

CHAPTER 6

UNFAIR CIGARETTE SALES ACT RULES

Authority

N.J.S.A. 56:7-31.

Source and Effective Date

R.2009 d.368, effective November 13, 2009.
See: 41 N.J.R. 2636(a), 41 N.J.R. 4463(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 6, Unfair Cigarette Sales Act Rules, expires on May 12, 2017. See: 48 N.J.R. 2597(a).

Chapter Historical Note

Chapter 6, Unfair Cigarette Sales Act, was adopted and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1984 d.97, effective March 19, 1984. See: 16 N.J.R. 228(a), 16 N.J.R. 746(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1989 d.199, effective March 14, 1989. See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1994 d.185, effective March 14, 1994. See: 26 N.J.R. 760(a), 26 N.J.R. 1696(a).

Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1999 d.79, effective February 4, 1999. See: 30 N.J.R. 3168(a), 31 N.J.R. 669(a).

Chapter 6, Unfair Cigarette Sales Act, was readopted as R.2004 d.239, effective May 28, 2004. See: 36 N.J.R. 933(a), 36 N.J.R. 3302(a).

Chapter 6, Unfair Cigarette Sales Act, was readopted as R.2009 d.368, effective November 13, 2009. As a part of R.2009 d.368, Chapter 6 was renamed Unfair Cigarette Sales Act Rules, effective December 7, 2009. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 6, Unfair Cigarette Sales Act Rules, was scheduled to expire on November 13, 2016. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

18:6-1.1 Definitions

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

“Basic cost of cigarettes” means the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, less all trade discounts and the normal discount for cash, afforded for prompt payment, but excluding any special, extraordinary, or anticipatory discounts for payment within a shorter period of time than the prompt payment date required for eligibility for the normal discount for cash, plus the total face value of any stamps required by the New Jersey Cigarette Tax Act and by any municipal ordinance now in effect or hereafter enacted, if not already included in the invoice or replacement cost. The trade discount and normal discount for cash is deemed to be two percent of the invoice cost or replacement cost of cigarettes.

“Business day” means any day other than a Sunday or a legal holiday.

“Cigarette” means any roll for smoking, made wholly or in part of tobacco, or of any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapper or cover of which is made of paper or any other substance or material excepting tobacco.

“Cigarette Tax Act” means the Public Laws of 1948, Chapter 65 as amended and supplemented (N.J.S.A. 54:40A-1, et seq.).

“Cost of doing business” means and includes without limitation, as evidenced by the standards and methods of accounting regularly employed in the allocation of overhead costs and expenses, paid or incurred:

1. Labor (including salaries of executives and officers);
2. Rent;
3. Depreciation;
4. Selling costs;
5. Maintenance of equipment;
6. Delivery costs;
7. Licenses of all types;
8. Taxes;
9. Insurance;
10. Advertising;

11. In the absence of the filing with the Director of satisfactory proof of a lesser or higher cost of doing business, the “cost of doing business” is to be as follows:

- i. For a retailer, eight per cent of the “basic cost of cigarettes” to the retailer;
- ii. For a wholesaler 5.25 per cent of the “basic cost of cigarettes” to the wholesaler, plus cartage to the retailer outlet if performed or paid for by the wholesaler, which cartage cost in the absence of the filing with the Director of satisfactory proof of a lesser or higher cost is deemed to be $\frac{3}{4}$ of one per cent of the “basic cost of cigarettes” to the wholesaler.

“Cost to the retailer” means the “basic cost of cigarettes” to the retailer plus the “cost of doing business” by the retailer.

“Cost to the wholesaler” means the “basic cost of cigarettes” to the wholesaler plus the “cost of doing business” by the wholesaler.

“Director” means the Director of the Division of Taxation. Wherever in these rules and regulations the word “Director” is used, it shall mean and include any employee or employees of the Division of Taxation, deputized or authorized, either generally or specifically, to act on behalf of the Director.

“Manufacturer” means any person, wherever resident or located, who manufactures or produces, or causes to be manufactured or produced, cigarettes and sells, uses, stores, or distributes the same regardless of whether they are intended for sale, use or distribution within or without the State of New Jersey.

“Manufacturer’s representative” means any person, employed by a manufacturer, who, for promotional purposes, sells, stores, handles or distributes cigarettes within the State of New Jersey, limited exclusively to cigarettes manufactured by the employing manufacturer.

“Person” means any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of the State of New Jersey, trust, receiver, trustee, fiduciary and conservator.

“Retailer” means any person who operates a store, stand, booth or concession for the purposes of making sales of cigarettes at retail.

