

CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION
OF CONSUMER AFFAIRS

Authority

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

Source and Effective Date

R.1995 d.618, effective November 6, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Executive Order No. 66(1978) Expiration Date

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, expires on November 6, 2000.

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).

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 Subchapter 2 was repealed and new rules adopted effective August 17, 1987 as R.1987 d.341.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 Subchapter 2 was repealed and new rules adopted effective May 15, 1989 as R.1989 d.253.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).

Subchapter 3 was adopted as new rules, filed June 22, 1973, by R.1973 d.169, effective January 1, 1974. See: 5 N.J.R. 154(a), 5 N.J.R. 239(b).

Subchapter 4 was adopted as new rules, filed August 10, 1973, by R.1973 d.222, effective August 15, 1973. See: 5 N.J.R. 229(d), 5 N.J.R. 317(c).

Subchapter 5 was adopted as new rules, filed September 14, 1973, by R.1973 d.262, effective January 1, 1974.

Subchapter 6 was adopted as new rules by R.1979 d.392, effective October 1, 1979. See: 11 N.J.R. 386(a), 11 N.J.R. 580(e). Subchapter 6 was readopted as R.1984 d.526, filed October 24, 1984. See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a).

Subchapter 7 was adopted as new rules by R.1973 d.307, effective January 1, 1974. See: 5 N.J.R. 351(b), 5 N.J.R. 390(b). Subchapter 7 was readopted as R.1984 d.527, filed October 24, 1984. See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b).

Subchapter 8 was adopted as new rules, filed October 26, 1973, by R.1973 d.309, effective December 1, 1973. See: 5 N.J.R. 354(a), 5 N.J.R. 390(e).

Subchapter 9 was adopted as new rules, filed January 21, 1974, by R.1974 d.15, effective March 1, 1974. See: 5 N.J.R. 422(a), 6 N.J.R. 82(b). Amendments were adopted by R.1980 d.200, effective May 6, 1980. See: 12 N.J.R. 45(a), 12 N.J.R. 348(b). Subchapter 9 was readopted as R.1985 d.256, effective April 29, 1985. See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b).

Subchapter 10 was adopted as new rules, filed January 21, 1974, by R.1974 d.16, effective March 1, 1974. See: 5 N.J.R. 421(a), 6 N.J.R. 82(c).

Subchapter 12 was adopted as new rules by R.1975 d.351, effective November 20, 1975. See: 7 N.J.R. 231(b), 7 N.J.R. 571(c). Subchapter 12 was repealed and new rules adopted by R.1988 d.271, effective

June 20, 1988. See: 19 N.J.R. 853(a), 20 N.J.R. 501(b), 20 N.J.R. 1463(a).

Subchapter 13 was adopted as new rules by R.1976 d.245, effective August 3, 1976. See: 8 N.J.R. 233(b), 8 N.J.R. 439(b).

Subchapter 14 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). Subchapter 14 expired on October 9, 1985 pursuant to Executive Order No. 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).

Subchapter 15 was adopted as new rules by R.1982 d.29, effective February 1, 1982. See: 13 N.J.R. 665(a), 14 N.J.R. 160(a).

Subchapter 16 became effective April 1, 1980 as R.1980 d.111. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b). Subchapter 16 expired April 1, 1985, and a new Subchapter 16 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).

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 19 was adopted as new rules by R.1990 d.371, effective August 6, 1990. See: 22 N.J.R. 786(a), 22 N.J.R. 2331(c).

Subchapter 20 was adopted as new rules by R.1984 d.196, effective May 21, 1984. See: 16 N.J.R. 417(a), 16 N.J.R. 1281(b).

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

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 was adopted as new rules by R.1985 d.306, effective June 17, 1985. See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

Subchapter 24 was adopted as new rules by R.1993 d.372, effective July 19, 1993. See: 24 N.J.R. 3019(b), 24 N.J.R. 3666(a), 25 N.J.R. 3235(a).

