CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS

Authority

N.J.S.A. 56:8-1 et seq., specifically 56:8-48

Source and Effective Date

R.2000 d.460, effective October 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 45A, Administrative Rules of the Division of Consumer Affairs, expires on April 18, 2006. See: 37 N.J.R. 4369(a).

Chapter Historical Note

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, Subchapter 1, Deceptive Practices in Mail Order or Catalog Business, was adopted as R.1973 d.176, effective August 1, 1973. See: 5 N.J.R. 151(b), 5 N.J.R. 290(a).

Subchapter 2, Motor Vehicle Advertising Practices, was adopted as R.1973 d.183, effective July 15, 1973. See: 5 N.J.R. 191(a), 5 N.J.R. 290(d).

Subchapter 4, Banned Hazardous Products, was adopted as R.1973 d.222, effective August 15, 1973. See: 5 N.J.R. 229(d), 5 N.J.R. 317(c).

Subchapter 8, Tire Distributors and Dealers, was adopted as R.1973 d.309, effective December 1, 1973. See: 5 N.J.R. 354(a), 5 N.J.R. 390(e).

Subchapter 3, Sale of Meat at Retail, was adopted as R.1973 d.169, effective January 1, 1974. See: 5 N.J.R. 154(a), 5 N.J.R. 239(b).

Subchapter 5, Delivery of Household Furniture and Furnishings, was adopted as R.1973 d.262, effective January 1, 1974. See: 5 N.J.R. 287(a), 5 N.J.R. 357(b).

Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, was adopted as R.1973 d.307, effective January 1, 1974. See: 5 N.J.R. 351(b), 5 N.J.R. 390(b).

Subchapter 9, Retail Store Advertising and Marketing Practices, was adopted as R.1974 d.15, effective March 1, 1974. See: 5 N.J.R. 422(a), 6 N.J.R. 82(b).

Subchapter 10, Servicing and Repairing of Home Appliances, was adopted as R.1974 d.16, effective March 1, 1974. See: 5 N.J.R. 421(a), 6 N.J.R. 82(c).

Subchapter 12, Sale of Animals, was adopted as R.1975 d.351, effective November 20, 1975. See: 7 N.J.R. 231(b), 7 N.J.R. 571(c).

Subchapter 13, Powers to be Exercised by County and Municipal Officers of Consumer Affairs, was adopted as R.1976 d.245, effective August 3, 1976. See: 8 N.J.R. 233(b), 8 N.J.R. 439(b).

Subchapter 14, Unit Pricing of Consumer Commodities in Retail Establishments, was adopted as R.1976 d.265, effective August 23, 1976. See: 8 N.J.R. 304(a), 8 N.J.R. 439(e).

Subchapter 6, Automotive Sales Practices, was adopted as R.1979 d.392, effective October 1, 1979. See: 11 N.J.R. 386(a), 11 N.J.R. 580(e).

Subchapter 16, Home Improvement Practices, was adopted as R.1980 d.111, effective April 1, 1980. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b).

Subchapter 9, Retail Store Advertising and Marketing Practices, was repealed and Subchapter 9, Merchandise Advertising, was adopted as new rules by R.1980 d.200, effective May 6, 1980. See: 12 N.J.R. 45(a), 12 N.J.R. 348(b).

Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was adopted as R.1981 d.294, effective August 6, 1981. See: 13 N.J.R. 235(b), 13 N.J.R. 520(b).

Subchapter 15, Disclosure of Refund Policy in Retail Establishment, was adopted as R.1982 d.29, effective February 1, 1982. See: 13 N.J.R. 665(a), 14 N.J.R. 160(a).

Subchapter 21, Representations Concerning and Requirements for the Sale of Kosher Food, was adopted as R.1984 d.113, effective April 2, 1984. See: 16 N.J.R. 220(a), 16 N.J.R. 741(a).

Subchapter 20, Resale of Tickets of Admission to Places of Entertainment, was adopted as R.1984 d.196, effective May 21, 1984. See: 16 N.J.R. 417(a), 16 N.J.R. 1281(b).

Pursuant to Executive Order No. 66(1978), Subchapter 6, Deceptive Practices Concerning Automotive Practices, was readopted as R.1984 d.526, effective October 24, 1984. See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a).

Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, was readopted as R.1984 d.527, effective October 24, 1984. See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b).

Pursuant to Executive Order No. 66(1978), Subchapter 16, Home Improvement Practices, expired April 1, 1985.

Pursuant to Executive Order No. 66(1978), Subchapter 9, Merchandise Advertising, was readopted as R.1985 d.256, effective April 29, 1985. See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b).

Subchapter 16, Home Improvement Practices, was adopted as new rules by R.1985 d.255, effective May 20, 1985. See: 17 N.J.R. 679(a), 17 N.J.R. 1325(a).

Subchapter 23, Deceptive Practices Concerning Watercraft Repair, was adopted as R.1985 d.306, effective June 17, 1985. See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, was adopted as R.1985 d.407, effective August 5, 1985. See: 17 N.J.R. 1241(a), 17 N.J.R. 1901(b).

Pursuant to Executive Order No. 66(1978), Subchapter 14, Unit Pricing of Consumer Commodities in Retail Establishments, expired on October 9, 1985.

Subchapter 14, Unit Pricing of Consumer Commodities in Retail Establishments, was adopted as new rules by R.1985 d.643, effective December 16, 1985. See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

Subchapter 2, Motor Vehicle Advertising Practices, was repealed and Subchapter 2, Motor Vehicle Advertising Practices, was adopted as new rules by R.1987 d.341, effective August 17, 1987. See: 19 N.J.R. 1056(a), 19 N.J.R. 1562(c).

Subchapter 21, Representations Concerning and Requirements for the Sale of Kosher Food, and Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, were repealed and Subchapter 21, Sale of Kosher Products, and Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, were adopted as new rules by R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d).

Subchapter 25, Sellers of Health Club Services, was adopted as R.1988 d.23, effective January 4, 1988. See: 19 N.J.R. 1967(a), 20 N.J.R. 103(a).

Subchapter 12, Sale of Animals, was repealed and Subchapter 12, Sale of Animals, was adopted as new rules by R.1988 d.271, effective June 20, 1988. See: 19 N.J.R. 853(a), 20 N.J.R. 501(b), 20 N.J.R. 1463(a).

Subchapter 25, Sellers of Health Club Services, was repealed and Subchapter 25, Sellers of Health Club Services, was adopted as new rules by R.1988 d.520, effective November 7, 1988. See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

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

Subchapter 2, Motor Vehicle Advertising Practices, was repealed and Subchapter 2, Motor Vehicle Advertising Practices, was adopted as new rules by R.1989 d.253, effective May 15, 1989. See: 21 N.J.R. 115(a), 21 N.J.R. 1368(a).

Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was repealed by R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Subchapter 19, Petition for Rulemaking, was adopted as R.1990 d.371, effective August 6, 1990. See: 22 N.J.R. 786(a), 22 N.J.R. 2331(c).

Petition for Rulemaking. See: 22 N.J.R. 3166(b).

Pursuant to Executive Order No. 66(1978), Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.1990 d.606, effective November 9, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Subchapter 24, Toy and Bicycle Safety, was adopted as R.1993 d.372, effective July 19, 1993. See: 24 N.J.R. 3019(b), 24 N.J.R. 3666(a), 25 N.J.R. 3235(a).

Subchapter 21, Sale of Kosher Products, and Subchapter 22, Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, were repealed and Subchapter 21, Regulations Concerning the Sale of Food Represented as Kosher, was adopted as new rules by R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Pursuant to Executive Order No. 66(1978), Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.1995 d.618, effective November 6, 1995, and Subchapter 2, Motor Vehicle Advertising Practices, Subchapter 6, Deceptive Practices Concerning Automotive Sales Practices, Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, and Subchapter 8, Tire Distributors and Dealers, were recodified as Subchapter 26A, Motor Vehicle Advertising Practices, Subchapter 26B, Automotive Sales Practices, Subchapter 26C, Automotive Repairs, and Subchapter 26D, Tire Distributors and Dealers, by R.1995 d.618, effective December 4, 1995. See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Subchapter 28, Motor Vehicle Leasing, was adopted as R.1996 d.129, effective March 4, 1996. See: 27 N.J.R. 4130(a), 28 N.J.R. 1394(b).

Subchapter 26E, Motorized Wheelchair Dispute Resolution, was adopted as R.1996 d.407, effective August 19, 1996. See: 28 N.J.R. 2320(a), 28 N.J.R. 3965(a).

Subchapter 26F, Unfair Trade Practices—Used Motor Vehicles—Sale and Warranty, was adopted as R.1999 d.45, effective February 1, 1999. See: 30 N.J.R. 518(a), 31 N.J.R. 446(a).

Pursuant to Executive Order No. 66(19780, Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was readopted as R.2000 d.460, effective October 20, 2000. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

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 transmission 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.