“Sale” means any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

“Sell at Retail”, “Sale at Retail” and “Retail Sales” mean any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller’s business, to the purchaser for consumption or use.

"Sell at Wholesale", "Sale at Wholesale" and "Wholesale Sales" mean any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

"Wholesaler" means any person who:

1. Purchases cigarettes directly from the manufacturer; or
2. Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purposes of resale only; or

3. Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Amended by R.1974 d.243, effective August 20, 1974.

See: 6 N.J.R. 327(b), 6 N.J.R. 414(d).

Amended by R.1979 d.86, effective March 8, 1979.

See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

Amended by R.1979 d.416, effective October 18, 1979.

See: 11 N.J.R. 472(a), 11 N.J.R. 596(c).

Amended by R.1989 d.199, effective April 17, 1989.

See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

Redefined "basic cost of cigarettes" and changed trade and normal discount for cash to "two" percent from "3 1/4" percent.

Statutory References

As to general definitions, see N.J.S.A. 56:7-19; as to the definition of "Cost to the Retailer", see N.J.S.A. 56:7-21; as to the definition of "Cost to the Wholesaler", see N.J.S.A. 56:7-22.

18:6-1.2 "Retailer" and "Wholesaler" not mutually exclusive

Nothing contained in section 1.1 (Definitions) of this chapter shall prevent a person from qualifying in different capacities as both a "retailer" and "wholesaler" under the applicable provisions of the New Jersey Unfair Cigarette Sales Act.

Statutory References

As to the definitions of retailer and wholesaler, see N.J.S.A. 56:7-19, 21, 22.

SUBCHAPTER 2. PROHIBITION OF ACTIONS WHICH LESSEN COMPETITION

18:6-2.1 Wholesalers

(a) Wholesalers with intent to injure competitors or destroy or substantially lessen competition, are prohibited from:

1. Advertising, offering to sell, or selling cigarettes at less than cost; or
2. Offering a rebate in price, giving a rebate in price, offering a concession of any kind, or giving a concession of any kind or nature whatsoever in connection with the sale of cigarettes.

Statutory References

As to unlawful acts, see N.J.S.A. 56:7-20.

18:6-2.2 Retailers

(a) Retailers with intent to injure competitors or destroy or substantially lessen competition, are prohibited from:

1. Advertising, offering to sell, or selling cigarettes at less than cost;
2. Offering a rebate in price, giving a rebate in price, offering a concession of any kind, or giving a concession

of any kind or nature whatsoever in connection with the sale of cigarettes;

3. Inducing or attempting to induce or procuring or attempting to procure the purchase of cigarettes at a price less than "cost to wholesaler" as defined in Section 1.1 (Definitions) of this Chapter;

4. Inducing or attempting to induce or procuring or attempting to procure a rebate or concession of any kind or nature whatsoever, in connection with the purchase of cigarettes.

Statutory References

As to unlawful acts, see N.J.S.A. 56:7-20.

18:6-2.3 Prima facie evidence of intent to injure competitors

The advertisement, offering to sell, or sale of cigarettes at less than cost, or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession of any kind or nature whatsoever in connection with the sale of cigarettes or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost by any wholesaler or retailer is prima facie evidence of an intent to injure competitors and to destroy or substantially lessen competition.

Statutory References

As to evidence of intent to do unlawful acts, see N.J.S.A. 56:7-20.

18:6-2.4 through 18:6-2.6 (Reserved)

SUBCHAPTER 3. PRICE LISTS

18:6-3.1 Minimum resale prices

(a) The Director is authorized to prepare and calculate for each and every brand a minimum sales price below which, in the absence of proof of a lesser or higher cost of doing business, cigarettes may not be sold in the State of New Jersey at both wholesale and retail.

(b) Minimum sales prices are calculated by adding to the sum of the basic cost of cigarettes and the total face value of any tax stamps required by the New Jersey Cigarette Tax Act and any municipal ordinance, the presumed cost of doing business by the wholesalers and retailers respectively, as defined in Section 1.1 (Definitions) of this Chapter.

(c) Minimum resale prices are issued in a list published by the Director and include the prices for sales by a wholesaler both for the delivery and nondelivery of cigarettes, and the prices for sales by a retailer both by the carton and by the pack.

(d) The sale of cigarettes by any wholesaler or retailer below the price specified on such minimum price list is deemed

prima facie evidence of a violation of the New Jersey Unfair Cigarette Sales Act.

