided, however, nothing herein contained shall be deemed to prohibit the negotiation of any agreement by consent to remedy any individual consumer complaint or the cessation of any unlawful consumer practice.

3. Attempt to confer or grant immunity from any criminal prosecution as authorized by L.1960 c.39 section 7 (N.J.S.A. 56:8–7).

13:45A–13.9 Effective date

The within regulations shall be effective upon the filing of a final order adopting the same with the Division of Administrative Procedure.

EXAMPLE 1

_____ _____
County or Municipal Seal (optional) (County or Municipality)

TO:

GREETING:

WE COMMAND YOU that, laying aside all business and excuses, you personally severally attend and appear before _____ at the _____ on _____ the _____ day of _____, 197___, at _____ o'clock in the _____noon of that day to testify in a certain investigation now pending between _____ _____ concerning the facts and circumstances relating to the sale or advertisement of merchandise or services to _____ _____

And also that you bring with you and produce at the same time and place aforesaid all records, books, documents, accounts and papers relevant and material to the inquiry, as follows:

FAILURE to comply with this subpoena may render you liable for contempt of court and such other penalties as provided by law

Dated: _____, 197___

_____ _____
Counsel to Director of Consumer Affairs Director of Consumer Affairs
(County or Municipality)

(County, Municipality)
of
(Name of agency)

IN THE MATTER OF AN INQUIRY
BETWEEN

and

SUBPOENA
Duces Tecum

_____
Director of Consumer Affairs
(County or Municipality)

Returnable _____, 197___

AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY)
SS
COUNTY OF)

_____, being duly sworn according to law, on his oath deposes and says that he is _____ and that on _____, he served the within Subpoena on _____ by exhibiting the original Subpoena to and leaving a true copy thereof with _____

at _____

Sworn and subscribed to
before me this _____ day
of _____, 197__

_____

SUBCHAPTER 14. UNIT PRICING OF CONSUMER COMMODITIES IN RETAIL ESTABLISHMENTS

Authority

N.J.S.A. 56:8–25.

Source and Effective Date

R.1985 d.643, effective December 16, 1985.
See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

Historical Note

All provisions of this subchapter became effective August 23, 1976 as R.1976 d.265. See: 8 N.J.R. 304(a), 8 N.J.R. 439(e). Amendments became effective October 10, 1980 as R.1980 d.444. See: 12 N.J.R. 130(a), 12 N.J.R. 672(d). This subchapter expired October 9, 1985 pursuant to Executive Order 66(1978). New Rules became effective December 16, 1985 as R.1985 d.643. See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c). See chapter and section levels for further amendments.

13:45A–14.1 General provisions

These regulations implement the Unit Price Disclosure Act, P.L.1975, c.242 (N.J.S.A. 56:8–25) and provide for the disclosure of information necessary to enable consumers to compare easily and effectively the retail prices of certain consumer commodities regardless of package size or quantity.

13:45A–14.2 Definitions

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

"Approved unit of measure" means the unit of weight, standard of measure or standard of count designated for each regulated consumer commodity in N.J.A.C. 13:45A–14.4.

"Consumer commodity" means any merchandise, wares, article, product, comestible or commodity of any kind of class produced, distributed, or offered for retail sale for consumption by individuals other than at the retail establishment, or for use by individuals for purposes of personal care or in the performance of services rendered within the household, and which is consumed or expended in the course of such use.

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

"Person" means any natural person, partnership, corporation or other organization engaged in the sale, display or offering for sale of consumer commodities at retail establishment whose combined total floor area, exclusive of office, receiving and storage areas, dedicated to the sale of consumer commodities exceeds 4,000 square feet or whose combined annual gross receipts from the sale of consumer commodities in the preceding year exceeded $2 million, regardless of the square footage involved.

"Regulated consumer commodity" means those consumer commodities listed in N.J.A.C. 13:45A–14.4.

"Retail establishment" means any place of business where consumer commodities are exposed or offered for sale at retail.

"Retail price" means the total retail price of a consumer commodity, excluding sales tax.

"Unit price" means the retail sales price of a consumer commodity expressed in terms of the approved unit of measure.

13:45A–14.3 Persons and operations exempted from complying with Unit Price Disclosure Act

(a) The following persons or entities shall be exempted from complying with this subchapter and the terms of the Unit Price Disclosure Act:

1. Any person owning and operating a single retail establishment with annual gross receipts from the sale of consumer commodities in the preceding year of not more than $2 million.

2. Any person owning and operating a single establishment or a series of retail establishment each having a total floor space of 4,000 square feet or less regardless of the annual gross receipts from the sale of consumer commodities therein.

3. Any person owning and operating a retail establishment or series of retail establishments, wherein the combined annual gross receipts from the sale of food products, nonprescription drugs, personal care products and household service products is less than 30 percent of the total annual gross receipts of such retail establishment when calculated on an individual store basis or an aggregate basis combining all retail establishments, providing that the portion of that person's retail establishment selling consumer commodities regulated herein has either a total floor area of less than 4,000 square feet or annual gross receipts not exceeding $2 million, or both.

4. Notwithstanding the provisions of (a)1, 2 and 3 above, any retail establishment, whether or not part of a series of retail establishments, which devotes less than five percent of its total floor area, exclusive of office, receiving and storage areas to the sale of consumer commodities and which derives less than five percent of its total gross receipt from the sale of consumer commodities.

Amended by R.1985 d.643, effective December 16, 1985.
See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).
Added text in (a)2 "or a series of retail establishments each."

13:45A–14.4 Regulated consumer commodities and their approved units of measure

(a) The following consumer commodities shall be considered regulated commodities. Wherever regulated commodities are exposed or offered for sale at retail, unless otherwise exempt from this subchapter, the unit price information required to be displayed shall be calculated on the basis hereinafter set forth. In each establishment, one approved unit of measure must be consistently used for the same commodity.

1. Dry units of measure shall be used for commodities sold according to net weight.

2. Liquid units of measure shall be used for commodities sold according to net weight, net contents or fluid ounces.

3. Commodities not usually measured in dry or liquid units as stated in (a)1 and 2 above shall be sold in count, or square feet, whichever is appropriate and approved.

4. The same unit of measure shall be used for all sizes of the same commodity.

(b) The following consumer commodities shall be considered regulated consumer commodities with their approved units of measure.