"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 2⅜ 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 neck 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 ⅛ 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%

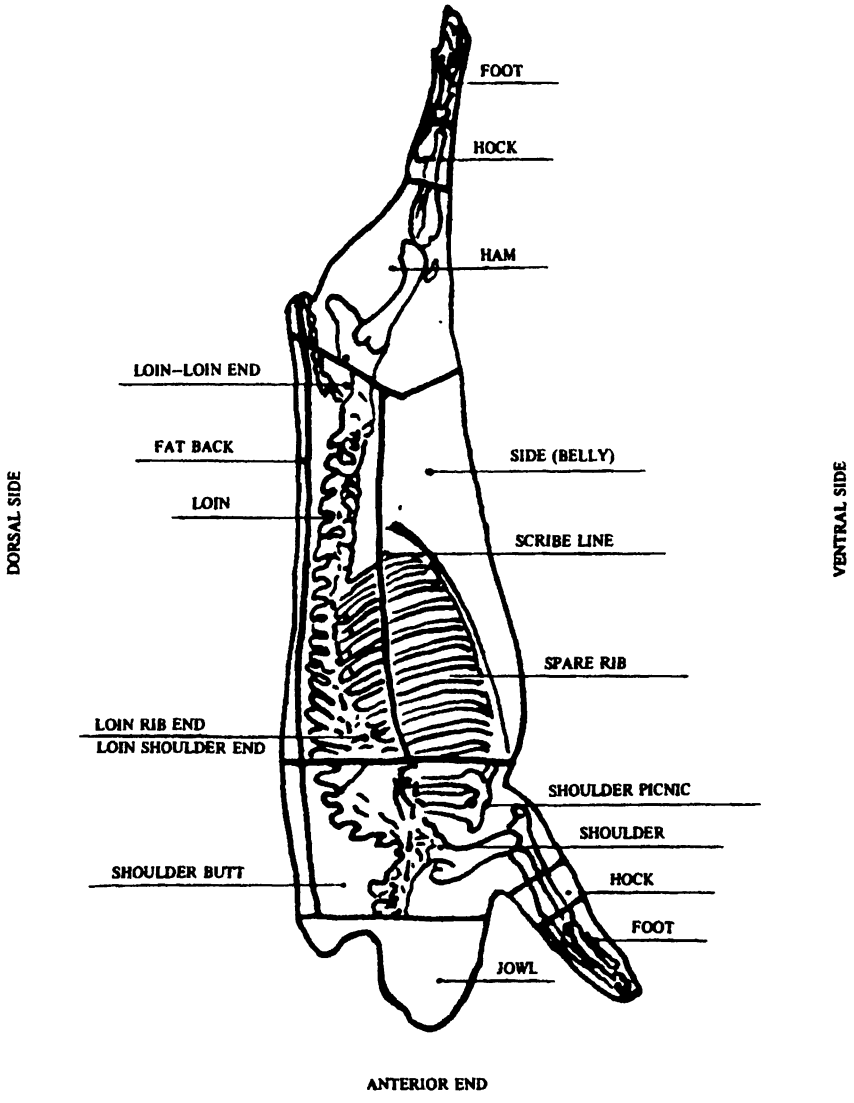
or

"BREADED VEAL STEAK, Beef fat added,

chopped and shaped"

Veal 61%, Breading and Batter not in

(d) Chart 4: Pork Carcass



SUBCHAPTER 4. BANNED HAZARDOUS PRODUCTS

Case Notes

U.S. v. One Hazardous Product Consisting of a Refuse Bin, D.C., 487 F.Supp. 581 (1980).

13:45A–4.1 Unconscionable commercial practice

It shall be an unconscionable commercial practice for any person, including any business entity, to manufacture, distribute, sell or offer for sale any consumer product contrary to any order of the Consumer Product Safety Commission, pursuant to 15 U.S.C. §2051 et seq.

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

13:45A–4.2 Consumer product defined

(a) For purposes of this rule, the term "consumer product" means any article or component part thereof, produced or distributed:

1. For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise; or

2. For the personal use, consumption or enjoyment of a permanent or temporary household or residence, a school, in recreation or otherwise.

13:45A–4.3 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq. any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 5. DELIVERY OF HOUSEHOLD FURNITURE AND FURNISHINGS

13:45A–5.1 Delivery practices; generally

(a) Any person who is engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for future delivery shall:

1. Deliver all of the ordered merchandise by or on the promised delivery date; or

2. Provide written notice to the consumer of the impossibility of meeting the promised delivery date. The notice shall offer the consumer the option to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified later time. Said written notice shall be mailed on or prior to the delivery date.

(b) In the event a seller fails to deliver all of the ordered merchandise on the promised delivery date and makes only a partial delivery, the seller shall comply with the notice requirement of (a) above. Said notice shall offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.

(c) Failure to comply with (a) above shall constitute a deceptive practice under the Consumer Fraud Act.

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

(e) For the purposes of this section, delivery of furniture or furnishings that are damaged or that are not the exact size, style, color or condition indicated on the sales contract, shall not constitute delivery as required by (a)1 above.

1. Upon receipt of such non-conforming merchandise, the consumer shall have the option of either accepting the furniture or of exercising any of the options set forth in (a)2 above.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Amended by R.2000 d.460, effective November 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).
Inserted (e).

Case Notes

Validity. State v. Hudson Furniture Co., 165 N.J.Super. 516, 398 A.2d 900 (App.Div.1979).

Consumer Fraud Act regulation applies when furniture is delivered untimely. DiNicola v. Watchung Furniture's Country Manor, 232 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 shall show the date of the order and shall contain the following sentence in ten-point bold face type:

> **The merchandise you have ordered is promised for delivery to you on or before** (insert date or length of time agreed upon).

(b) The blank 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").

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

13:45A–5.3 Contract form; delayed delivery

(a) The contract forms or sales documents shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with N.J.A.C. 13:45A–5.1 and shall contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

> **If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.**

(b) The provisions of this subchapter shall apply to any person who sells household furniture in or from the State of New Jersey or to any person located outside of the State of New Jersey who sells household furniture into this State.

(c) It shall be unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations", which violate or are contrary to the rights and responsibilities provided for by this rule. Any contract or sales agreement which contains such a provision shall be null and void and unenforceable.

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

13:45A–5.4 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. GENERAL ADVERTISING

13:45A–9.1 Definitions

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

"Advertisement" means any attempt by an advertiser, other than by use of a price tag, catalog or any offering for the sale of a motor vehicle subject to the requirements of N.J.A.C. 13:45A–26A, to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

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

"Catalog" means a multi-page solicitation in which a seller offers goods for sale or rental for a seasonal or specified period of time, from which consumers can order goods directly without going to the seller's place of business. An advertising circular, distributed through inclusion in a newspaper, representing a seller's partial offering of goods for sale or rental for a period of time not to exceed two weeks, shall not be considered a catalog.

"Closeout sale" means a sale in which an advertiser offers for sale at a reduced price items of merchandise remaining at one or more specified locations which the advertiser will not have available for sale within a reasonable period of time after all such items have been sold.

"Division" means the Division of Consumer Affairs.

"Factory outlet" means an establishment owned by a manufacturer that is used primarily to offer, at retail, the manufacturer's products directly to the consumer for his or her own use and not for resale.

"Fictitious former price" means an artificially inflated price for an item or items of merchandise established for the purpose of enabling the advertiser to subsequently offer the item or items at a large reduction.

"Former price or price range" in a price reduction advertisement means an advertised price or price range for an item of merchandise that has been offered or sold by the advertiser in his or her trade area or competitors in their trade area.

"Home appliance" means any electrical, mechanical or thermal article produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence including, but not limited to, air conditioners, cameras, computers, dehumidifiers, dishwashers, dryers, electric blankets, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereo equipment, televisions and washers.

"Merchandise" means any objects, wares, goods, commodities, services or anything offered directly or indirectly to the public for sale or rental at retail.

"Multi-tiered pricing" means a form of offer where the price of merchandise or the extent of a discount is contingent upon the consumer's merchandise selections, such as the number of units purchased, the purchase of other merchandise pursuant to the terms of the advertiser's offer, or the total dollar amount of the consumer's order, for example, "Buy two cans of soda, get a third can at half price."

"Percentage-off discount" means an offer to sell merchandise expressed in terms of a percentage reduction or range of percentage reductions in price, such as "10% off" or "25% to 50% off."

"Point of display" means a location within a retail establishment where an item of merchandise is displayed for the purpose of selection by the consumer with the intention of purchase.

"Point of sale" means any location in a retail establishment where purchases of merchandise are totaled by a scanner and payment is made by a consumer.

"Point of sale discount" means a price reduction which, although it is advertised or posted at the point of display, is automatically applied to reduce the retail price of the merchandise at the time it is scanned for consumer purchase, or a price reduction manually entered through a cash reduction or similar device, then scanned for consumer purchase.

"Price advertisement" means any advertisement in which a specific dollar price is stated with regard to specific advertised merchandise.

"Price reduction advertisement" means an advertisement which in any way states or suggests directly or indirectly that merchandise is being offered or made available for sale at a price less than that at which it has been routinely sold or offered for sale in the past or at which it will be sold or offered for sale in the future. The following words and terms or their substantial equivalent, when used in any advertisement except when used exclusively as part of the

advertiser's corporate, partnership or trade name, shall be deemed to indicate a price reduction advertisement: sale, discount, special savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, warehouse or factory clearance, buy one get one free, at cost, below cost, wholesale.

"Rain check" means a written statement issued by an advertiser allowing the purchase of designated merchandise at a previously advertised price.

"Scanner" means an electronic system that employs a laser bar code reader to retrieve product identity, price and other information stored in computer memory.

"Targeted discount" means a price reduction on merchandise which reduction is restricted to customers designated by the advertiser, such as those who possess a card or other device bearing a scanner-readable code issued by the advertiser, a particular type of credit card, or some other device which, when read by the scanner, shall apply the discount at the time of purchase.

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

Amended by R.1996, d.309, effective July 1, 1996 (operative August 15, 1996).
See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).
Added "Factory outlet", "Fictitious former price" and "Former price or price range"; deleted "Reference price"; and amended "Advertisement" and "Home appliance".
Amended by R.1998 d.489. effective October 5, 1998.
See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).
Rewrote the section.
Amended by R.2000 d.460, effective November 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).
In the definition of "Advertisement", amended the N.J.A.C. reference.

Case Notes

Advertisements allegedly in violation of the Consumer Fraud Act, but not the subject of a specific regulation implementing the Act, are best left for a jury determination. Leon v. Rite Aid Corporation, 774 A.2d 674 (2001).

An advertisement violating regulations implementing the Consumer Fraud Act is per se a violation of the Act. Leon v. Rite Aid Corporation, 774 A.2d 674 (2001).

Held that a franchise or business opportunity venture is "merchandise" within 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; or if represented to be permanently reduced.

2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability. By way of illustration, and not by limitation, the following shall be deemed violative of this subparagraph:

i. The failure to specifically designate which merchandise items are below cost, if any amount less than all advertised items are below cost, when a statement of below cost sales is set forth in an advertisement;

ii. The failure to specifically designate which merchandise items, if any, are damaged or in any way less than first quality condition;

iii. The failure to specifically designate merchandise as floor models, discontinued models or one of a kind, when applicable;

iv. The failure to clearly designate or describe the retail outlets at which advertised merchandise will or will not be available. Such information need not be disclosed on any in-store advertisement.