(e) Minimum prices are calculated without regard to any promotions offered by cigarette manufacturers because these promotions operate as a rebate to a wholesaler or retailer and not as a discount in the list price for cigarettes.

Public Notice: Notice of Determination.

See: 30 N.J.R. 2308(c).

Amended by R.2009 d.368, effective December 7, 2009.

See: 41 N.J.R. 2636(a), 41 N.J.R. 4463(a).

Added (e).

18:6-3.2 Fractional cents

Whenever the Director prepares and calculates minimum prices at wholesale and retail for any brand or brands of cigarettes, which computation results include a fraction of a cent, the price on all such figures is to be rounded to the next higher cent.

18:6-3.3 Revised minimum resale prices

Whenever there is any change in the basic cost of any brand or brands of cigarettes to a retailer or wholesaler due either to a change in a manufacturer's invoice price or discount, or the rate of a cigarette tax imposed by either the State of New Jersey, or any municipality thereof, the Director shall prepare and recalculate a revised minimum cigarette sales price below which the particular brand or brands may not be sold at wholesale and retail respectively.

18:6-3.4 Manufacturers' promotions and minimum resale prices

Manufacturers' promotions, as set forth in N.J.A.C. 18:6-4.1, do not reduce the basic cost of cigarettes as purchased by a retailer or wholesaler because the promotions operate by providing the retail or wholesale purchaser with an additional cash payment subsequent to the initial purchase. There is, therefore, no effect on the basic cost of the cigarettes to the retailer or wholesaler, so the promotions will not be taken into account in setting the minimum resale prices.

New Rule, R.2009 d.368, effective December 7, 2009.

See: 41 N.J.R. 2636(a), 41 N.J.R. 4463(a).

18:6-3.5 (Reserved)

SUBCHAPTER 4. MANUFACTURER'S PROMOTIONAL SALES PLANS

18:6-4.1 Promotional sales plans

Any sales plan, program or promotion, sponsored or initiated by any manufacturer of cigarettes licensed pursuant to the New Jersey Cigarette Tax Act, and which involves the placement of any coupons, literature, premiums, displays,

goods, wares, merchandise or other material upon the premises of any licensed retailer which is designed to stimulate, encourage, or induce the purchase of cigarettes by the consumer, or in which a concession or gift is offered with the sale of cigarettes, is subject to the provisions of the New Jersey Unfair Cigarette Sales Act, and these regulations.

18:6-4.2 Notification

Written notification must be given to the Director by every sponsoring manufacturer at least 30 days prior to the commencement of any manufacturer's promotional sales plan, including a description of the plan in detail and the dates and period of time during which the plan is to be operative.

Amended by R.2004 d.239, effective July 6, 2004.

See: 36 N.J.R. 933(a), 36 N.J.R. 3302(a).

Substituted "30" for "ten" preceding "days prior to the commencement".

18:6-4.3 Sales campaigns shall be nondiscriminatory

(a) Every manufacturer's promotional sales plan shall be universal and shall be made available simultaneously and on equal terms to each and every licensed retailer dealing in the sponsoring manufacturers' products.

(b) No manufacturer's promotional sales plan shall discriminate in the placement of any promotional material, be selective as to time and place, or be limited to a restricted group or class of retailers.

Amended by R.2004 d.239, effective July 6, 2004.

See: 36 N.J.R. 933(a), 36 N.J.R. 3302(a).

In (a), substituted "shall" for "is to" preceding "be universal" and "be made"; in (b), substituted "No manufacturer's promotional sales plan shall discriminate" for "No such plan may discriminate".

18:6-4.4 Cost of plan

(a) The cost of all coupons, literature, premiums, displays, gifts, wares, merchandise, or other material, offered with the sale of cigarettes in a promotional sales plan are to be borne by the sponsoring manufacturer.

(b) No part of the cost of any such plan is to be paid by any retailer on whose premises the plan is operative.

18:6-4.5 Written statement on premises

Every retailer on whose premises a promotional sales plan is being conducted is required to keep on file a written statement from the sponsoring manufacturer describing the promotion and indicating the dates and period of time during which the plan is to be operative.

18:6-4.6 Noncompliance

Any manufacturer whose promotional sales plan does not completely and fully comply with the provisions of these regulations is deemed to be in violation of the New Jersey Unfair Cigarette Sales Act and unlawful.

18:6-4.7 Purchases by manufacturers' representatives

(a) Whenever a licensed representative of any cigarette manufacturer purchases cigarettes from a licensed Distributor or Wholesale Dealer for sales promotional distribution purposes, the price to be paid by the manufacturer's representative may not be less than the minimum delivered price required to be paid by licensed retail dealers for the particular brand or brands of cigarettes purchased.