Commodity	Approved Unit of Measure
1. Aluminum foils, wax and plastic wraps	100 or 50 sq. ft.
2. Baby food	pint, pound, quart
3. Baking mixes and supplies, pancake mixes	pound
4. Bread and pastry products: prepackaged outside of seller's premises	pound
5. Bottle and canned beverages, carbonated and non-carbonated	quart
6. Butter and oleomargarine	pound
7. Candy (excluding 5 ounces or less)	pound
8. Canned poultry, fish and meat products	pound
9. Cocoa	pound
10. Coffee (instant and ground)	pound
11. Cereal	pound
12. Cheese	pound
13. Cold cuts; prepackaged meats and salads	pound
14. Cookies and crackers	pound
15. Condiments: ketchups, mustards, mayonnaise (including pickles, relishes, olives, etc.)	pint, quart, pound
16. Deodorants, dry, spray, and roll-on	pound, pint
17. Detergents, soap, laundry products (dry bulk, liquid)	quart, gallon, pound 100 count
18. Flour	pound
19. Fruits and vegetables: jars, cans	pound
boxes (not fresh products)	pound
20. Grains and beans	pound
21. Hair conditioners, creme rinses, shampoos (not dyes)	pound, pint
22. Household cleaners, waxes, deodorizers	pound, gallon, quart
starches, bleaches	100 count
23. Instant breakfast food	pound
24. Jellies, jams, preserves	pound
25. Juices and juice drinks, fresh, canned	quart
26. Molasses	quart, pound
27. Non-alcoholic drink mixes	quart, pound
28. Oil (cooking)	quart
29. Peanut butter	pound
30. Pet food and supplies (canned, dried, moist) limited to dog and cat food; kitty litter)	pound
31. Plastic and paper bags	100 count
32. Salad dressings	pint, quart, pound
33. Salt	pound
34. Sanitary paper products, including but not limited to napkins, facial tissues, paper towels, bathroom tissues	100 count
35. Sauces (tomato, spaghetti, meat)	pint, pound, quart
36. Seasonings and spices, flavor extracts, imitation flavorings over five ounce	ounce, pint, pound
37. Shaving cream	pound
38. Snack foods over 5 ounces	ounce, pound
39. Soups (canned, dried)	ounce, pound
40. Solid shortenings	pound
41. Spaghetti, macaroni, noodles and pasta	pound
42. Sugar	pound
43. Syrups	ounce, pound, pint, quart
44. Tea	100 count, pound
45. Toothpaste	ounce, pound

Amended by R.1985 d.643, effective December 16, 1985.
See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).
(b)36 added "pint".
Amended by R.1995 d.181, effective March 20, 1995.
See: 27 N.J.R. 302(a), 27 N.J.R. 1192(a).

13:45A–14.5 Exempt consumer commodities

(a) The following consumer commodities shall be deemed exempt consumer commodities and may be exposed or offered for sale at retail without complying with the provisions of this subchapter:

1. Medicines sold by prescription only;

2. Vitamins;

3. Beverages subject to or complying with packaging or labeling requirements imposed under the Federal Alcoholic Administration;

4. Consumer commodities required to be marked individually with the cost per unit of weight pursuant to N.J.A.C. 13:47D–4.1 et seq.;

5. Any consumer commodity offered for sale at a net quantity equal to the approved unit of measure for such commodity, provided that the retail price of the commodity is plainly marked on the commodity, or shelf molding;

6. Any consumer commodity offered for sale in one size only, and not comparable in form to any other product;

7. Any consumer commodity co-mingled with other consumer commodities for purposes of a one-price sale;

8. Any consumer commodity packaged to include more than one food product (i.e. T.V. dinner or mixed vegetables);

9. Bakery products sold in a service department which are not prepacked outside of the seller's premises;

10. Snack foods, including, but not limited to, cakes, candy, nuts, gum, chips and pretzels sold in packages weighing five ounces or less;

11. Spices, flavor extracts, imitation flavoring and boullion cubes sold in packages of five ounces or less in weight or fluid ounces;

12. Ice cream, ice milk, frozen yogurt, frozen desserts;

13. Frozen foods.

(b) Any and all consumer commodities not specifically included in those regulated consumer commodities set forth in N.J.A.C. 13:45A–14.4 shall be deemed to be exempt from the provisions of L.1975, c.242, section 3 as though specifically listed as an exempt consumer commodity under this section.

13:45A–14.6 Calculation of the numerical unit price of a regulated consumer commodity

(a) The unit price shall be calculated to the nearest cent for all regulated consumer commodities when the retail price per approved unit of measure is $1.00 or more.

(b) The unit price shall be calculated to the nearest one-tenth of one cent for all regulated consumer commodities when the retail price per approved unit of measure is less than $1.00.

(c) For the purpose of determining the nearest cent or one-tenth of one cent, any calculation of the price per unit resulting in $0.05 cents or $0.005 cents per unit shall be rounded up to the next higher cent or one-tenth of one cent. Any such calculation resulting in less than $0.05 cents or $0.005 cents per unit shall be rounded down to the next lower cent or one-tenth cent. For example:

1. $1.005 per unit shall be marked $1.01 per unit;
2. $1.004 per unit shall be marked $1.00 per unit;
3. 50.05¢ per unit shall be marked 50.1¢ per unit;
4. 50.04¢ per unit shall be marked 50.0¢ per unit;

(d) If the numerical unit price is $1.00 or more, the unit price shall appear on the unit price label, sign, list or tag, expressed as dollars per unit. If the numerical unit price is less than $1.00, the numerical unit price shall be expressed as cents per unit.

13:45A–14.7 Unit price labels approved for display

(a) Whenever this subchapter requires that a unit price label be displayed in conjunction with the exposing or offering for sale at retail of a regulated consumer commodity, a sample format of the label shall be submitted to the director for approval prior to the display of the label.

(b) In determining whether to approve the label, the Director shall be guided by the following standards:

1. The shelf label shall be divided so as to create a left and right side; individual item labels may be divided vertically or horizontally into two portions. The amount of space devoted to the unit price and the retail price portion shall be equal. The size and conspicuousness of the numerals used to disclose the retail price shall be equal to or greater than that for the unit price. Where the retail price exceeds the unit price, the type face for the unit price shall not be less than 50 percent than that of the retail price.

2. The left side or upper portion shall be known as the unit price side and shall contain the following information:

i. The term "unit price";

ii. The numerical unit price in bold figures;

iii. The approved unit of measure, including, if appropriate, the "ply" count or thickness of the regulated commodity.

3. The right side or lower portion shall be known as the retail price side and shall contain the following information:

i. The term "retail price," "you pay" or some similar term;

ii. The numerical retail price;

iii. The quantity or size of the commodity being sold, for shelf labels only.

4. A description of the commodity being sold shall appear on the unit price shelf label.

5. Additional stock or code information may appear on the unit price shelf label.

6. All letters and numbers shall be in conspicuous, bold figures and shall be clear and legible. Handwritten labels shall be legibly printed.

7. The overall design of the label shall convey all the information in a clear, readable and conspicuous fashion. Any stock or code information shall not obscure or deemphasize the consumer information appearing on the unit price label.