3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as "sale," "as advertised," "20% off."

4. In any price advertisement in which a home appliance is offered for sale, the failure of an advertiser to disclose the following information relating to the advertised merchandise: the manufacturer's name or the merchandise trade name, the model or series number and such other information as may be necessary to clearly delineate the advertised item from other similar merchandise produced by the same manufacturer.

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

6. The use of the terms "Public Notice," "Public Sale" or words or terms of similar meaning in any advertisement offering merchandise for sale, where such sale is not required by court order or by operation of law, other than a sale conducted by an auctioneer on behalf of a non-business entity.

7. Describing the advertiser through the use of the terms "warehouse," "factory outlet," "discount," "bargain," "clearance," "liquidators," "unclaimed freight," or other words or terms of similar meaning, whether in the advertiser's corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described.

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 (Reserved)

Repealed by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Section was "Effective date".

APPENDIX

Example 1

_____ (County or Municipality)

County or Municipal Seal (optional)

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__

Administrative correction.
See: 35 N.J.R. 1562(b).

SUBCHAPTER 14. UNIT PRICING OF CONSUMER COMMODITIES IN RETAIL ESTABLISHMENTS

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.

"Wash load" means seven pounds of laundry by dry weight.

Amended by R.1998 d.489, effective October 5, 1998.
See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).
Added "Wash load" definition.

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 establishments each having a total floor space of 4,000 square feet or less regardless of the annual gross receipts in New Jersey 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 in New Jersey 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 in New Jersey 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."
Amended by R.1998 d.489, effective October 5, 1998.
See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).
Inserted references to New Jersey throughout the section.

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.

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

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

Law Review and Journal Commentaries

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 Purpose and scope

(a) The purpose of the rules in this subchapter is to implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., by providing procedures for the regulation and content of home improvement contracts and establishing standards to facilitate enforcement of the requirements of the Act.

(b) The rules in this subchapter shall apply to all sellers as defined in N.J.A.C. 13:45A–16.1A and to all home improvement contractors as defined in N.J.A.C. 13:45A–17.2 whether or not they are exempt from the provisions of N.J.A.C. 13:45A–17.

New Rule, R.2004 d.418, effective November 1, 2004 (operative November 9, 2004).
See: 36 N.J.R. 3506(a), 36 N.J.R. 4984(a).
Former N.J.A.C. 13:45A–16.1, Definitions, recodified to N.J.A.C. 13:45A–16.1A.

(b) Information contained in the application required pursuant to N.J.A.C. 13:45A–17.5 and information contained in the disclosure statement required to be filed pursuant to N.J.A.C. 13:45A–17.6 may be used by the Director as grounds for denying, suspending or revoking a registration. An applicant whose registration is denied or a home improvement contractor whose registration is suspended or revoked based upon information contained in the application or disclosure statement or any amendments thereto shall be afforded an opportunity to be heard 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, upon written request to the Director within 30 days of the notice of denial, suspension or revocation which shall contain the basis for such action. In any matter in which the provisions of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A–1 et seq., apply, the Director shall comply with the requirements of that Act.

(c) Except as provided in (b) above, prior to refusing to issue or renew or suspending or revoking a home improvement contractor registration or assessing a penalty, the Director shall notify the applicant or registrant and provide an opportunity to be heard.

(d) In addition to assessing a monetary penalty for any violation of this subchapter, the Director may revoke a registration or suspend the registration for a period of time dependent upon the seriousness of the violation.

(e) Nothing contained in this subchapter shall limit the Director from imposing any additional fees, fines, penalties, restitution or any other sanctions as permitted under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq.

13:45A–17.10 Reinstatement of suspended registration

A registration that is suspended by the Director may be reinstated upon the contractor satisfying the conditions for reinstatement as determined by the Director and paying all outstanding fees, fines, penalties and restitution, including the payment of the reinstatement fee specified in N.J.A.C. 13:45A–17.14.

13:45A–17.11 Ownership and use of registration number; replacement and duplicate certificates

(a) Each registration number and certificate containing such registration number issued by the Director to a home improvement contractor remain the property of the State of New Jersey. If the Director suspends, fails to renew, or revokes a registration, the home improvement contractor shall immediately return all registration certificates to the Director and shall remove the registration number from all vehicles, advertising and anything else on which the registration number is displayed or otherwise communicated.

(b) The Director shall issue a replacement certificate upon payment of the replacement certificate fee as set forth in N.J.A.C. 13:45A–17.14 and receipt by the Director of an affidavit or certified statement attesting that the original was either lost, destroyed, mutilated or is otherwise no longer in the custody of and cannot be recovered by the certificate holder.

(c) The Director shall issue a duplicate certificate to a registered contractor upon payment of the duplicate certificate fee as set forth in N.J.A.C. 13:45A–17.14 and receipt by the Director of an affidavit or certified statement that the registered contractor has multiple places of business in which the contractor must display a certificate. A registered contractor may not possess more registration certificates than the number of places of business utilized by the contractor.

(d) A registered home improvement contractor shall prominently display:

1. The original registration certificate or a duplicate registration certificate issued by the Division at each place of business; and

2. The contractor's registration number on all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this State, and on all commercial vehicles registered in this State and leased or owned by a registrant and used by the registrant for the purpose of providing home improvements, except for vehicles leased or rented by a registrant to a customer of that registrant.

(e) Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to (b) of N.J.S.A. 56:8–149b.

13:45A–17.12 Mandatory commercial general liability insurance

(a) On or after December 31, 2005 every registered home improvement contractor shall secure and maintain in full force and effect during the entire term of registration a commercial general liability insurance policy and shall file with the Director proof that such insurance is in full force and effect.

(b) The insurance policy required to be filed with the Director shall be a commercial general liability insurance policy, occurrence form, and shall provide a minimum coverage in the amount of $500,000 per occurrence. On or after December 31 2005, every registered contractor engaged in home improvements whose commercial general liability insurance policy is canceled or nonrenewed shall submit to the director a copy of the certificate of commercial general liability insurance for a new or replacement policy which meets the requirements of (a) above before the former policy is no longer effective.

(c) The proof of insurance required by (a) above shall be a certificate provided by the insurer containing the insured's name, business street address, policy number, term of the insurance, and information assuring that the policy conforms with (b) above.

(d) A home improvement contractor who either does not renew or otherwise changes the contractor's commercial general liability policy shall submit a copy of the certificate of commercial general liability insurance for the new policy before the former policy is no longer effective.

Administrative change.
See: 37 N.J.R. 2212(a).

13:45A–17.13 Requirements of certain home improvement contracts

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A–16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provisions of N.J.S.A. 56:8–151.

13:45A–17.14 Fees

(a) The Division shall charge the following non-refundable home improvement contractor registration fees:

1.	Initial registration fee	$90.00;
2.	Renewal registration fee	$75.00;
3.	Late fee	$25.00;
4.	Reinstatement fee	$50.00;
5.	Replacement or duplicate certificate fee	$20.00.

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

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

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.

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

Recodified to N.J.A.C. 13:45A–20.1A and amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Recodified from N.J.A.C. 13:45A–20.1A by R.2000 d.460, effective November 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).
Former N.J.A.C. 13:45A–20.1, Delayed effective date of regulation, repealed.

13:45A–20.1A (Reserved)

Recodified from N.J.A.C. 13:45A–20.1 and amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Recodified to N.J.A.C. 13:45A–20.1 by R.2000 d.460, effective November 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).

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 Place of business

(a) A ticket reseller shall maintain a bona fide place of business.

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 ticket reseller 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.

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

13:45A–20.5 Sale or exchange

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

(b) A place of entertainment or its agent 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 therefor.

(c) 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.

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

(e) 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.

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

(g) A ticket reseller 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.

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

13:45A–20.6 Records

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

(b) Records of a ticket reseller shall clearly set forth:

1. The prices at which all tickets have been bought and sold by the ticket reseller.

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

(c) Records of a ticket reseller 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 ticket reseller 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 ticket reseller'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 a ticket reseller 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.

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

13:45A–20.7 Advertising

(a) A ticket reseller shall not attempt 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 by a ticket reseller 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.

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

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

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, 507 U.S. 952, 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, 507 U.S. 952, 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, 507 U.S. 952, 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, 507 U.S. 952, 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. HALAL FOOD

Authority

N.J.S.A. 56:8–1 et seq.

Source and Effective Date

R.2004 d.337, effective September 7, 2004.
See: 35 N.J.R. 3754(a), 36 N.J.R. 4152(b).

13:45A–22.1 Purpose and scope

(a) The rules in this subchapter implement the provisions of P.L. 2000, c.60 (N.J.S.A. 56:8–98 et seq.), which created the "Halal Food Consumer Protection Act" under the Division of Consumer Affairs.

(b) This subchapter shall apply to all dealers, as defined in N.J.A.C. 13:45A–22.2, who prepare, distribute, sell or expose for sale any food represented to be halal.

13:45A–22.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly 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, Internet and electronic media, telephone book listings, distribution of fliers and menus and any in-store signs or announcements.

4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.

5. The replaced parts, if requested before work is commenced, unless their size, weight or similar factors make return of the parts impractical.

6. A written copy of any guaranty."

12. Nothing in this section shall be construed as requiring a watercraft repair dealer to provide a written estimate if the dealer does not agree to do the repair.

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

SUBCHAPTER 24. TOY AND BICYCLE SAFETY

13:45A-24.1 Purpose and scope

(a) The purpose of this subchapter is:

1. To implement P.L. 1991, c.250, by setting forth regulations for the reporting of toy-related deaths or injuries;

2. To implement P.L. 1991, c.295, by setting forth regulations for disseminating notice of defective or hazardous toys or other articles intended for use by children; and

3. To implement P.L. 1991, c.323, by setting forth regulations for a notice promoting the use of helmets to be affixed to bicycles sold at retail in the State of New Jersey.