(b) The purchase by any manufacturer's representative of any brand or brands of cigarettes below such minimum delivered price is prohibited, and if perpetrated will be deemed a violation of the New Jersey Unfair Cigarette Sales Act.

18:6-4.8 Collection of sales tax on cigarette sales during promotions

A vendor shall collect and remit sales tax and/or use tax on the sales price, as defined at N.J.A.C. 18:24-1.2 (which sales price shall include any manufacturer's reimbursable coupon supplied by the purchaser to the vendor) connected with the sale, purchase, exchange or transfer of cigarettes in a pro-

motional transaction. Such taxable sales price connected with the promotional distribution of cigarettes shall in no event be less than the minimum resale price pursuant to N.J.A.C. 18:6-3.1.

New Rule, R.2004 d.239, effective July 6, 2004.

See: 36 N.J.R. 933(a), 36 N.J.R. 3302(a).

Amended by R.2009 d.368, effective December 7, 2009.

See: 41 N.J.R. 2636(a), 41 N.J.R. 4463(a).

Substituted "sales price" for "receipt" three times, updated the first N.J.A.C. reference and deleted a comma following "exchange".

18:6-4.9 through 18:6-4.11 (Reserved)

SUBCHAPTER 5. REPORTS REQUIRED**18:6-5.1 Distributor reports required**

(a) Each distributor licensed pursuant to the New Jersey Cigarette Tax Act is required to file a monthly confidential informational and sales report on Cigarette Tax Form CDIS-1.

(b) Form CDIS-2 (Schedule S), Distributor's Sales Schedule, must accompany the report when it is applicable.

(c) Negative reports must be filed.

Amended by R.1979 d.86, effective March 8, 1979.
See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

Historical Note

Formerly Reg. CS-4, Filed June 2, 1952.

18:6-5.2 Wholesale dealer reports required

(a) Each wholesale dealer licensed pursuant to the New Jersey Cigarette Tax Act is required to file a monthly confidential informational and purchases report on Cigarette Tax Form CWIP-1.

(b) Form CWIP-2 (Schedule R), Wholesale Dealer's Purchase Schedule, must accompany the report when it is applicable.

(c) Negative reports must be filed.

Amended by R.1979 d.86, effective March 8, 1979.
See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

Historical Note

Formerly Reg. CS-4, Filed June 2, 1952.

18:6-5.3 Time for filing reports

(a) All reports required must be filed with the Division of Taxation, together with all supporting schedules, on or before the 10th day of each calendar month following the month being reported upon.

(b) All reports, including the supporting schedules, must be submitted in duplicate.

Amended by R.1979 d.86, effective March 8, 1979.
See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

Historical Note

Formerly Reg. CS-4, Filed June 2, 1952.

18:6-5.4 Consolidated reports

(a) The filing of consolidated reports is not permitted.

(b) When one person (or other legal entity) operates more than one licensed activity from whom reports are required, separate reports must be submitted from each separately licensed activity.

18:6-5.5 Number of reports required

(a) An original and two copies of all the required reports and schedules are to be prepared.

(b) The original and one copy are to be filed with the Division of Taxation, Trenton, New Jersey 08646.

(c) One copy of all the required reports and schedules is to be retained by the licensee on the licensed premises and be preserved with all the other records in his possession.

Amended by R.1979 d.86, effective March 8, 1979.
See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

18:6-5.6 Reproduction of forms

(a) Subject to the conditions and requirements described in this Section, the Director will accept, for filing purposes, reproductions of report forms in lieu of the official forms printed and furnished by him.

(b) In order to be acceptable for filing purposes, reproductions of report forms must meet the following conditions and requirements:

1. The reproduction must be facsimiles of the official form, produced by photo-offset, photo-engraving, photocopying, or other similar reproduction processes;

2. The reproduction must be on paper substantially the same color, weight and texture, and of a quality at least as good as that used in the official form;

3. The reproductions must be of the same size as that of the official form, both as to overall dimensions of the paper and the image produced thereon;

4. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each individual page must be the same as on the official form;

5. The color and quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible, either typed or printed;

6. The reproduction of forms may be made after insertion of the required information. However, all signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process;

7. The Director does not approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostatic copies do not meet all of the above conditions;

8. The Director does not approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white, with satisfactory legibility, either typed or printed.