Amended by R.1994 d.257, effective May 16, 1994.
See: 26 N.J.R. 1306(a), 26 N.J.R. 2138(a).

13:45A–14.8 Unit price signs and unit price lists

(a) Whenever this subchapter permits a person to display a sign or list in conjunction with the exposing or offering for sale at retail of a regulated consumer commodity, a sample format of the sign or list shall be submitted to the director for approval prior to the display of the sign or list.

(b) In determining whether to approve the sign or list, the director shall be guided by the following standards:

1. The sign or list shall be divided so as to create a left and right side.

2. The left side of a sign or list shall be known as the unit price side and shall contain the following information:

i. The term "unit price";

ii. The numerical unit price;

iii. The approved unit of measure including if appropriate the "ply" count or thickness of the consumer commodity.

3. The right side shall be known as the retail price side and shall contain the following information:

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 Extension of time to comply with these regulations

On timely written application made within 90 days after final adoption of this subchapter, the director may grant additional time in which to comply with the regulations, providing good cause is shown for such an extension. In no event, however, shall an extension exceed 60 days.

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.

SUBCHAPTER 15. DISCLOSURE OF REFUND POLICY IN RETAIL ESTABLISHMENT

Authority

N.J.S.A. 56:8–4.

Source and Effective Date

R.1982 d.29, eff. February 1, 1982.
See: 13 N.J.R. 665(a), 14 N.J.R. 160(a).

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";

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.

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

Subchapter Historical Note

All provisions of this subchapter became effective April 1, 1980 as R.1980 d.111. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b). This subchapter expired April 1, 1985 and a new subchapter became effective May 20, 1985 pursuant to Executive Order No. 66(1978) as R.1985 d.255. See: 17 N.J.R. 679(a), 17 N.J.R. 1325(a). See, also, Chapter Historical note.

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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 Definitions

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

"Home improvement" means the remodeling, altering, painting, repairing, 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, aluminum 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 non-commercial property.

"Home improvement contract" means an oral or written agreement between a seller and an owner of residential or noncommercial property, or a seller 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 seller is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"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.

"Seller" 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.

Amended by R.1994 d.396, effective August 1, 1994.
See: 26 N.J.R. 1605(a), 26 N.J.R. 3183(a).

Case Notes

Residential property within scope of Consumer Fraud Act regulations. Blake Const. v. Pavlick, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Consumer Fraud Act regulation requiring home improvement contracts to be in writing was valid. Blake Const. v. Pavlick, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Home improvement contract did not comply with Consumer Fraud Act and was unenforceable. Blake Const. v. Pavlick, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Owners of property characterized as residential not liable for defective abutting sidewalk. Borges v. Hamed, 247 N.J.Super. 353, 589 A.2d 199 (L.1990), affirmed 247 N.J.Super. 295, 589 A.2d 169.

13:45A–16.2 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., utilization by a seller of the following acts and practices involving the sale, attempted sale, or performance of home improvements shall be unlawful thereunder:

1. Model home representations: Misrepresent or falsely state to a prospective buyer that the buyer's residential or noncommercial property is to serve as a "model" or "advertising job", or use any other prospective buyer lure to mislead the buyer into believing that a price reduction or other compensation will be received by reason of such representations;

2. Product and material representations: Misrepresent directly or by implication that products or materials to be used in the home improvement:

i. Need no periodic repainting, finishing, maintenance or other service;

ii. Are of a specific or well-known brand name, or are produced by a specific manufacturer or exclusively distributed by the seller;

iii. Are of a specific size, weight, grade or quality, or possess any other distinguishing characteristics or features;

iv. Perform certain functions or substitute for, or are equal in performance to, other products or materials;

v. Meet or exceed municipal, state, federal, or other applicable standards or requirements;

vi. Are approved or recommended by any governmental agency, person, firm or organization, or that they are the users of such products or materials;

vii. Are of sufficient size, capacity, character or nature to do the job expected or represented;

viii. Are or will be custom-built or specially designed for the needs of the buyer; or

ix. May be serviced or repaired within the buyer's immediate trade area, or be maintained with replacement and repair parts which are readily available.

3. Bait selling:

i. Offer or represent specific products or materials as being for sale, where the purpose or effect of the offer or representation is not to sell as represented but to bait or entice the buyer into the purchase of other or higher priced substitute products or materials;

ii. Disparage, degrade or otherwise discourage the purchase of products or materials offered or represented by the seller as being for sale, by statements or representations in conflict with other claims or representations made with respect to such products and materials, to induce the buyer to purchase other or higher priced substitute products or materials;

iii. Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale;

iv. Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home improvements by sample, illustration or model, without the knowledge or consent of the buyer;

v. Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands; or

vi. Misrepresent that certain products or materials are unavailable or that there will be a long delay in their manufacture, delivery, service or installation in order to induce a buyer to purchase other or higher priced substitute products or materials from the seller.

4. Identity of seller:

i. Deceptively gain entry into the prospective buyer's home or onto the buyer's property under the guise of any governmental or public utility inspection, or otherwise misrepresent that the seller has any official right, duty or authority to conduct an inspection;

ii. Misrepresent that the seller is an employee, officer or representative of a manufacturer, importer or any other person, firm or organization, or a member of any trade association, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract; or

iii. Misrepresent the status, authority or position of the sales representative in the organization he represents.

5. Gift offers:

i. Offer or advertise any gift, free item or bonus without fully disclosing the terms or conditions of the offer, including expiration date of the offer and when the gift, free item or bonus will be given; or

ii. Fail to comply with the terms of such offer.

6. Price and financing:

i. Misrepresent to a prospective buyer that an introductory, confidential, close-out, going out of business, factory, wholesale, or any other special price or discount is being given, or that any other concession is made because of materials left over from another job, a market survey or test, or any other reason;

ii. Misrepresent that any person, firm or organization, whether or not connected with the seller, is especially interested in seeing that the prospective buyer gets a bargain, special price, discount or any other benefit or concession;

iii. Misrepresent or mislead the prospective buyer into believing that insurance or some other form of protection will be furnished to relieve the buyer from obligations under the contract if the buyer becomes ill, dies or is unable to make payments;

iv. Misrepresent or mislead the buyer into believing that no obligation will be incurred because of the signing of any document, or that the buyer will be relieved of some or all obligations under the contract by the signing of any documents;

v. Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract;

vi. Misrepresent or fail to disclose that the offered or contract price does not include delivery or installation, or that other requirements must be fulfilled by the buyer as a condition to the performance of labor, services, or the furnishing of products or materials at the offered or contract price;

vii. Mislead the prospective buyer into believing that the down payment or any other sum constitutes the full amount the buyer will be obligated to pay;

viii. Misrepresent or fail to disclose that the offered or contract price does not include all financing charges, interest service charges, credit investigation costs, building or installation permit fees, or other obligations, charges, cost or fees to be paid by the buyer;

ix. Advise or induce the buyer to inflate the value of the buyer's property or assets, or to misrepresent or falsify the buyer's true financial position in order to obtain credit; or

x. Increase or falsify the contract price, or induce the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit.