(b) The sections of this subchapter shall apply as follows:

1. N.J.A.C. 13:45A-24.2 applies to all physicians, defined for purposes of this section as Doctors of Medicine, Doctors of Osteopathy, and Doctors of Podiatric Medicine who are licensed by the State Board of Medical Examiners, and Doctors of Chiropractic who are licensed by the State Board of Chiropractic Examiners; and to the medical directors of all licensed health-related facilities located within the State of New Jersey, such as hospitals, public health centers, emergency and other medical treatment centers, or the premises of health maintenance organizations if patients are seen or treated therein.

2. N.J.A.C. 13:45A-24.3 applies to manufacturers, importers, and distributors of toys or other articles intended for use by children, and to all dealers who offer to sell or sell such items to consumers in the State of New Jersey.

3. N.J.A.C. 13:45A-24.4 applies to all persons in the business of selling bicycles at retail in the State of New Jersey.

13:45A-24.2 Reporting of toy-related injuries

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

"Toy" means a plaything or item primarily marketed for the amusement or recreation of children, as well as any article that is designed for use by children, such as a stroller, crib, child-sized furniture, pacifier, teething ring, etc.

"Toy-related injury" means an injury to a person of any age caused or worsened by a toy as defined above; the term does not include an injury which involved a toy but was not directly caused by the toy or worsened by an apparent characteristic of the toy.

(b) Whenever a physician has before him or her a person whose injury or death the physician determines to be or reasonably suspects may be toy-related, the physician or designee shall, as soon as practicable but no later than the next business day, make a report as follows:

1. If the injured person was seen in a private office or non-institutional setting, the physician shall report the toy-related injury to:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel.: (201) 504-6257

2. If the injured person was seen in a licensed health-care facility or other medical treatment center, or on the premises of a health maintenance organization, the physician or designee shall promptly report the injury or death to the medical director of that organization.

3. The medical director shall transmit the information supplied pursuant to (b)2 above as soon as practicable but no later than the next business day to the Office of Consumer Protection at the address set forth in (b)1 above.

(c) The initial report to the Office of Consumer Protection shall be made by telephone during business hours (8:30 A.M. to 4:30 P.M. Monday through Friday); the physician or medical director, as applicable, shall then complete a written form provided by the Office of Consumer Protection and shall return it within seven days of receipt to the address set forth in (b)1 above.

(d) The Division Director shall maintain a record of the toy-related injuries or deaths reported by physicians and medical directors and shall:

1. Prepare a report which does not identify either the physician or patient involved;

2. Transmit the information on a regular basis to the U.S. Consumer Product Safety Commission; and

3. Make the report available monthly to the public, upon request to the Office of Consumer Protection at the address set forth in (b)1 above. The request shall include a check or money order, payable to "Division of Consumer Affairs," for the processing fee of $5.00. Cash will not be accepted.

(e) If upon review of such reports of injury or death, the Director determines that a specific toy may pose an immediate danger to the residents of this State, the Director shall issue a statement warning the public that such reports have been received.

(f) The Director may release the information identifying the physician and/or patient involved solely to an appropriate governmental organization for good cause shown.

(g) Failure by a physician or medical director to report a toy-related injury or death as set forth herein shall be referred by the Director to the attention of the State Board of Medical Examiners, or the State Board of Chiropractic Examiners, as applicable.

13:45A-24.3 Toy recall notices

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

"Dealer" means a person who sells at retail a toy or other article intended for use by children. A dealer who sells at wholesale such toy or article shall, with respect to that sale, be considered the "distributor" of that item.

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

"Distributor" means a person who sells at wholesale a toy or other article intended for use by children, or a parent company which purchases said items and distributes them to its authorized outlet stores.

"Manufacturer" means a person who, under any name, manufactures or imports a toy or other article distributed in New Jersey. When the toy or other article is distributed or sold under a name other than that of the actual manufacturer of the toy or other article, the term "manufacturer" includes any person under whose name the toy or other article is distributed or sold.

(b) Any manufacturer, distributor or dealer who, pursuant to any law or any regulation of the U.S. Consumer Product Safety Commission, is required to give public notice or who voluntarily gives such notice, with regard to a defect or hazard in any toy or other article intended for use by children, shall at the same time notify the Director, in writing, at the following address:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel. (201) 504–6257

(c) A dealer shall maintain a record of receipt of toy recall notices, including the date of receipt, and shall make it available upon request to a representative of the Office of Consumer Protection.

(d) A dealer who is notified by a manufacturer, a distributor, or the U.S. Consumer Product Safety Commission of a defective or hazardous toy or other article intended for use by children shall, if the dealer has carried or normally carries such item, prominently display that notification for at least 120 days after its receipt on each premises where the toy or article was sold or would normally be sold, as follows:

1. Each notification shall be displayed at the principal entrance of the store, or in the cash register area, or in a location elsewhere that is readily accessible to the public. Notifications shall be placed so that they can be easily read by adult persons of average height and normal vision. No structures, furniture, boxes, merchandise, packaging material, etc., shall impede access to the display of notifications.

(e) The Director shall publish and disseminate to the public, at least quarter-annually, a summary of toys and other items intended for use by children, which items have been found to be defective or hazardous. The summary shall be drawn from findings of the U.S. Consumer Product Safety Commission and voluntary notices from manufacturers or distributors. In addition, the Director shall alert the public about particular toys or items, as warranted from time to time.

(f) Failure to comply with any requirement of this section shall be deemed a violation of the Consumer Fraud Act, N.J.S.A. 56:8–2 et seq.

13:45A-24.4 Bicycle safety notices

(a) A bicycle safety statement promoting the use of helmets shall be prominently affixed to every new or used bicycle offered to be sold or sold at retail by a person in the business of selling bicycles. The statement shall be attached to the seat, handlebar or, if in the form of a decal, to the top tube of the bicycle or, if unassembled, prominently printed on or firmly attached to the outside of the box or carton containing the unassembled bicycle.

(b) The statement may be in the form of the warning card, "This Bike is Missing One Part," designed by the New Jersey Coalition for Prevention of Developmental Disabilities, available from:

The New Jersey Coalition for Prevention
of Developmental Disabilities
985 Livingston Avenue
North Brunswick, New Jersey 08902
Tel. (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 if in the form of a tag or notice and no less than 18–point type if in the form of a decal, and is printed in boldface capital letters, in color contrasting with the background. The tag or notice shall be made of cardboard, durable paper or plastic, and shall be no smaller than four inches by six inches if in the form of a tag or notice and no less than one by two inches if in the form of a decal; 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.

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

SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

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

Cross References

Special rules regarding disputes arising under the New Jersey Lemon Law, see N.J.A.C. 1:13A.

Law Reviews and Journal Commentaries

Expert testimony not required in Lemon Law suits, court says. Matt Ackermann, 150 N.J.L.J. 609 (1997).

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.

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 shall provide at least the following information:

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

2. A specific description of the repair work performed.

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

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

5. 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).
Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Administrative Change.
32 N.J.R. 1037(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
Newark, New Jersey 07101
Telephone (973) 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).
Administrative Change.
32 N.J.R. 1037(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

Lack of qualifying nonconformity defeats Lemon Law claim. O'Connell v. Chrysler Motor Corporation, 97 N.J.A.R.2d (CMA) 139.

Lemon Law claim dismissed due to failure to present vehicle for three repair attempts for the same nonconformity. Doryk v. General Motors Corporation (Chevrolet Motor Division) (CMA) 122.

Consumer's failure to give statutorily prescribed notice before filing lemon law complaint defeats claim. Goldberg v. Chrysler Motor Corporation, 97 N.J.A.R.2d (CMA) 36.

Purchaser was entitled to Lemon Law presumption that manufacturer was unable to repair nonconformity where automobile was out-of-service for 34 days during first repair attempt. Ramnanan v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 229.

Lemon Law complaint was dismissed where automobile's problems were repaired by dealer. Hampton v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 192.

Lemon Law relief granted where automobile dealer failed to avail itself of last chance repair opportunity. Sigman v. Nissan Motor Corporation, U.S.A., 96 N.J.A.R.2d (CMA) 168.

Consumer's failure to comply with Lemon Law's statutory filing requirements precludes claim. Rivera v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 63.

Consumer denied Lemon Law relief for failure to inform manufacturer of problems and offer opportunity for repair before filing Lemon Law complaint. Vitale v. Buick Motor Division-GM, 96 N.J.A.R.2d (CMA) 61.

Lemon Law claim that pickup truck pulled to right while braking was dismissed when defect was corrected by manufacturer at last-chance opportunity. Boothroyd v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 47.

Lemon Law complainant failed to allow dealer sufficient opportunity to repair automobile problems. Conrad-Kessaris v. Mitsubishi Motor Sales of America, Inc., 96 N.J.A.R.2d (CMA) 19.

Consumer failed to meet procedural requirements by submitting allegedly defective vehicle to repair three or more times and affording manufacturer a last chance opportunity. Shepps v. Mitsubishi Motor, 95 N.J.A.R.2d (CMA) 78.

Failure to give manufacturer a final opportunity to repair alleged defect in vehicle was fatal to consumer's claim. Viccaro v. Mitsubishi Motor, 95 N.J.A.R.2d (CMA) 56.

Presumption of inability to correct nonconformity was not available when manufacturer commenced repair but was thereafter prevented by consumer from completing repair. Stassi v. Hyundai Motor, 95 N.J.A.R.2d (CMA) 49.

Remedies under Lemon Law were not available to consumer without affording dealer last chance opportunity to correct alleged defects in vehicle. Benenati v. Mitsubishi Motor Sales, 95 N.J.A.R.2d (CMA) 9.

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 within the term of protection 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); and

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.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Amended by R.1999 d.269, effective August 16, 1999.
See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).
In (b), deleted a former 6.

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.

(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.

Amended by R.1999 d.269, effective August 16, 1999.
See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).
In (f), deleted a former third sentence.