18:6-5.7 Form of reports

(a) All reports are required to be made on the report forms approved by the Director as provided in Section 5.1 (Distributors' reports), 5.2 (Wholesalers' reports) of this Chapter.

(b) The Director may require any taxpayer to file such other reports and submit such further information as he deems necessary for the proper administration of the New Jersey Unfair Cigarette Sales Act.

18:6-5.8 Place for filing reports

All reports must be filed with the New Jersey Division of Taxation, Trenton, New Jersey 08646.

Amended by R.1979 d.86, effective March 8, 1979.
See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

Statutory References

As to the powers of the Director to insure compliance, see N.J.S.A. 56:7-37.

18:6-5.9 Secrecy of reports

(a) All reports are deemed secret and confidential.

(b) The State Tax Uniform Procedure Law prohibits the unauthorized disclosure of information obtained from the reports or the records.

Statutory References

As to the secrecy of the reports, see N.J.S.A. 54:50A-8; As to the privilege of certain officers to examine the reports, see N.J.S.A. 54:50A-9.

18:6-5.10 Reports to be executed

(a) All reports are to be signed in the following manner:

1. If the licensee is an individual, by the licensee;
2. If the licensee is a partnership, by one of the partners;
3. If the licensee is a corporation, by one of the officers of the corporation, or by its duly authorized agent.

(b) A report signed by an agent of a licensee will be accepted for filing only where a written authorization for such agent to sign has been filed with the Director.

18:6-5.11 Reporting of unlicensed retailers

(a) Any licensed distributor or wholesale dealer who supplies a retailer with cigarettes must obtain the retail license number of such retail account. Said license number is to be found on the license certificate issued to retail dealers by the Division of Taxation.

(b) If the supplier of cigarettes is unable to obtain such license number, the complete name and address of the retailer must be submitted to the Division of Taxation on the suppliers appropriate monthly informational report. (Form CDIS-1 or CWIP-1.)

(c) This provision also applies to changes in ownership, in corporate or trade name status, and the relocation of retail cigarette accounts.

Amended by R.1979 d.86, effective March 8, 1979.
See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

18:6-5.12 through 18:6-5.15 (Reserved)

SUBCHAPTER 6. REMEDIES AND PENALTIES

18:6-6.1 Penalty; disorderly person

Any person who violates any provision of the New Jersey Unfair Cigarette Sales Act or these regulations is deemed a disorderly person and may be prosecuted and punished by a fine of not more than \$1,000.00 for each offense in accordance with the provisions of Title 2C of the New Jersey Statutes.

Amended by R.1989 d.199, effective April 17, 1989.
See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

Changed fine to "\$1000.00" from "\$100.00" and changed statutory reference to "Title 2C" from "Subtitle 12 of Title 2A."

Statutory References

As to penalties for violations of the Act, see N.J.S.A. 56:7-20.

18:6-6.2 Remedies by Attorney General

(a) The Attorney General, upon request of the Director, may maintain an action in any court of equitable jurisdiction in this State to prevent, restrain, or enjoin a violation, or threatened violation, of any of the provisions of the New Jersey Unfair Cigarette Sales Act or of these regulations.

(b) If in such action a violation or threatened violation of this Act is established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation.

Statutory References

As to the right of the Attorney General to sue, see N.J.S.A. 56:7-32.

18:6-6.3 Remedies by other persons

(a) Any person may maintain an action in any court of equitable jurisdiction in this State to prevent, restrain, or enjoin a violation, or threatened violation, of any of the provisions of the New Jersey Unfair Cigarette Sales Act or these regulations.

(b) If in such action a violation or threatened violation of this Act is established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation.

(c) In such an action it is not necessary that actual damages to the plaintiff be alleged or proved, but where alleged or proved, the plaintiff in said action, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, is entitled to recover from the defendant the actual damages sustained by such plaintiff.

(d) In the event that no injunctive relief is sought or required, any person injured by a violation of the New Jersey Unfair Cigarette Sales Act may maintain an action for damages and costs of suit in any court of competent jurisdiction.

Statutory References

As to the right of other persons to sue, see N.J.S.A. 56:7-32.

18:6-6.4 Suspension or revocation of license

The Director is authorized to suspend or revoke the license of any person who fails to comply with any provision of the New Jersey Unfair Cigarette Sales Act or of these regulations.

Statutory References

As to the power of the Director to suspend or revoke licenses, see N.J.S.A. 56:7-33.

18:6-6.5 Notice of suspension or revocation of license

(a) Before suspending or revoking the license of any person deemed in violation of the New Jersey Unfair Cigarette Sales Act, the Director shall give ten days notice to such licensee personally, or by mail addressed to his last known address.