7. Performance:

i. Deliver materials, begin work, or use any similar tactic to unduly pressure the buyer into a home improvement contract, or make any claim or assertion that a binding contract has been agreed upon where no final agreement or understanding exists;

ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

8. Competitors:

i. Misrepresent that the work of a competitor was performed by the seller;

ii. Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor; or

iii. Use or imitate the trademarks, trade names, labels or other distinctive marks of a competitor.

9. Sales representations:

i. Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veterans' organization, or misrepresent the extent of such aid or assistance;

ii. Knowingly fail to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading; or

iii. Misrepresent that the customer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement.

10. Building permits:

i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances; or

ii. Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer by the seller when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

11. Guarantees or warranties:

i. The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time the seller presents his bid as well as at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

12. Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of $100.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to the following:

i. 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;

ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a description of such products or materials shall be clearly set forth in the contract;

iii. The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials, the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated;

iv. The dates or time period on or within which the work is to begin and be completed by the seller;

v. A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement; and

vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

13. Disclosures and obligations concerning preservation of buyers' claims and defenses:

i. If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer;

ii. No home improvement contract shall require or entail the execution of any note, unless such note shall have conspicuously printed thereon the disclosures required by either State law (N.J.S.A. 17:16C–64.2 (consumer note)) or Federal law (16 C.F.R. section 433.2) concerning the preservation of buyers' claims and defenses.

Petition for Rulemaking: Denied.
See: 21 N.J.R. 3565(b).
Amended by R.1990 d.125, effective February 20, 1990.
See: 21 N.J.R. 3433(b), 22 N.J.R. 662(d).
Threshold amount at (a)12. changed from $25.00 to $100.00.

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Consumer Fraud Act—Attorneys' Fees. Steven P. Bann, 138 N.J.L.J. No. 3, 45 (1994).

Case Notes

"Unlawful," within meaning of Consumer Fraud Act; no person misled or deceived. Cox v. Sears Roebuck & Co., 138 N.J. 2, 647 A.2d 454 (1994).

Merchant who agreed to perform home improvement work on residence engaged in "unlawful acts". Cox v. Sears Roebuck & Co., 138 N.J. 2, 647 A.2d 454 (1994).

Violation of specific regulation; strict liability. Cox v. Sears Roebuck & Co., 138 N.J. 2, 647 A.2d 454 (1994).

Homeowner sustained "ascertainable loss" within meaning of the Consumer Fraud Act. Cox v. Sears Roebuck & Co., 138 N.J. 2, 647 A.2d 454 (1994).

Property was residential in character under Consumer Fraud Act, even though part was used as a tavern and liquor store. Blake Const. v. Pavlick, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Regulations did not exceed Consumer Fraud Act authority. Blake Const. v. Pavlick, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Home improvement contract did not comply with Consumer Fraud Act and was enforceable. Blake Const. v. Pavlick, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

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. (RESERVED)

Subchapter Historical Note

Pursuant to N.J.S.A. 45:17A–15, 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 17 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 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 contracts, 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

Authority

N.J.S.A. 52:17B–122a.

Source and Effective Date

R.1990 d.371, effective August 6, 1990.
See: 22 N.J.R. 786(a), 22 N.J.R. 2331(c).

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, 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 proposed text of the new 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).

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

Authority

N.J.S.A. 56:8–36.

Source and Effective Date

R.1984 d.196, effective May 21, 1984.
See: 16 N.J.R. 417(a), 16 N.J.R. 1281(b).

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.

"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 agent" means any person who is involved in the business of selling or reselling of admission to places of entertainment who charges a premium in excess of the price, plus taxes, printed on the tickets.

13:45A–20.2 Licensure

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

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

(c) An application for licensure 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 licensee shall file a new and additional bond in the sum of $10,000 consistent with provisions of P.L. 1983, Chapters 135 and 220 within 30 days of the commencement of a suit to recover on the bond.

4. Any failure by the licensee to file such a new and additional bond within such period shall constitute cause

for the revocation of the license previously issued to the licensee.

(d) The Director shall afford an applicant who has been rejected for licensure, 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 license:

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.

13:45A–20.3 Fees: new or renewal license

(a) An application for a new or renewal license, 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 licensee for a copy of the license 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.

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 Places of business

(a) A licensee shall maintain a bona fide place of business within the State of New Jersey.

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 licensee 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 licensee shall request the prior approval of the Director for any change in the business address.

(d) A license shall not be transferred nor assigned.

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

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

13:45A–20.5 Sale or exchange

(a) A licensee shall not acquire tickets for a place for entertainment from any person other than the owner of a place of entertainment or another licensee.

(b) A licensee shall not sell or exchange any ticket for entry to a place of entertainment without first impressing his sale or exchange stamp clearly showing the license 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 should bear the stamp of every licensee engaged in its sale or exchange.

(c) A place of entertainment 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 therefore.

(d) 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 shall be printed either in a dollar amount or as a formula 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 after the effective date of the regulations.

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

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

(g) Any buyer who pays any monies towards the purchase of ticket and fails to receive the promised ticket on the promised delivery date shall be given notification by the licensee 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.

(h) A licensee 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.

13:45A–20.6 Records

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

(b) Records of a licensee shall clearly set forth:

1. The prices which all tickets have been bought and sold by the licensee.

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

(c) Records of a licensee 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 licensee 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 licensee'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 licensee shall include a sales journal which reflects a record of daily sales.

(e) Records set forth in this subchapter shall be made available for inspection by the Division at any reasonable time and upon reasonable notice.

13:45A–20.7 Advertising

(a) A licensee shall not attempt in any advertisement or 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 licensee shall clearly and conspicuously disclose his license number in any public advertisement or advertising material.

(c) Advertising for any event 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.

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

Authority

N.J.S.A. 56:8–4.

Source and Effective Date

R.1994 d.204, effective April 18, 1994.
See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Subchapter Historical Note

Subchapter 21, originally 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). Amendments were adopted as R.1984 d.402, effective September 4, 1984. See: 16 N.J.R. 1696(a), 16 N.J.R. 2371(a). Subchapter 21 was repealed and new rules regarding "the Sale of Kosher Products" were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.433, effective September 4, 1990, and R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 1439(a), 22 N.J.R. 2747(c); 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Subchapter 21 was repealed and new rules were adopted as R.1994 d.204. See: Source and Effective Date.