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

Automobile purchaser was entitled to Lemon Law refund plus reasonable attorney fees and costs. Clyde v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 188.

Administrative law judge calculated damages for stipulated judgment in Lemon Law case. Martir v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 154.

Nine bent wheel rims over a period of time, when not due to misuse, were indicative of a nonconformity affecting safety and use requiring manufacturer to provide consumers with reimbursement and a reasonable attorney's fee. Jurofsky v. Volvo Cars, 95 N.J.A.R.2d (CMA) 157.

Faulty temperature gauge that erroneously indicated an overheating engine was nonconformity requiring refund with reasonable allowance for vehicle use. Lamoree v. Chevrolet Motor, 95 N.J.A.R.2d (CMA) 155.

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 Manufacturer's reporting requirements

(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;

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 design to the date on which performance of the award was satisfied; and

6. A list of all motor vehicles and their Vehicle Identification Numbers stamped with "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING," which have been reported to the MRS Special Title Section during the previous six months.

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

13:45A–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.

SUBCHAPTER 26A. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A–26A.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.

Recodified from 13:45A–2.1 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

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–26A.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.

Recodified from 13:45A–2.2 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

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.

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

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

Amended by R.2000 d.460, effective November 20, 2000.
See: 32 N.J.R. 3282(a), 32 N.J.R. 4126(a).
In (a)1, substituted "mail," for " certified mail, return receipt requested," following "nonconformity by".

13:45A–26E.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer shall provide the following items to the WLLU by certified mail, return receipt requested:

1. A completed Application for Dispute Resolution which can be obtained from the WLLU; and

2. Photocopies of the consumer's written notification(s) of the nonconformities to the manufacturer sent prior to the expiration of the manufacturer's warranty.

(b) If application forms are not available, a consumer may file a written request for dispute resolution which shall be accepted by the WLLU if that written request contains all information, items and statements listed in N.J.A.C. 13:45A–26E.7.

13:45A–26E.7 Application

(a) Application for Dispute Resolution shall require submission of the following:

1. The name, address and telephone number of the consumer as well as the lienholder, if any;

2. The date of the original delivery of the motorized wheelchair to the consumer;

3. A written account of the events resulting in the dispute including description(s) of the claimed nonconformity(ies) and a chronology of the repair attempts;

4. Photocopies of the statements of repair given to the consumer by the manufacturer through its dealer, each time a motorized wheelchair is returned from being examined or repaired; and

5. Photocopies of the agreement of sale or lease, 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. Finance charges;

iii. Rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period when the consumer's motorized wheelchair was out of service due to a nonconformity;

iv. Prescription for the wheelchair from a licensed medical professional if the consumer purchased or leased the wheelchair by prescription;

v. Documents from third-party payors; 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 that the motorized wheelchair's use, market value or safety is substantially impaired by the nonconformity(ies) complained of;

2. That the nonconformity(ies) complained of is (are) not the result of abuse, neglect or unauthorized modifications of the motorized wheelchair 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 three attempts to correct the same substantial defect, or the motorized wheelchair was out of service by reason of repair for at least an aggregate of 20 days;

4. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts to repair substantially the same nonconformity and the nonconformity continues to exist; or

ii. The motorized wheelchair was out of service by reason of repair for one or more nonconformities for an aggregate total of 20 or more days since the original delivery of the motorized wheelchair, and the nonconformity(ies) continues to exist; and

5. 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. This option will be available only in the event the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A–26E.10(f).

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

13:45A–26E.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.

(b) The filing fee shall be requested by the WLLU when it has determined that the consumer's application is complete, that it complies with this subchapter and the Wheelchair Lemon Law and that it is eligible for the WLLU's Dispute Resolution System.

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

13:45A-26E.9 Processing of applications

(a) Submitted applications shall be reviewed by the WLLU for completeness and compliance with the Wheelchair Lemon Law and this subchapter.

1. Incomplete applications shall be returned to the consumer for completion.

2. Applications not in compliance with this subchapter and the Wheelchair Lemon Law shall be rejected and the WLLU shall notify the consumer of the reason for the rejection. However, no judgment shall be made by the WLLU as to whether the claimed defect is substantiated by the evidence or whether the defect substantially impairs the use, market value or safety of a motorized wheelchair.

(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-26E.10 Notification and scheduling of hearings

(a) By August 29, 1996, each manufacturer of motorized wheelchairs sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Wheelchair Lemon Law Unit, the name, address, telephone and telefax 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, the WLLU shall send a notice by certified mail, return receipt requested to the consumer and the 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 WLLU 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 WLLU simultaneously with the notice of acceptance of the application, to the manufacturer or the manufacturer's designee. Within 10 days of receipt 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.

Cross References

Motorized wheelchair dispute resolution, applications, proceeding on the papers, see N.J.A.C. 13:45A-26E.6.

13:45A-26E.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4 of the Wheelchair Lemon Law, whether through the Division of Consumer Affairs motorized wheelchair dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase price of the wheelchair including finance charges, sales tax or, in the case of a lease, the total sum of lease payments made, including any down payment,

2. The cost of any necessary modifications arranged, installed or made by the manufacturer or its dealer within one year after the original date of delivery,

3. Other charges or fees, including, but not limited to, actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period during which the consumer's motorized wheelchair was out of service due to a nonconformity.

(b) From the total sum of items in (a) above, a deduction shall be made, representing an allowance for use. This deduction shall be calculated as follows: the full purchase price of the motorized wheelchair shall be multiplied by a fraction, the denominator of which is 1,825 and the numerator of which is equal to the number of days that the wheelchair was used before the consumer first reported the problem to the dealer or the manufacturer.

Administrative Correction.
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.

(c) The manufacturer shall advise the Director as to its compliance with the final decision or its intent to appeal 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 $5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

13:45A–26E.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of the Superior Court by filing a notice of appeal with the court as well as the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 45A–26E.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 $2,500 for anticipated attorney's fees and other costs;

2. Which sum shall be secured by cash or its equivalent; and

3. Payable to the consumer.

13:45A–26E.14 Manufacturer's informal dispute resolution system

(a) The WLLU shall compile a roster of American and foreign manufacturers of motorized wheelchairs sold or leased in New Jersey..

(b) Manufacturers who establish or participate in an in-house customer assistance mechanism, private arbitration, private buy-back program, or any other type of dispute resolution system shall, by September 18, 1996:

1. Advise the WLLU of the existence of its procedure mentioned in (b) above; and

2. Send the WLLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure and shall include all necessary addresses and phone numbers.

13:45A–26E.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of motorized wheelchair 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 January 1, 1997 and every 12 months thereafter.

SUBCHAPTER 26F. UNFAIR TRADE PRACTICES—USED MOTOR VEHICLES—SALE AND WARRANTY

13:45A–26F.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 56:8–67 et seq., commonly known as the Used Car Lemon Law. The subchapter specifies which used motor vehicles are subject to the Act; the purchaser's as well as the dealer's obligations under the Act; the warranties which the dealer must provide; the conditions which must be met before a purchaser may waive a warranty; and the dealer's bonding and reporting requirements. In addition, the subchapter establishes a dispute resolution program within the Division of Consumer Affairs in conjunction with the Office of Administrative Law.

(b) This subchapter applies to:

1. Dealers (as defined in N.J.A.C. 13:45A–26F.2), who sell used motor vehicles in the State of New Jersey; and

2. All consumers (as defined in N.J.A.C. 13:45A–26F.2), of used motor vehicles in the State of New Jersey.

13:45A–26F.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"As is" means a used motor vehicle sold by a dealer to a consumer without any warranty, either express or implied, and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

"Consumer" means the purchaser or prospective purchaser, other than for the purpose of resale, of a used motor vehicle normally used for personal, family or household purposes.

"Covered item" means and includes the following components of a used motor vehicle: Engine—all internal lubricated parts, timing chains, gears and cover, timing belt, pulleys and cover, oil pump and gears, water pump, valve covers, oil pan, manifolds, flywheel, harmonic balancer, engine mounts, seals and gaskets, and turbo-charger housing; however, housing, engine block and cylinder heads are covered items only if damaged by the failure of an internal lubricated part. Transmission Automatic/Transfer Case—all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets. Transmission Manual/Transfer Case—all internal lubricated parts, transmission mounts, seals and gaskets, but excluding a manual clutch, pressure plate, throw-out bearings, clutch master or slave cylinders. Front-Wheel Drive—all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets. Rear-Wheel Drive—all internal lubricated parts, propeller shafts, supports and U-joints, axle shafts and bearings, seals and gaskets.

"Dealer" means any person or business which sells, or offers for sale, a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12–month period.

"Deduction for personal use" means the mileage allowance set by the Federal Internal Revenue Service for business usage of a motor vehicle in effect on the date a used motor vehicle is repurchased by a dealer in accordance with N.J.S.A. 56:8–71, multiplied by the total number of miles a used motor vehicle is driven by a consumer from the date of purchase of that vehicle until the time of its repurchase.

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

"Excessive wear and tear" means wear or damage to a used motor vehicle beyond that expected to be incurred in normal circumstances.

"Material defect" means a malfunction of a used motor vehicle, subject to a warranty, which substantially impairs its use, value or safety.

"Model year" means the calendar year beginning January 1 and ending December 31 of the year listed on the motor vehicle's title or certificate of ownership and vehicle identification number.

"Repair insurance" means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specified mileage and provided at an extra charge beyond the price of the used motor vehicle.

"Sale" means the transfer of title of a used motor vehicle from the owner-seller to the purchaser-consumer and does not include those transactions in which the owner-seller has obtained title to, or is granted the right to sell, a used motor vehicle by operation of law (for example, pursuant to N.J.S.A. 2C:64–7 or 54:49–13a), or in which the seller is a public entity or governmental unit.

"Service contract" means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specific mileage or provided at an extra charge beyond the price of the used motor vehicle.

"Used motor vehicle" means a passenger motor vehicle, excluding motorcycles, motor homes and off-road vehicles, title to, or possession of which has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to become what is commonly known as "secondhand," within the ordinary meaning thereof but does not mean a passenger motor vehicle, subject to a motor vehicle lease agreement which was in effect for more than 90 days, which is sold by the lessor to the lessee, or to a family member or employee of the lessee upon the termination of the lease agreement.