(b) The notice shall recite in detail the reasons and basis for the suspension or revocation, and specify the date, time and place for the Hearing.

Statutory References

As to the requirement that prior notice be given before suspension or revocation of a license, see N.J.S.A. 56:7-33.

18:6-6.6 Hearing of suspension or revocation of license

(a) Any person who has received a Notice of Hearing to suspend or revoke any license for a violation of the New Jersey Unfair Cigarette Sales Act, has the right to 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.

Amended by R.1989 d.199, effective April 17, 1989.

See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

Deleted 1-3 of (a); deleted (b)-(d). Substantially changed to indicate hearing rights pursuant to Administrative Procedure Act and Title 1 of Administrative Code.

Statutory References

As to the manner of conducting a hearing, see N.J.S.A. 54:50-3.

18:6-6.7 Period of suspension

(a) After a hearing as provided in N.J.A.C. 18:6-6.6, the Director, upon a finding that the licensee has failed to

comply with any provision of the New Jersey Unfair Cigarette Sales Act or this chapter, may, in the case of the first offender, suspend the license or licenses of such licensee for a period of not less than 10 nor more than 20 consecutive business days, in the case of a second or plural offender, may suspend the license or licenses for a period of not less than 30 consecutive business days nor more than 12 months, and in the case of a third offender, shall suspend the license or licenses for a period of 12 months.

(b) In the case of a person who is guilty of willful and persistent violations, the Director may revoke such person's license or licenses.

Amended by R.1989 d.199, effective April 17, 1989.

See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

(a): Changed suspension period for first offender to not less than "10" days from "5"; for second offender to not less than "30" days from "20"; added suspension period for third offender.

Statutory References

As to the period of a suspension or revocation of a license, see N.J.S.A. 56:7-33.

18:6-6.8 Basis of order of suspension or revocation of license

In issuing any Order to suspend or revoke the license of any person, the Director shall include a statement of the findings of fact upon which such Order is based.

18:6-6.9 Service of order of suspension or revocation of license

A copy of any Order suspending or revoking the license of a person found to be in violation of the New Jersey Unfair Cigarette Sales Act, shall be served personally, or by mailing such Order to the last known address of such licensee.

Statutory References

As to the method of giving notice, see N.J.S.A. 54:50-6.

18:6-6.10 Appeal of order of suspension or revocation of license

Any person aggrieved by an Order or determination of the Director suspending or revoking the license of such person or refusing to reinstate the previously revoked license or licenses of such person may, within 45 days from the date of such Order, appeal to the Appellate Division of the Superior Court of New Jersey.

Statutory References

As to the right to and method of filing an appeal, see N.J.S.A. 56:7-35.

18:6-6.11 Sale during a suspension or revocation of license

Any person whose license has been suspended or revoked for a violation of the New Jersey Unfair Cigarette Sales Act may neither sell cigarettes nor permit cigarettes to be sold on the premises occupied by him or others or in any other manner or form whatever during the period of such suspension.

Statutory References

As to the prohibition of sales during a period of suspension or revocation, see N.J.S.A. 56:7-34.

18:6-6.12 Abatement of proceedings

The expiration, transfer, surrender, renewal, continuance or extension of any license issued pursuant to the New Jersey Cigarette Tax Act does not bar or abate the Director from instituting any disciplinary proceedings or action for a violation of the New Jersey Unfair Cigarette Sales Act.

Statutory References

As to no abatement of proceedings, see N.J.S.A. 56:7-34.

18:6-6.13 Reinstatement of revoked license

(a) Any person whose license has been revoked for a violation of the New Jersey Unfair Cigarette Sales Act may, after the expiration of one year from the date of such revocation, apply to the Director for reinstatement of his license or licenses.

(b) If it appears to the satisfaction of the Director that the licensee is willing to comply with the provisions of the Act and these regulations, he may reinstate such license or licenses at such time.

Statutory References

As to the reinstatement of licenses, see N.J.S.A. 56:7-33.

18:6-6.14 Notice of suspension or revocation to manufacturers

Upon the suspension or revocation of any person's license or licenses for a violation of the New Jersey Unfair Cigarette Sales Act, the Director shall, by notice in writing, apprise all manufacturers, distributors and wholesale dealers licensed under the New Jersey Cigarette Tax Act of such revocation or suspension including the reason therefor and the dates and length of time of the suspension.