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, 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, 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, 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, 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, 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, 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, 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, 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 ribcage 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 ribcage 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 thereafter 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, 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, 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", "Glatt" 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, 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, 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. (RESERVED)

Subchapter Historical Note

Subchapter 22, formerly 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 pursuant to N.J.S.A. 56:8–4 as R.1985 d.407, effective August 5, 1985. See: 17 N.J.R. 1241(a), 17 N.J.R. 1901(b). Subchapter 21 was repealed and new rules on the subject were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Chapter 21 was repealed by R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

SUBCHAPTER 23. DECEPTIVE PRACTICES CONCERNING WATERCRAFT REPAIR

Authority

N.J.S.A. 56:8–1 et seq., specifically 56:8–4.

Source and Effective Date

R.1985 d.306, effective June 17, 1985.
See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

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

Authority

N.J.S.A. 52:17B–124.1, 56:8–52(b) and 39:4–14.7(a).

Source and Effective Date

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).

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) 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 or handlebars 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 the Prevention of
Developmental Disabilities
985 Livingston Avenue
North Brunswick, New Jersey 08902
Tel. (908) 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 and is printed in boldface capital letters, in color contrasting with the background. The tag or notice shall be made of cardboard or durable paper and shall be no smaller than four inches by six inches; 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.

SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

Authority

P.L. 1987, c.238 (N.J.S.A. 56:8–39 et seq., specifically 56:8–48).

Source and Effective Date

R.1988 d.520, effective November 7, 1988.
See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

Historical Note

All provisions of this subchapter became effective pursuant to Authority of P.L. 1987 c.238 (N.J.S.A. 56:8–4) on January 4, 1988 d.23.

See: 19 N.J.R. 1967(a), 20 N.J.R. 103(a). The subchapter was repealed and new rules adopted effective November 7, 1988 as R.1988 d.520. See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

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", "weekdays", "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 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.

SUBCHAPTER 26. AUTOMOTIVE DISPUTE RESOLUTION

Authority

P.L. 1988 c.123, § 21.

Source and Effective Date

R.1989 d.65, effective February 6, 1989.
See: 20 N.J.R. 2681(b), 21 N.J.R. 339(b).

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 cars 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).

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.

"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.

"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 18,000 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).

Case Notes

Vehicle nonconformity; proof. Kuhn v. Mercedes–Benz of North America, Inc., 94 N.J.A.R.2d (CMA) 101.

Lemon law claim had to be brought before 18,000 miles. Ortenau v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 98.

Failure to prove that vehicle had substantial impairment. Mayurnik v. Chrysler Corporation, 94 N.J.A.R.2d (CMA) 96.

Failure to prove defect. Krieg v. American Isuzu Motors, 94 N.J.A.R.2d (CMA) 91.

Squealing breaks not a defect. Kaufman v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 89.

Failure to prove nonconformity. Wilkinson v. Chrysler Motor Corp., 94 N.J.A.R.2d (CMA) 87.

Pulsing upon braking was not a defect; antilock brakes. Candeias v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 85.

Relief under Lemon Law; problems continued after vehicle was repaired over period of several visits. Gehringer v. Volkswagen United States, Inc., 94 N.J.A.R.2d (CMA) 78.

Failure to afford manufacturer final opportunity to repair. Simmons–Dixon v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 74.

Failure to prove that intermittent hard shifting constituted nonconformity. Thornton v. Mercedes–Benz of North America, 94 N.J.A.R.2d (CMA) 73.

No nonconformity; car's condition was remedied on fifth repair. Pajaro v. Hyundiu Motor America, 94 N.J.A.R.2d (CMA) 69.

Failure to prove that brake chatter was nonconformity. Hoe v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 67.

Inability to repair nonconformity within a reasonable time. Shin v. Mitsubishi Motor Sales of America, Inc., 94 N.J.A.R.2d (CMA) 63.

Failure to show that problems were attributable to defect in starter. Velez v. General Motors Corporation, 94 N.J.A.R.2d (CMA) 59.

Rumble and vibration of transmission at certain speeds did not constitute nonconformity. Hurff v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 55.

Testimony refuted claim of substantial impairment affecting the use and safety of the vehicle. Valentin v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 53.

Manufacturer failed to correct faulty brake system and overcharged keyless entry system; defects substantially interfered with the safety and enjoyment. Kolody v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 52.

Failure of seat belts to buckle and rear air conditioning to perform; Lemon Law. McGlynn v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 47.

Engine noise; substantial impairment in value, use, or safety of vehicle. Esposito v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 42.

Automatic cutoff of air conditioner; no substantial impairment in value, use, or safety of vehicle. Casey v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 40.

Engine noise; substantial impairment of use, value, or safety of vehicle. Collado v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 39.

Transmission problem; no substantial impairment of substantial impairment of use, value, or safety of vehicle. Collura v. General Motors Corporation, 94 N.J.A.R.2d (CMA) 35.

Leaking transmission; substantial impairment of the use, value, or safety of vehicle. Parker v. Subaru of America, 94 N.J.A.R.2d (CMA) 33.

Engine and radio noise; no substantial impairment of use, value, or safety of vehicle. Smith v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 31.

Insufficient evidence; transmission defect. Shook v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 26.

Value, use and safety unimpaired and owner failed to complain after repairs. Zwerin v. Ford Motor Corporation, 94 N.J.A.r.2d (CMA) 24.

Insufficient evidence; brake, steering and paint defects. Geller v. Mitsubishi Motor Sales of Amenia, Inc., 94 N.J.A.R.2d (CMA) 23.

Loss of engine oil was substantial defect affecting use of vehicle. Schoppmann v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 16.

Fog light failure not a substantial defect or nonconformity. Terkovich v. Mercedes Benz of North American, Inc., 94 N.J.A.R.2d (CMA) 13.

Claim of transmission problem not substantiated. Barton v. Ford Motor Company, Inc. 94 N.J.A.R.2d (CMA) 11.

Petitioner failed to meet burden of proof required for Lemon Law relief. Dachisen v. American Honda Motor Company, Inc., 94 N.J.A.R.2d (CMA) 4.

Automobile's air conditioning design was not a defect which substantially impaired use or value of vehicle. Sanchez v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 3.

Complaint of car's vibrations or jerkiness at slow speeds failed to meet the requirement for a Lemon Law claim. Reaves v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 1.

Fogging condition on car's windows constituted a safety hazard entitling car's purchaser to refund of the purchase price. Federico v. Mitsubishi Motor Sales of America, 93 N.J.A.R.2d (CMA) 148.

Defective power steering belt entitled owner to full restitution. Pelle v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 145.