"Warranty" means any undertaking, in writing and in connection with the sale by a dealer of a used motor vehicle, to refund, repair, replace, maintain or take other action with respect to the used motor vehicle, and which is provided at no extra charge beyond the price of the used motor vehicle.

Petition for Rulemaking.
See: 33 N.J.R. 1478(c).

13:45A–26F.3 Dealer warranty; form; scope; purchaser's obligations

(a) Upon the sale of a used motor vehicle in the State of New Jersey, the dealer shall furnish the consumer with a written warranty which meets the requirements of (c) below, unless:

1. The purchase price of the used motor vehicle is less than $3,000;

2. The used motor vehicle is eight or more model years old;

3. The used motor vehicle has been declared a total loss by an insurance company and the consumer has been notified in writing of that fact at, or prior to, sale;

4. The used motor vehicle has more than 60,000 miles and the consumer elects to waive the warranty in writing pursuant to N.J.A.C. 13:45A–26F.4; or

5. The used motor vehicle has more than 100,000 miles.

(b) The written warranty shall be in the same format, and contain all of the information in, the "Used Motor Vehicle Limited Warranty" form which is appended hereto as Appendix A, incorporated herein by reference, and have at least the following minimum durations:

1. If the used motor vehicle has 24,000 miles or less, the warranty shall be, at a minimum, 90 days or 3,000 miles, whichever comes first;

2. If the used motor vehicle has more than 24,000 miles but less than 60,000 miles, the warranty shall be, at a minimum, 60 days or 2,000 miles, whichever comes first; or

3. If the used motor vehicle has 60,000 miles or more, the warranty shall be, at a minimum, 30 days or 1,000 miles, whichever comes first, unless the consumer elects to waive this warranty pursuant to the terms of N.J.A.C. 13:45A–26F.4.

(c) The written warranty shall require the dealer, during the term of the warranty, to correct the failure or malfunction of a covered item as defined in N.J.A.C. 13:45A–26F.2, provided the used motor vehicle is delivered to the dealer, at the dealer's regular place of business and subject to a deductible amount of $50.00 to be paid by the consumer for each repair of a covered item. This written warranty shall exclude repairs covered by any manufacturer's warranty or recall program, as well as repairs of a covered item required because of collision, abuse, or the consumer's failure to properly maintain such used motor vehicle in accordance with the manufacturer's recommended maintenance schedule, or from damage of a covered item caused as a result of any commercial use of the used motor vehicle, or operation of such vehicle without proper lubrication or coolant, or as a result of any misuse, negligence or alteration of such vehicle by someone other than the dealer.

(d) The warranty periods in (b) above shall be extended by any time period during which the used motor vehicle is waiting for the dealer or his agent to begin or complete repairs of a material defect of the used motor vehicle.

(e) If the dealer fails to provide the consumer with a written warranty required by N.J.S.A. 56:8–69, the dealer nevertheless shall be deemed to have given the warranty as a matter of law, unless a waiver has been signed by the consumer in accordance with N.J.S.A. 56:8–73 and N.J.A.C. 13:45A–26F.4.

13:45A–26F.4 Waiver of warranty

(a) A consumer, as a result of a price negotiation for the purchase of a used motor vehicle with over 60,000 miles, may elect to waive the dealer's obligation to provide a warranty on the used motor vehicle provided that:

1. The waiver is in writing;

2. The waiver shall be in the same format and contain all of the information in the "'As Is' Disclosure" form and the "Waiver of New Jersey Used Motor Vehicle Limited Warranty" form which are appended hereto as Appendices B and C, respectively, incorporated herein by reference; and

3. The waiver and disclosure forms are signed separate and apart from the contract of sale.

13:45A–26F.5 Bond requirement

To assure compliance with the requirements of N.J.S.A. 56:8–77 et seq., a dealer shall provide a bond in favor of the State of New Jersey in the amount of $10,000, executed by a surety company authorized to transact business in the State of New Jersey by the Department of Banking and Insurance and to be conditioned on the faithful performance of the provisions of N.J.S.A. 56:8–77 et seq. This bond shall be for the term of 12 months and shall be renewed at each expiration for a similar period. The Director of the Division of Motor Vehicles shall not issue a dealer's license and shall not renew a license of any dealer who has not furnished proof of the existence of such bond.

13:45A–26F.6 Administrative fee

(a) At the time of sale a dealer shall collect an administrative fee of $0.50 from each consumer who purchases a used motor vehicle in the State of New Jersey which transaction is subject to the Act and this subchapter, including a consumer who elects to waive the warranty pursuant to N.J.A.C. 13:45A–26F.4.

(b) On the 15th of every January, April, July and October, a dealer shall mail to the Used Car Lemon Law Unit, the following:

1. A check or money order made payable to the "New Jersey Division of Consumer Affairs," in an amount equal to the total sum of administrative fees collected during the preceding three-month period; and

2. Documentation of each used motor vehicle subject to the Act and this subchapter which was sold by the dealer during the preceding three-month period.

(c) The Director may conduct random audits of dealers' records to assure compliance with the Act and this subchapter.

13:45A–26F.7 Procedures regarding repair of material defect

(a) When a consumer believes that a used motor vehicle does not conform to an applicable warranty the consumer shall:

1. Notify the dealer of a material defect ; and

2. Make the used motor vehicle available for repair by delivering the motor vehicle to the dealer at the dealer's regular place of business before the appropriate warranty period expires.

(b) If, within the terms of the warranty applicable to the used motor vehicle, the same material defect has been subject to repair three or more times by the dealer or the dealer's agent and the material defect continues to exist, or the used motor vehicle has been out of service a cumulative total of 20 or more days during the warranty period because the dealer has yet to begin or complete repair of the material defect, and the dealer fails to refund the full purchase price of the used motor vehicle excluding all sales taxes, title and registration fees, or any similar governmental charges and less a reasonable allowance for excessive wear and tear and less a deduction for personal use of the motor vehicle, then the consumer may seek resolution:

1. Through the Division of Consumer Affairs dispute resolution program in conjunction with the Office of Administrative Law;

2. Through the Division of Consumer Affairs alternative dispute resolution procedure in which both parties agree to participate in informal settlement discussions with an independent third party who works to assist the participants in reaching a mutually satisfactory settlement;

3. By filing an action in the Superior Court of New Jersey. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Used Car Lemon Law shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the Director and to the Used Car Lemon Law Unit within 10 days after filing the pleading with the court; or

4. Through the dealer's informal dispute resolution procedures pursuant to N.J.A.C. 13:45A-26F.16, if available.

(c) A consumer who selects options (b)2 or 4 above and who fails to achieve a satisfactory result may seek resolution from among the remaining options.

13:45A-26F.8 Used Car Lemon Law Unit; duties; address

(a) There is established within the Division of Consumer Affairs a section which shall process Used Car Lemon Law matters, to be known as the Used Car Lemon Law (UCLL) Unit which shall:

1. Upon request, provide consumers with a brochure setting forth:

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

ii. The procedures to be followed in order to participate in the various dispute resolution systems;

2. Review and process applications received for dispute resolution;

3. Compile a roster of motor vehicle dealers who sell used motor vehicles in New Jersey; and

4. Perform such other duties as the Director may from time to time assign.

(b) All correspondence to the Division of Consumer Affairs regarding Used Car Lemon Law matters shall be directed to the attention of the UCLL Unit as follows:

Division of Consumer Affairs
Used Car Lemon Law Unit
PO Box 45026
124 Halsey Street
Newark, New Jersey 07101-5026

13:45A-26F.9 Procedures for resolving a complaint

(a) To be eligible to have a dispute resolved in one of the forums set forth in N.J.A.C. 13:45A-26F.7, a consumer shall provide the following items to the UCLL Unit by certified mail, return receipt requested:

1. A completed application for dispute resolution (see N.J.A.C. 13:45A-26F.10) which can be obtained form the UCLL Unit or the dealer; and

2. Photocopies of all relevant supporting documentation.

13:45A-26F.10 Application for dispute resolution

(a) The application for dispute resolution shall contain the following:

1. The name, address and telephone number of the consumer and lien-holder, if any;

2. The date the used motor vehicle was purchased by the consumer from the dealer;

3. The number of miles the motor vehicle had been driven prior to the date of purchase;

4. A written account of the events resulting in the dispute, including description(s) of the claimed material defect(s) and a chronology of the repair attempts;

5. A photocopy of proof of payment of the $50.00 deductible by the consumer to the dealer for each repair of a covered item required by N.J.S.A. 56:8-70;

6. Photocopies of the statements of repair given to the consumer by the dealer or the dealer's agent, each time the used motor vehicle was examined or repaired; and

7. Photocopies of the agreement of sale, the written warranty and any other documents related to the dispute.

(b) The application shall also contain a statement to the effect:

1. That the consumer believes that the used motor vehicle's use, value, or safety is substantially impaired by the defect(s) complained of;

2. That the material defect(s) complained of is(are) not the result of abuse, neglect or unauthorized modification or alteration of the used motor vehicle by anyone other than the dealer or its agent;

3. That within the applicable warranty period:

i. The consumer gave the dealer or its agent at least three opportunities to repair the material defect, and the material defect continues to exist; or

ii. The used motor vehicle has been out of service by reason of waiting for the dealer to begin or complete repair of the defective covered item for a cumulative total of 20 or more days since the date of purchase of the used motor vehicle by the consumer, and the material defect continues to exist; and

4. Whether the consumer wishes to participate in:

i. The Division of Consumer Affairs' UCLL dispute resolution program in conjunction with the Office of Administrative Law; or

ii. The Division of Consumer Affairs' alternative dispute resolution procedure.

13:45A–26F.11 Processing of applications

(a) An application which has been submitted shall be reviewed by the UCLL Unit for completeness and compliance with the Used Car Lemon Law and this subchapter.