Subchapter 25 was adopted as new rules by R.1988 d.23, effective January 4, 1988. See: 19 N.J.R. 1967(a), 20 N.J.R. 103(a). Subchapter 25 was repealed and new rules adopted by R.1988 d.520, effective November 7, 1988. See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

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

Pursuant to Executive Order No. 66(1978), Chapter 45A was re-adopted as R.1990 d.606, effective November 9, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Pursuant to Executive Order No. 66(1978), Chapter 45A was re-adopted as R.1995 d.618, effective November 6, 1995. As part of R.1995 d.618, Subchapter 2, Motor Vehicle Advertising Practices, Subchapter 6, Deceptive Practices Concerning Automotive Sales Practices, Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, and Subchapter 8, Tire Distributors and Dealers, were recodified as Subchapters 26A, 26B, 26C and 26D respectively. See: Source and Effective Date. See, also, section annotations.

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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 an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to accept money through the mail or any electronic transfer medium, for merchandise ordered by mail, telephone, facsimile transmis-

sion or electronic mail 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 consumer a letter or notice advising the consumer of the duration of an expected delay or the substitution of merchandise of equivalent or superior quality, and offering to send a refund within one week if so requested. If a proposal to substitute merchandise is made, it shall describe, in specific detail, how the substituted merchandise 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 receipt of the merchandise and, upon request, the consumer's choice of either, 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 letter or card by the seller. The consumer's request entered on such a letter or card must be honored by the seller; and

iii. The written notice and postage-paid 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 merchandise 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 an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to fail to disclose the legal name of the company and the complete and permanent street address from which the business is actually conducted in any materials, including advertising and promotional materials, order blanks and order forms, which contain a mailing address other than the actual street address from which the business actually engages in or conducts business.

(f) The provisions of this section shall apply to any person who conducts a mail order or catalog business in or from the State of New Jersey or who advertises or sells merchandise via mail order or catalog into this State.

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

Case Notes

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.

Purchaser of rail cars was not a "consumer" and the car design was not "merchandise" under New Jersey Consumer Fraud Act. *R.J. Longo Const. Co., Inc. v. Transit America, Inc.*, D.N.J. 1996, 921 F.Supp. 1295.

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. (RESERVED)

SUBCHAPTER 3. SALE OF MEAT AT RETAIL

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.

See: 28 N.J.R. 4105(a).

13:45A-26E.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(New Vehicle Only)
 \$_____ Total Cost of Options and Extras Not Included in MSRP
 \$_____ Title and Registration Fees for:
 _____ First Year of Lease, or
 _____ Full Term of Lease
 \$_____ Gross Capitalized Cost of Vehicle
 \$_____ Capitalized Cost Reduction, includes:
 \$_____ Initial Cash Payment
 \$_____ Trade-in Credit
 \$_____ Rebates
 \$_____ Total Capitalized Cost/Adjusted Capitalized Cost
 \$_____ Residual Value
 \$_____ Per Mile Over _____ Miles
 \$_____ Amount of Periodic Payment
 _____ Total Number of Periodic Payments
 \$_____ Total Fixed Cost of Lease (No Option to Purchase

\$_____ Security Deposit
 \$_____ Optional Warranty or Insurance Charge

\$_____ Vehicle) or Total Cost of Lease (With Option to Purchase)

I UNDERSTAND THAT THIS IS A LEASE AGREEMENT AND NOT A PURCHASE AGREEMENT, THAT THE PROPERTY BEING LEASED MAY NOT HAVE ANY EQUITY OR OWNERSHIP VALUE TO ME AT THE END OF THE LEASE AND THAT THE LEASED PROPERTY BELONGS TO THE LESSOR.

It has been explained to me that if I terminate this lease early, I may have to pay significant costs.

Dated _____

 Lessee's (Consumer's) Signature

 Co-Lessee's Signature

 Lessor's Signature

 (Lessee's and Lessor's Initials)

Excess Wear and Damage Charges have been explained to me.

 (Lessee's and Lessor's Initials)

(For leases with purchase option): How I may purchase this vehicle at the end of the lease has been explained to me.

 (Lessee's and Lessor's Initials)

1. The waiver shall be completed in full without any blank spaces to be filled in after the waiver has been signed by the lessee. Any item which is inapplicable may be marked "not applicable" or "NA".

2. The waiver shall be retained by the lessor for the duration of the lease and a copy shall be given to the lessee upon signing.

3. A copy of the waiver shall be provided to the Division of Consumer Affairs upon request.

Administrative correction.
 See: 28 N.J.R. 1860(a).