Alleged excess oil consumption was not substantial nonconformity that impaired the use, value or safety of the petitioner's vehicle. Doyle v. American Suzuki Motor Corp., 93 N.J.A.R.2d (CMA) 142.

A consumer was not entitled to relief under New Jersey Lemon Law where the consumer failed to present evidence that misalignment in dashboard affected use, safety and value of vehicle. Cascetti v. Chevrolet Motor Division—GM, 93 N.J.A.R.2d (CMA) 138.

Claimant could not recover absent presence of actual defects. Schulke v. Chrysler Motor Corp., 93 N.J.A.R.2d (CMA) 137.

No recovery under the Lemon Law; normal wind noise. N.J.S.A. 56:12–29 et seq. Peritz v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 83.

Odor rendered automobile nonconforming and unsafe. N.J.S.A. 56:12–30. Gerson v. BMW of North America, Inc., 93 N.J.A.R.2d (CMA) 80.

Noise did not substantially impair the value. N.J.S.A. 56:12–29 et seq. Wasserman v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 78.

There was failure to prove alleged transmission defects. N.J.S.A. 56:12–29 et seq. Gall v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 76.

Failure to show that the vehicle had defects that were not repaired. N.J.S.A. 56:12–29 et seq. Bartoli v. Mazda Motor of America, Inc., 93 N.J.A.R.2d (CMA) 74.

Maintaining Lemon Law claim against manufacturer for dealer's neglect repair even though repainted auto hood was not nonconformity. N.J.S.A. 56:12–31. Anderson v. American Honda Motor Co., Inc., 93 N.J.A.R.2d (CMA) 71.

Clicking noise and difficulty of engagement of brake constituted an impairment in use, value and safety of vehicle. Batista v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 41.

Vehicle drift did not substantially impair use, safety or value of vehicle. Grillo v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 39.

Sulphurous odor preventing use of heater and air conditioner was a substantial impairment. Edwards v. Mitsubishi Motor Sales of America, Inc., 93 N.J.A.R.2d (CMA) 37.

Ability to shift gears without difficulty and never having been towed did not show transmission problems impairing the use, value or safety of vehicle for a claim under the Lemon Law. Millar v. Chrysler Corporation, 93 N.J.A.R.2d (CMA) 34.

Air leak and whistling noise in door did not constitute a nonconformity. Kozma v. Chrysler Motor Corp., 93 N.J.A.R.2d (CMA) 28.

Vibration not shown to have impact on the use, value or safety of the vehicle. Villagomez v. Toyota Motor Sales, U.S.A., Inc., 93 N.J.A.R.2d (CMA) 31.

Vehicle drift was not substantial impairment in use, safety or value under provisions of Lemon Law. McConnell v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 27.

Foreign substances which caused the engine to seize substantially impaired the use, value or safety of the vehicle due to abuse, but was not caused by the dealer or manufacturer. Booker v. Hyundai Motor America, 93 N.J.A.R.2d (CMA) 25.

Brakes which squeal or grind do not rise to the level of nonconformity under the Lemon Law. Tirre v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 21.

Veering on brake application substantially impaired use, value and safety of the vehicle. Montesian v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 19.

Uncorrected shimmying constituted substantial impairment. Umbach v. Volkswagen of America, 93 N.J.A.R.2d (CMA) 11.

Claim under Lemon Law for failure of rear defroster to work dismissed. Singh v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 7.

Slight rightward drift of minivan did not impair the safety, use or value of vehicle so as to entitle owner to relief under Lemon Law. Thompson v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 5.

Leak was not substantial and did not entitle owner to relief under Lemon Law. Drayton v. Sterling Motor Cars, 93 N.J.A.R.2d (CMA) 3.

Transmission problems of stalls and lost power substantially impaired the safety of the vehicle. Bello v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 208.

No defect which constituted a nonconformity under the Lemon Law existed in a car that pulled to the right and drifted to left. Dente v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 204.

Evidence that vibration and involuntary downshifting substantially impaired the use, value or safety of the vehicle demonstrated no claim was available under the Lemon Law. Manzi v. BMW of North America, Inc., 92 N.J.A.R.2d (CMA) 195.

Rough idle and rattle was not impairment in use, value and safety as to constitute a nonconforming vehicle. Scanlon v. Volkswagen of America, Inc., 92 N.J.A.R.2d (CMA) 190.

Excessive bounciness and swaying and creaking noises did not constitute nonconformity. Ostrovsky v. Toyota Motor Sales, 92 N.J.A.R.2d (CMA) 187.

Sudden excessive revving was defect or nonconformity which substantially impaired use, safety or value of vehicle. Bertucci v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 185.

Stalling and electrical failures interfered with reasonable enjoyment and safe operation of vehicle entitling owner to relief under Lemon Law. Baccigalupi v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 182.

Oil pump rotor damage and consequences following oil changes by owner was substantial defect for which neither the dealer nor the manufacturer was liable under the Lemon Law. Purcell v. Kawasaki Motors Corporation, U.S.A., 92 N.J.A.R.2d (CMA) 177.

Rattles did not use to a level for which Lemon Law relief was appropriate. George v. Acura Div.–American Honda Motor Co., Inc., 92 N.J.A.R.2d (CMA) 175.

Vehicle pulling and vibrating was substantially impaired in use, value and safety. Kaufman v. Mercedes–Benz of North America, 92 N.J.A.R.2d (CMA) 171.

Rough engine idle was not substantial impairment. Wilson v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 169.

Emission of odor and low gasoline mileage constituted substantial impairment. Ryan v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 165.

Vehicle pulling sideways at least three feet within a 60 foot stop entitled the owner to relief under the Lemon Law. Cranston v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 160.

Vehicle contained fuel pump defect which constituted a nonconformity. Stanford v. Toyota Motor Sales, U.S.A., Inc., 92 N.J.A.R.2d (CMA) 155.

Failure of anti-lock brake system constituted a nonconformity. Slusarczuk v. Chrysler Corporation, 92 N.J.A.R.2d (CMA) 151.

Neither squealing noise nor a "popping" noise constituted a condition which substantially impaired the use, safety or value of the vehicle. Kuras v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 149.

Pulsating/knocking noise would not impair the safety or use of vehicle. Ruff v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 147.

Steering mechanism had design defect substantially impairing the value of the vehicle. Watkins v. Chevrolet Motor Division, General Motors Corporation, 92 N.J.A.R.2d (CMA) 144.

Nonconformity as defined in the Lemon Law existed in vehicle with steering problems. Shannon v. Buick Motor Division, General Motors Corporation, 92 N.J.A.R.2d (CMA) 142.

Proof failed to establish veering of vehicle on sudden braking. Breitman v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 140.