1. An incomplete application shall be returned to the consumer for completion.

2. An application which does not comply with this subchapter and the Used Car Lemon Law shall be rejected and the UCLL Unit shall notify the consumer of the reason for the rejection without making any determination as to whether the claimed defect is substantiated by the evidence or whether the defect substantially impairs the use, value or safety of the used motor vehicle.

3. An application which is accepted shall be date stamped to indicate acceptance and shall be directed to the Division's UCLL program or the Division's alternate dispute resolution procedure.

13:45A–26F.12 Notification of scheduling of hearings

(a) By February 11, 1999, used motor vehicle dealers in New Jersey shall forward to the Division of Consumer Affairs, UCLL Unit, the name, address, telephone and telefax number of the person designated by the dealer to receive notices under the dispute resolution process. It shall be the duty of the dealer to update this information, as necessary.

(b) Upon acceptance of an application, the UCLL Unit shall send a notice by certified mail, return receipt requested, to the consumer and the dealer's designee.

(c) The UCLL Unit shall promptly thereafter refer an accepted application for dispute resolution to the Office of Administrative Law (OAL) or the Division's alternative dispute resolution procedure. The matter 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.

(d) Notice of the date, time and location of the hearing shall be mailed by OAL to both parties.

(e) Simultaneously with the notice of acceptance of the application, the UCLL Unit shall send a copy of the application materials to the dealer or the dealer's designee. Within 10 days of receipt of the notice of acceptance of the consumer's application for dispute resolution, the dealer shall mail by certified mail, return receipt requested, to the consumer at his or her address 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 dealer objects to a proceeding on the papers if requested by the consumer.

(f) Applications for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1–9.6.

13:45A–26F.13 Final decision

(a) The Director shall mail notification of the rejected, modified or adopted decision to both parties, the lienholder, if any, and the OAL.

(b) In instances in which the matter is resolved in favor of the consumer, the dealer 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.

13:45A–26F.14 Computation of refund

(a) The refund claimed by a consumer pursuant to N.J.S.A. 56:8–71 of the Used Car Lemon Law, whether through a dealer's informal dispute resolution process, the Division's alternate dispute resolution procedure or the Division's UCLL dispute resolution program, shall include:

1. The total purchase price of the used motor vehicle excluding:

i. All sale taxes;

ii. Title and registration fees or any similar governmental charges;

iii. A reasonable allowance for excessive wear and tear if any; and

iv. A deduction for personal use (as that term is defined at N.J.A.C. 13:45A–26F.2) of the used motor vehicle by the consumer.

Petition for Rulemaking.
See: 33 N.J.R. 1478(c), 33 N.J.R. 1479(a).

13:45A–26F.15 Appeals

A dealer or consumer may appeal a final decision to the Appellate Division of the Superior Court no later than 45 days after the date of the final decision. A copy of the notice of appeal must also be filed with the Director.

13:45A–26F.16 Dealer's informal dispute resolution procedures

(a) Dealers who establish or participate in an informal dispute settlement procedure shall by March 3, 1999:

1. Advise the UCLL Unit of the existence of its informal dispute resolution procedure; and

2. Send the UCLL Unit an outline of the steps that a consumer must take in order to participate in the dealer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

13:45A–26F.17 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all used motor vehicle disputes by make, model, dealer and such other information as the Director requires, and shall compile and maintain statistics indicating the record of dealer compliance with any judgments or settlements.

(b) The index and statistical record of compliance shall be made available to the public on February 1, 2000 and every six months thereafter.

13:45A–26F.18 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 subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

Administrative change.
See: 31 N.J.R. 768(b).

APPENDIX C

Waiver of New Jersey Used Motor Vehicle Limited Warranty

I understand that because the following used motor vehicle is seven or less model years old and has an odometer reading which exceeds 60,000 miles, the dealer is required under the Used Car Lemon Law to give me a 30-day or 1,000 mile warranty, whichever comes first. However, after negotiating the price of the vehicle with the selling dealer, I hereby waive (give up) my right to a limited warranty on this vehicle and purchase the vehicle "as is". I understand that because the used motor vehicle is sold "as is," it means that the vehicle is being sold to me by the dealer without any warranty, either expressed or implied, and that I will be solely responsible for the cost of any repairs to it.

By signing this document, I acknowledge that because of the age and mileage of the below described vehicle, I would have been entitled under the law to a 30-day or 1,000 mile (whichever comes first) warranty. However, I have voluntarily waived my right to that warranty on the vehicle because I have negotiated a lower price for it without the warranty.

Year _____ Make _____ Model _____

Vehicle Identification Number _____ Odometer Reading _____

_____	_____	_____
Date	Purchaser's Signature	Co-Purchaser's Signature (if applicable)

SUBCHAPTER 27. NEW JERSEY UNIFORM PRESCRIPTION BLANKS PROGRAM

Authority

N.J.S.A. 45:14-14.1 et seq.

Source and Effective Date

R.2004 d.238, effective June 21, 2004.
See: 35 N.J.R. 4172(a), 36 N.J.R. 3059(a).

13:45A–27.1 Purpose and scope

(a) The rules in this subchapter implement the provisions of P.L. 1996, c.154, the Uniform Prescription Blanks Act, supplementing N.J.S.A. 45:14–1 et seq., an act regulating the practice of pharmacy in the State of New Jersey.

(b) The rules of this subchapter shall apply to the following:

1. All licensed healthcare practitioners authorized to write prescriptions for controlled dangerous substances, legend drugs or other items;

2. All healthcare facilities licensed pursuant to N.J.S.A. 26:2H–1 et seq., that are authorized to issue prescription blanks;

3. All licensed pharmacies which fill prescriptions or medication orders pursuant to N.J.A.C. 13:39; and

4. All vendors authorized to manufacture and distribute New Jersey Prescription Blanks pursuant to N.J.A.C. 13:45A–27.7.

13:45A–27.2 Definitions

As used in this subchapter, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Address of record" means an address designated by a licensed prescriber which is part of the public record and which may be disclosed upon request. "Address of record" may be a licensed prescriber's home, business or mailing address, but shall not be a post office box.

"Division" means the New Jersey Division of Consumer Affairs.

"Licensed healthcare facility" means any facility licensed by the New Jersey Department of Health and Senior Services including hospitals, long-term care facilities, ambulatory care facilities, residential drug treatment facilities, and alcohol treatment facilities which have been, or are eligible to be assigned, a Division of Consumer Affairs uniform prescription blank unique provider number.

"Licensed prescriber" means any healthcare practitioner authorized by law to write prescriptions.

"New Jersey Prescription Blank (NJPB)" means a uniform, non-reproducible, non-erasable safety paper form developed by the Division pursuant to N.J.S.A. 45:14–14.6 which satisfies the specifications of N.J.A.C. 13:45A–27.8.

"Prescription" means an order for drugs or controlled dangerous substances, or any combination or mixture thereof, or other prescribed items, written or signed by a licensed prescriber for the diagnosis, treatment, prevention, or amelioration of disease, injury, pain, or physical condition in man or animals. For the purposes of this definition, the term "other prescribed items" includes eyewear, medical devices, orthotics and prosthetics, and syringes.

"Vendor" means any person authorized to manufacture and distribute NJPBs pursuant to the rules in this subchapter. For purposes of this definition, "person" means an individual, partnership, limited liability partnership, limited liability company, corporation or any other business entity.

13:45A–27.3 NJPB required for prescriptions

(a) A written prescription issued by a licensed prescriber shall appear on either the personal NJPB of the licensed prescriber or the NJPB of a licensed healthcare facility obtained from a vendor approved by the Division pursuant to this subchapter.

(b) A licensed prescriber affiliated with a healthcare facility licensed pursuant to P.L. 1971, c.136 (N.J.S.A. 26:2H–1 et seq.), may use the NJPB of the licensed facility provided that:

1. The prescription is written for a patient treated at that healthcare facility;

2. The name and license number of the licensed prescriber is legibly written, typed, stamped, or otherwise affixed to the NJPB;

3. The prescription contains the signature of the licensed prescriber; and

4. If the prescription is for a controlled dangerous substance, the licensed prescriber's Federal Drug Enforcement Administration (DEA) registration number is legibly written, typed, stamped, or otherwise affixed to the NJPB.

(c) A separate NJPB shall be utilized for each prescription written for a controlled dangerous substance. No other medication shall appear on the prescription.

(d) If a licensed prescriber utilizes an NJPB pre-printed with multiple drugs, the prescriber shall obliterate, by a cross-off procedure, any drug that is not being prescribed.

(e) A prescription transmitted verbally or transmitted electronically by telephone, facsimile, modem, or other means to a pharmacy by a licensed prescriber shall be exempt from the requirement of utilizing an NJPB if the licensed prescriber provides the pharmacist with his or her

license number and DEA number, as appropriate to the particular prescription, at the time of transmission of the prescription, and the pharmacist satisfies the requirements of N.J.A.C. 13:39–5.8, 5.8A or 5.8B.

1. A prescriber licensed by the State Board of Medical Examiners who transmits a facsimile or electronic prescription shall also comply with all requirements set forth in N.J.A.C. 13:35–7.4 and 7.4A.

(f) A licensed prescriber writing a prescription for a Schedule II narcotic substance to be compounded for direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, or a prescription for a Schedule II narcotic substance for a hospice patient, or a prescription for any Schedule II substance for a long-term care facility resident, shall be exempt from the requirement of utilizing an NJPB if the prescription is transmitted or prepared in compliance with DEA regulations as set forth in 21 C.F.R. 1306.11(d), (e), (f) and (g), consistent with the requirements set forth at N.J.A.C. 13:39–5.8, 5.8A or 5.8B.

1. A prescriber licensed by the State Board of Medical Examiners writing a prescription for a Schedule II narcotic substance to be compounded for direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, or a prescription for a Schedule II narcotic substance for a hospice patient, or a prescription for any Schedule II substance for a long-term care facility resident, shall also comply with all requirements set forth in N.J.A.C. 13:35–7.4 and 7.4A.