18:6-6.15 through 18:6-6.17 (Reserved)**SUBCHAPTER 7. MISCELLANEOUS PROVISIONS****18:6-7.1 Combination sales**

(a) Where brands of cigarettes are advertised, offered for sale, or sold together with any other goods, wares, articles, products, commodities, or merchandise, at a single combined price, or a gift or concession is given with the sale of cigarettes, the total combined price is not to be less than the total cost to the retailer or wholesaler of all goods, wares, articles, products, commodities, or merchandise, gifts, or concessions included in such transactions.

(b) The sale of any combination in which the portion of the combined selling price relating to the cigarettes is below the price at which the cigarettes could be sold separately, is prohibited.

Statutory References

N.J.S.A. 56:7-23.

18:6-7.2 Sales by a wholesaler to a wholesaler

(a) When one wholesaler sells cigarettes to any other wholesaler, the former is not required to include in his selling price to the latter his cost of doing business.

(b) Provided however, no such sale is to be made at a price less than the selling wholesaler's basic cost of cigarettes.

(c) The purchasing wholesaler, upon resale to a retailer is to add to his purchase cost, his cost of doing business plus cartage where applicable.

Statutory References

As to sales between wholesalers, see N.J.S.A. 56:7-24.

18:6-7.3 Sales exception

The provisions of the New Jersey Unfair Cigarette Sales Act do not apply to the following sales at retail or wholesale made:

1. As an isolated transaction and not in the usual course of business;

2. Where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale states the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

3. Where cigarettes are advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale states the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

4. Where cigarettes are sold upon the final liquidation of a business; or

5. Where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

Statutory References

As to sales exception to the Act, see N.J.S.A. 56:7-25.

18:6-7.4 Effect of sales outside ordinary channels of business

In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or close out sale, or other sale outside the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

Statutory References

As to sales outside ordinary channels, see N.J.S.A. 56:7-29.

18:6-7.5 Evidence considered in determining cost

In determining the cost to the retailer and the cost to the wholesaler, the Director or a court of competent jurisdiction in this State shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of the New Jersey Unfair Cigarettes Sales Act, purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such manner, or under such invoices, as to conceal the true cost, discounts, or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or State of New Jersey.

Statutory References

As to evidence considered in determining cost, see N.J.S.A. 56:7-28.

18:6-7.6 Manufacturer's free goods

Any merchandise or thing of value given gratis or any payment made to a retailer or wholesaler by any manufacturer of cigarettes for display, advertising, promotional purposes, or otherwise, is not to be considered in determining the cost of cigarettes to the retailer or the wholesaler.

Statutory References

As to the exclusion of goods given gratis from the determination of the cost, see N.J.S.A. 56:7-28.

18:6-7.7 Cost survey

(a) The Director is empowered to and may undertake a cost survey to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler" pursuant to recognized statistical and cost accounting practices.

(b) Such cost survey, when made for any trading area in which an offense has been committed under the New Jersey Unfair Cigarette Sales Act, shall be deemed competent evidence to be used in proving the cost to any wholesaler or retailer within the trading area.

Statutory References

As to the use of a "cost survey" to determine cost, see N.J.S.A. 56:7-30; as to the power of the Director to undertake a cost survey, see N.J.S.A. 56:7-31.

18:6-7.8 Sales to meet competition; good faith

(a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in the New Jersey Unfair Cigarette Sales Act.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in the New Jersey Unfair Cigarette Sales Act.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in Section 7.3 (Sales exceptions) of this Chapter are not to be considered the price of a competitor and are not to be used as a basis for establishing prices below cost, nor is the price established at a bankrupt sale to be considered the price of a competitor within the purview of this regulation.

Statutory References

As to sales to meet competition, see N.J.S.A. 56:7-26.

18:6-7.9 Price of a competitor

In the absence of proof of the "price of a competitor", under Section 7.8 (Sales to meet competition) of this Chapter, the "lowest cost to the retailer", or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey", made pursuant to Section 7.7 of this Chapter, may be deemed the "price of a competitor" within the meaning of this regulation.

Statutory References

As to the method of determining the price to a competitor, see N.J.S.A. 56:7-26.

18:6-7.10 Illegal and void contracts

Any mutual or secret contract, agreement, arrangement, combination, or common understanding expressed or implied, made by any person, licensed pursuant to the New Jersey Cigarette Tax Act, with any other licensee or person, whereby with the intent to injure competitors or destroy or substantially lessen competition, the price for cigarettes to be paid in the State of New Jersey is reduced, or decreased below the minimum price stipulated by the Director for the particular brand or brands, is void, illegal, and prohibited, and no recovery thereon may be had.