Failure of judge to hear noise on a test drive and continued driving of the vehicle after report of problem indicated that nonconformity did not exist. Compolo v. Chrysler Corporation, 92 N.J.A.R.2d (CMA) 138.

Continued repair efforts did not prove nonconformity of the vehicle under the Lemon Law. Bennett v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 137.

Clanging, rumbling and vibration in the drive shaft substantially affected the use of sports utility vehicle and entitled the purchaser to relief under Lemon Law. Ward v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 133.

Continuing tire air loss constituted a nonconformity which entitled owner of vehicle right to restitution under Lemon Law. McCarthy v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 132.

Smell from the air conditioning and wind noise from the windows was not substantial impairment of the use of the vehicle. Galvano v. American Honda Motor Co., Inc., 92 N.J.A.R.2d (CMA) 130.

Rattle was not a substantial impairment of the value of the car. Hirschorn v. Acura Division–American Honda Motor Co., Inc., 92 N.J.A.R.2d (CMA) 129.

Leak was a nonconformity under the Lemon Law. Black v. Volvo North America Corporation, 92 N.J.A.R.2d (CMA) 123.

Vibration due to transmission with a lock-up torque converter was not nonconformity within the Lemon Law. Gentile v. Chevrolet Motor Division, General Motors Corporation, 92 N.J.A.R.2d (CMA) 120.

Vehicle contained a defect which constituted a nonconformity which impaired the use, safety and value of the vehicle. Berrie v. Toyota Motor Sales, U.S.A., Inc., 92 N.J.A.R.2d (CMA) 117 affirmed 267 N.J. Super. 152.

Leak was a nonconformity which substantially impaired the value of the vehicle. Cappuccio v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 114.

Intermittent rattle and claimed vibration in the steering column failed to establish right to relief under the Lemon Law. Longa v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 111.

Finish of car did not constitute a nonconformity within the Lemon Law. Rottenberg v. Volkswagen of America, Inc., 92 N.J.A.R.2d (CMA) 109.

Squeaking brakes substantially impaired vehicle use, value or safety, and entitled owner to full restitution. Pardo v. Chevrolet Motor Division, 92 N.J.A.R.2d (CMA) 105.

Corrected nonconformity of exterior paint of car was not basis for relief under the Lemon Law. Ferrara v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 93.

Transmission slippage was not a sufficient defect to constitute a nonconformity under the Lemon Law. Roe v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 91.

Repair of rattle negated any claim for nonconformity under the Lemon Law. Pagano v. General Motors Corporation, 92 N.J.A.R.2d (CMA) 87.

Transmission defects caused by impact of external force, and results of repair and/or maintenance not authorized by the manufacturer, did not allow the owner the right of recovery under the Lemon Law. Lugo v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 84.

Uncorrectable water leak constituted a substantial impairment of value which allowed the owner to relief under the Lemon Law. Pak v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 80.

Vehicle noisier than the owner desired, and without the gas mileage which the owner expected, was not so defective as to constitute a nonconformity. Frison v. Toyota Motor Sales, U.S.A., 92 N.J.A.R.2d (CMA) 75.

Noises were not nonconformity which would impair use, value or safety of vehicle. Dogra v. Mitsubishi Motor Sales of America, Inc., 92 N.J.A.R.2d (CMA) 73.

Transmission slippage and whining and clanking did not constitute a condition or defect which substantially impaired the use, value or safety of the vehicle. Valentini v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 70.

Transmission with design defect entitled owner to restitution under the Lemon Law. Mills v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 68.

Failure of the headlights and wipers entitled the owner to relief under the Lemon Law. Marley v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 62.

Engine noise did not constitute a nonconformity. Spadavecchia v. Toyota Motor Corporation, 92 N.J.A.R.2d (CMA) 59.

Leaks of water into the passenger compartment and engine starting defect constituted a nonconformity under the Lemon Law. Hartzell v. Porsche Cars North America, Inc., 92 N.J.A.R.2d (CMA) 55.

Grinding and noisy brakes demonstrated a nonconformity which substantially impaired the use, safety and value of the vehicle. Davis v. Mazda Motor of America, 92 N.J.A.R.2d (CMA) 53.

Racing of engine failed to establish a nonconformity under the Lemon Law. Quairoli v. Chrysler Motor Corporation, Inc., 92 N.J.A.R.2d (CMA) 51.

Screeching brakes did not substantially impair use, value or safety of vehicle. Friedberg v. Volvo Cars of North America, 92 N.J.A.R.2d (CMA) 47.

Vehicle was not subject to the defect of a "body boom", but was the normal condition for the vehicle as modified, and did not constitute a nonconformity under the Lemon Law. Palamara v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 45.

Neither rattling noise, ignition switch problem, nor misalignment of the steering wheel constituted a nonconformity under Lemon Law. Kochie v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 39.

Transmission problems constituted a nonconformity which substantially impaired the use, safety or value of the vehicle and entitled the purchaser to restitution. Caprio v. American Honda Motor Company, Inc., 92 N.J.A.R.2d (CMA) 36.

Transmission problem was nonconformity which substantially impaired the use, safety or value of the vehicle and entitled the buyer to full restitution. Hopke v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 33.

Transmission and other claimed defects did not establish the existence of a bona fide defect or condition substantially impairing the use, value or safety. Deitelbaum v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 30.

Acid rain damage is not covered by Lemon Law. Mavuro v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 26.

Transmission drag did not rise to the level of a substantial impairment to the use, safety, or market value of the vehicle. Boyd v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 24.

Stalling for no apparent reason was not substantial impairment in use, value and safety within the statutory standard for relief under the Lemon Law. Cortes v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 23.

No sufficient evidence that a defect or nonconformity which affected its use, safety or value existed. Trifun v. World–Wide Volkswagen Corp., 92 N.J.A.R.2d (CMA) 20.

Absence of testimony to the effect on value or safe use made a claim under the Lemon Law unavailable. Rosko v. General Motors Corporation, 92 N.J.A.R.2d (CMA) 18.

Clicking noise was not a substantial impairment under the Lemon Law. Greenbaum v. Ford Motor Co., 92 N.J.A.R.2d (CMA) 16.

Unauthorized modification or alteration did not constitute a "nonconformity" within the Lemon Law. Mount v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 13.

Unsuccessful repair entitled the owner to a claim under the Lemon Law. Quinton v. GMC Truck, D.M.A.C. Operation, 92 N.J.A.R.2d (CMA) 5.

Convertible having water leak was not "nonconformity" under the Lemon Law. Chudzinksi v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 1.

Rattle and rumbling noise did not cause motor vehicle to be a "nonconformity" under the Lemon Law. Stewart v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 1.

Evidence was insufficient to find that motor vehicle had any unusual vibration. N.J.S.A. 56:12–30, 56:12–31, 56:12–32, 56:12–40, 56:12–33. Nolin v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 19.

Automobile used excessive amounts of oil; nonconformity which substantially impaired its safety, use, and value. N.J.S.A. 56:12–29, 56:12–30, 56:12–31, 56:12–32, 56:12–34, 56:12–42. Antunes v. Mitsubishi Motor Sales of America, Inc., 91 N.J.A.R.2d (CMA) 14.

Rattle in wheels presented a safety hazard with respect to use of the vehicle. N.J.S.A. 13:45A–26.11, 56:12–29 et seq., 56:12–33. Sager v. Nissan Motor Corp., 91 N.J.A.R.2d (CMA) 11.

Humming and vibrations substantially impaired use and value of the vehicle under the Lemon Law. N.J.S.A. 56:12–29 et seq. Zuelch v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 7.

Gear noise was not defect. N.J.S.A. 56:12–29 et seq., 56:12–30. Weaver v. Hyundai Motor America, 91 N.J.A.R.2d (CMA) 6.

Overheated engine and loss of fluids, malfunctioning air conditioning system, and smell of exhaust fumes inside car, did not justify refund of purchase price. N.J.S.A. 56:12–29 et seq., 56:12–31. Gilliard v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 4.

Excessive vibration was not a defect. N.J.S.A. 56:12–29 et seq. McClintock v. Chrysler Motor Corp., 91 N.J.A.R.2d (CMA) 2.

Pick-up was not a passenger vehicle under the state Lemon Law. N.J.S.A. 39:1–1, 56:12–29 et seq. Hund v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 1.

13:45A–26.3 Statements to consumer; other notices

(a) At the time of purchase or lease of a motor vehicle in the State of New Jersey, the manufacturer, through its dealer or lessor, shall provide the following written statement directly to the consumer on a separate piece of paper, in 10–point bold-face type:

> "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER NEW JERSEY LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS. FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT POST OFFICE BOX 45026, 124 HALSEY STREET, NEWARK, NEW JERSEY 07101, TEL. NO. (201) 504–6226."

The manufacturer, through its dealer or lessor, shall maintain a record substantiating compliance with this section and shall make the record available to the Division upon request.

(b) If a motor vehicle is returned to the manufacturer under the provisions of the Lemon Law or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, the motor vehicle shall not be resold or released in New Jersey unless the following steps are taken:

1. Immediately upon receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall cause the words "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING" to be clearly and conspicuously stamped on the face of the original certificate of title, the manufacturer's statement of origin, or other evidence of ownership.

2. Within 10 days of receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall submit a copy of the stamped document to the Special Title Section of the Division of Motor Vehicles to indicate that title to the vehicle shall be permanently branded.

3. The manufacturer shall provide to the dealer or lessor, and the dealer or lessor shall provide to the consumer prior to the resale or release of the motor vehicle a copy for the consumer's records of the following statement on a separate piece of paper, in 10–point boldface type:

> NOTICE OF NONCONFORMITY
>
> "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S WARRANTY AND THE NONCONFORMITY WAS NOT CORRECTED

WITHIN A REASONABLE TIME AS PROVIDED BY LAW."

(This notice is required under the New Jersey "Lemon Law", N.J.S.A. 56:12–1 et seq., for vehicles that have been replaced or repurchased by the manufacturer as the result of any one of the following: a court judgment, or a final decision pursuant to a hearing or settlement by the Office of Administrative Law, or an arbitration proceeding between the manufacturer or its agent and a consumer.)

4. Upon delivery to the consumer of the statement in (b)3 above the dealer or lessor shall obtain from the consumer a signed receipt, on a separate sheet of paper, which shall state the following, in underlined 10–point boldface type:

"I ACKNOWLEDGE RECEIPT OF NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____ AS REQUIRED BY N.J.S.A. 56:12–35 (THE 'LEMON LAW')."

Alternatively, the dealer or lessor may fulfill this requirement by making the following notation in underlined boldface type on the front page of the vehicle buyer order form or the lease form:

"NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____, HAS BEEN PROVIDED TO THE PURCHASER OR LESSEE, AS REQUIRED BY N.J.S.A. 56:12–35 (THE 'LEMON LAW')."

5. The manufacturer, dealer or lessor shall notify the Special Title Section of the Division of Motor Vehicles of the resale or release of the vehicle by requesting transfer of the branded title to the new owner or lessor, in writing.

(c) Each time a consumer's motor vehicle is returned from being examined or repaired during the term of protection, the manufacturer through its dealer shall provide to the consumer an itemized, legible statement of repair which indicates any diagnosis made and all work performed on the vehicle; the statement of repair should provide information including, but not limited to:

1. A general description of the problem reported by the consumer or an identification of the problem reported by the consumer or an identification of the defect or condition;

2. The amount charged for parts and the amount charged for labor, if paid by the consumer;

3. The date and the odometer reading when the vehicle was submitted for repair; and

4. The date and the odometer reading when the vehicle was made available to the consumer.

(d) Failure to comply with the provisions of this section shall be a violation of the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq.

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).

13:45A–26.4 Lemon Law Unit

(a) There is established within the Division of Consumer Affairs a section processing Lemon Law matters, to be known as the Lemon Law Unit (LLU).

(b) The Lemon Law Unit shall upon request provide consumers with a brochure setting forth:

1. Information regarding a consumer's rights and remedies under the relevant law; and

2. The procedure to be followed in order to participate in the various dispute resolution systems.

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law 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, 124 Halsey Street
Newark, New Jersey 07101
Telephone (201) 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).

13:45A–26.5 Preliminary steps

(a) To initiate a claim under the Lemon Law, written notification of the potential claim must be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if either of the following occurs during the first 18,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

1. Substantially the same nonconformity has been subject to repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist; or

2. The motor vehicle has been 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, and a nonconformity continues to exist.

(b) The manufacturer by law has one more opportunity to repair or correct the nonconformity within 10 days following receipt of notification from the consumer of a potential claim; 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 criteria necessary to pursue a Lemon Law claim have been met. The consumer may then:

1. Refer the matter to the manufacturer for resolution through the manufacturer's informal dispute settlement procedure;

2. Refer the matter to the LLU for dispute resolution; or

3. File an action in the Superior Court. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Lemon Law shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

Case Notes

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 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);

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; and

6. 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, if the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A–26.10(f).

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) Within 10 days after the effective date of this subchapter, each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit, the name, address, and telephone 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 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 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.

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

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 DMV. 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).

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 Manufacturers' informal dispute resolution procedures

(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 within 30 days after the effective date of this subchapter:

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; and

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.

(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).

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 initial index and statistical record of compliance shall be made available to the public on July 1, 1990 and every six months thereafter.