18:6-7.11 Cigarette price signs

(a) All signs of a confusing or misleading character advertising the sale price of cigarettes at wholesale or retail are prohibited.

(b) Contents; sale price; taxes.

1. All signs advertising the sale price of cigarettes at wholesale or retail are to set forth the total sale price of the cigarettes including all taxes imposed by the State of New Jersey and local governments in figures equally as large as any other figures appearing on the sign.

2. If the tax is shown separately, it is to be plainly labeled and is to be in figures equally as large as any other figures appearing on the sign.

(c) The total sale price displayed on any sign advertising cigarettes at wholesale or retail is never to be lower than the minimum price fixed by the New Jersey Unfair Cigarette Sales Act as determined by the application of the formula and percentage mark-ups therein specified.

Historical Note

Formerly Reg. CS-3, Filed June 2, 1952.

18:6-7.12 Cooperatives

(a) Cooperatives and business ventures in the nature of cooperatives, which hold cigarette distributors' or wholesale dealers' licenses issued pursuant to the New Jersey Cigarette Tax Act, may not declare dividends nor give benefits nor rebates correlated to cigarette sales, to the member stores.

(b) The giving of any such dividend, benefit, or rebate is considered a violation of the New Jersey Unfair Cigarette Sales Act.

Historical Note

Formerly Reg. CS-5, Filed October 27, 1961.

18:6-7.13 Drop shipments; prepackaging

(a) All wholesale dealers licensed pursuant to the New Jersey Cigarette Tax Act, may not have cigarettes intended for sale or delivery to retail accounts, drop shipped by the supplier.

(b) A wholesale dealer may not acquire cigarettes prepackaged for a retail account by a supplier when such prepackaging results in a price rebate or concession from the supplier.

(c) Wholesale dealers must acquire cigarettes in their own storage facilities and do all billing necessary to the final transfer of the cigarettes to their retail accounts.

(d) The drop shipping or prepackaging of any cigarettes by the supplier, contrary to the provisions of (a), (b) and (c) above, for a wholesale dealer's retail accounts is prohibited, and considered a violation of the New Jersey Unfair Cigarette Sales Act.

Amended by R.1989 d.84, effective February 6, 1989.

See: 20 N.J.R. 2192(b), 21 N.J.R. 311(a).

Added new (b) and recodified old (b)-(c) as (c)-(d).

18:6-7.14 Purchase of retail dealer's license

(a) The payment, rebate, or reimbursement to a licensed retail dealer by a licensed distributor or wholesale dealer of the fee paid by the retailer for his retail dealer's cigarette license is prohibited.

(b) The payment of any such license fee by a supplier for any retail customer serviced is considered a violation of the New Jersey Unfair Cigarette Sales Act.

18:6-7.15 Credit memoranda

(a) All licensed distributors and wholesale dealers, when issuing credit memoranda to their retail cigarette accounts, are to specify in detail all merchandise covered by the credit memoranda.

(b) The issuance of any such credit memoranda which do not specify the merchandise credited is prohibited, and considered a violation of the New Jersey Unfair Cigarette Sales Act.

18:6-7.16 Trading stamps

(a) No trading stamps are to be given with the sale of cigarettes at either wholesale or retail.

(b) The giving of any trading stamps to a purchaser of cigarettes is prohibited and considered a violation of the New Jersey Unfair Cigarette Sales Act.

18:6-7.17 Act applies to all cigarette licensees

All manufacturers, manufacturers' representatives, distributors, wholesale dealers, retail dealers, and others, licensed pursuant to the New Jersey Cigarette Tax Act are subject to the applicable provisions of the New Jersey Unfair Cigarette Sales Act, and these regulations.

18:6-7.18 Change of source of supply

(a) Any retailer may, in his discretion, change his wholesale source of supply of cigarettes at any time.

(b) Provided however, the Director requires any such retailer to give a notice of intention to effect such change within ten days thereof.

18:6-7.19 Gifts or loans

The giving or loaning of anything of value without consideration to any retailer by a wholesaler in connection with the sale of cigarettes is prohibited under the New Jersey Unfair Cigarette Sales Act.

18:6-7.20 Powers of Director

All of the powers vested in the Director of the Division of Taxation pursuant to the provisions of the New Jersey

Cigarette Tax Act and the regulations thereunder are available to the Director in the enforcement and administration of the New Jersey Unfair Cigarette Sales Act and these regulations.

Statutory References

As to the general powers of the Director, see N.J.S.A. 56:7-37.