13:45A–27.4 Recordkeeping, reporting, and security requirements for licensed prescribers, healthcare facilities, and pharmacists

(a) Licensed prescribers and healthcare facilities shall maintain records indicating the ordering, receipt, storage, maintenance, and distribution of NJPB pads. Such records shall include, at a minimum, the following:

1. The name and address of the vendor supplying the NJPB pads;

2. The date of order and receipt;

3. The batch numbers of the NJPB pads;

4. The date, the quantity, and to whom the NJPB pads were distributed at a group practice office or healthcare facility, if applicable;

5. The designation of a person responsible for the ordering, receipt, storage, maintenance, and distribution of the NJPB pads. NJPB pads shall not be ordered, received, stored, maintained or distributed by anyone other than the licensed prescriber or healthcare facility, or persons employed by the licensed prescriber or healthcare facility; and

6. The designation of a secure storage area for the NJPB pads.

(b) All licensed prescribers and healthcare facilities shall establish and implement a security protocol for the storage, maintenance, and distribution of NJPBs.

(c) All licensed pharmacies shall establish and implement a security protocol for the storage and maintenance of prescriptions issued on NJPBs and shall consecutively number and file such prescriptions pursuant to N.J.S.A. 45:14–15.

(d) Licensed prescribers and healthcare facilities shall notify the Office of Drug Control in the Division as soon as possible but no later than 72 hours of becoming aware that any NJPB in their possession has been lost, stolen, or altered in any way. An incident report shall be filed in writing with the Office of Drug Control within seven days after such notification on a form provided by the Office of Drug Control.

13:45A–27.5 Group practice

(a) A group practice may utilize individual NJPB pads for each licensed prescriber affiliated with the practice, or may utilize NJPB pads listing multiple prescribers affiliated with the practice, provided that multiple prescriber NJPB pads contain check-off boxes to indicate which prescriber issued the prescription.

(b) A group practice using an NJPB listing multiple prescribers shall obtain new NJPBs within 30 days if the composition of the practice changes, except as provided in (c) below. Any remaining NJPBs of the former group practice shall be destroyed and the newly formed practice shall file an NJPB destruction form with the Office of Drug Control.

(c) If the composition of the group practice is changed through the addition of a licensed prescriber, the newly formed group practice may continue to use the NJPBs of the former group practice, provided that the licensed prescriber who becomes newly affiliated with the group obtains individual NJPBs with the information required pursuant to N.J.A.C. 13:45A–27.8.

13:45A–27.6 Vendor application

(a) An applicant to become an approved NJPB vendor shall submit an application on a form supplied by the Division, which shall include the following:

1. Documentary evidence of experience in large volume printing and distribution activity;

2. Organizational staffing plans;

3. Documentation that the applicant is financially viable;

4. A written description of the work output capacities of the physical plant(s), the size and location of the plant(s), the equipment list, and security measures;

(d) Vendors shall deliver NJPBs within 14 days of receipt of an initial order, or seven days for a reorder, in sealed packets in minimum quantities of 500. Such deliveries shall be made to the address of record on file with a Division via a secure delivery service which is capable of tracking the shipment. Delivery of healthcare facility NJPBs shall be made only to the healthcare facility official designated as the responsible party when the order was placed, and only to the healthcare facility address. If a discrepancy exists between the order delivery information and the address which appears on file with the Division, the vendor shall verify the prescriber address information with the prescriber's licensing board. If a vendor is unable to deliver the NJPBs within the time specified above, the vendor shall immediately notify the licensed prescriber or the healthcare facility of the delay in the processing of the order.

(e) A licensed prescriber may pick up NJPBs at a vendor's place of business provided that:

1. The licensed prescriber provides documentation verifying his or her identity and licensure;

2. The vendor verifies the licensed prescriber's signature; and

3. The vendor remains responsible for the security of the NJPBs delivered in this manner.

(f) Vendors shall be capable of producing NJPBs in the following forms:

1. A single non-erasable NJPB form; and

2. A two-part carbonless NJPB form;

i. The top copy shall comply with the requirements of N.J.A.C. 13:45A–27.8;

ii. The second copy shall be yellow and may contain the prescriber information required pursuant to N.J.A.C. 13:45A–27.8;

3. Micro-perforated four inches by five and one half inches computer ready NJPBs imprinted with all the prescriber information required pursuant to N.J.A.C. 13:45A–27.8, which are capable of being computer printed from a laser printer; and

4. Micro-perforated four inches by five and one half inches continuous pin-fed NJPBs imprinted with all the prescriber information required pursuant to N.J.A.C. 13:45A–27.8, which are capable of being computer printed through the use of dot-matrix or ink-jet printers.

(g) Vendors shall assign and maintain a unique NJPB batch number for each order of NJPBs from a licensed prescriber or licensed healthcare facility. Re-orders of NJPBs shall contain batch numbers sequentially greater than the batch number assigned to any previous order. Batch numbers shall consist of:

1. An alphabetic prefix assigned by the Division which represents the identity of the vendor;

2. The date of printing in the following order: year, month, and day; and

3. A number sequentially assigned by the vendor.

(h) Vendors shall maintain an on-site computerized database which shall:

1. Include the following data fields for each licensed prescriber and healthcare facility:

i. Name;

ii. Name of the organization;

iii. Name of the person designated to receive shipment;

iv. Address;

v. License number;

vi. Batch number;

vii. Quantity ordered;

viii. Date ordered; and

ix. Date shipped and delivery service utilized; and

2. Be made available upon request by the Division on an ASCI format digital file.

13:45A–27.10 Vendor security requirements

(a) Vendors shall maintain secure production, storage, and distribution facilities. Security provisions shall include, at a minimum, the following:

1. All NJPBs are to be produced under tight security, in secure plants with access limited to authorized personnel. Any unfinished work related to the production of the NJPBs shall be stored under secure, controlled conditions.

2. NJPBs and materials used to produce NJPBs, including all disks, plates, negatives, and inventory goods, shall be stored at the vendor production site in a secure manner which protects against theft or loss;

3. Vendors shall not subcontract or assign any portion of the production of NJPBs without the prior approval of the Division;

4. If an applicant intends to subcontract any portion of NJPBs, the applicant shall provide the subcontractor company name, address, telephone number, ownership, and equipment list as part of the vendor's NJPB program application to the Division;

5. The subcontractor shall provide to the Division details regarding its production of any portion of the NJPBs and the security which will be provided. The vendor and the subcontractor shall sign and submit a completed form supplied by the Division which states that

the parties understand and agree to the contract specifications and the regulations of this subchapter.

6. Vendors shall not add, transfer or discontinue the services of a subcontractor without prior approval by the Division. Vendors shall notify the Division of such changes in writing by mail, return receipt requested. Within 14 days of the discontinuance of the services of a subcontractor, an approved vendor shall retrieve all NJPB materials from the subcontractor and shall submit a certification to the Division verifying the retrieval;

7. Vendors shall assure that damaged NJPBs are destroyed and shall maintain records indicating the date and method of destruction; and

8. Vendors shall report to the Division any theft, loss, damage, alteration, or unauthorized use of NJPBs as soon as possible but no later than 72 hours of discovery.

(b) Vendors shall produce NJPB exemplar samples for review by the Division upon request.

13:45A–27.11 Confidentiality

(a) Vendors shall maintain the confidentiality of all data, documents, files and computer records received from, or access through, the Division, relating to the production, storage and distribution of NJPBs.

(b) Vendors shall certify, prior to being granted approved vendor status, that they will protect the confidentiality of all data related to prescribers and healthcare facilities for whom they print NJPBs, and all data collected in order to accomplish any NJPB related function.

(c) Vendors shall return all documents, files and records supplied by the Division, and all copies thereof, upon the vendor's termination or voluntary withdrawal from the NJPB program.

13:45A–27.12 Enforcement

(a) Vendors shall permit the Division or its authorized representative to inspect any facility utilized in the production, storage, or distribution of NJPBs. Inspections may be conducted for a period of five years following the withdrawal or termination of a vendor from the NJPB program.

(b) Vendors shall provide the Division or its authorized representative access to all records relating to the printing and distribution of NJPBs, including financial records. Such records shall be maintained for five years following a vendor's termination or voluntary withdrawal from the NJPB program.

(c) Failure to comply with any of the requirements of this subchapter or the contract specifications may result in suspension, the placement of conditions on, or the permanent termination of the vendor from the NJPB program consistent with the requirements of N.J.A.C. 13:45A–27.7.

13:45A–27.13 Renewal of approved vendor status

Vendors shall submit an application for renewal of approved vendor status, on a form supplied by the Division, by September 19, 2004 and, thereafter, vendors shall apply for renewal of approved vendor status on a triennial basis.

SUBCHAPTER 28. MOTOR VEHICLE LEASING

13:45A–28.1 through 13:45A–28.7 (Reserved)

13:45A–28.8 Credit check of lessee; right to review contract

(a)–(c) (Reserved)

(d) A lessee may waive his or her right to review the contract under N.J.S.A. 56:12–67b(1) provided the lessee obtains a waiver from the lessor which appears in 12–point Times Roman print (except for the document title "WAIVER" which shall appear in 14–point Times Roman print) and contains the following:

WAIVER

I HAVE BEEN ADVISED THAT UNDER THE NEW JERSEY CONSUMER PROTECTION LEASING ACT, N.J.S.A. 56:12–60 et seq., I AM ENTITLED TO REVIEW THE LEASE CONTRACT FOR ONE 24–HOUR BUSINESS DAY BEFORE SIGNING. I CHOOSE TO WAIVE THAT RIGHT AND SIGN THE LEASE NOW.

LESSEE'S (CONSUMER'S) INITIALS	LESSOR'S (DEALER'S) INITIALS

CO-LESSEE'S INITIALS

VEHICLE: Year ____ Make _____ Model _____

VIN Number _____

THE LESSOR (DEALER) HAS REVIEWED THE FOLLOWING ELEMENTS OF THE LEASE DISCLOSURE WITH ME:

$____ MSRP (New Vehicle Only)	$____ Acquisition Fee
$____ Total Cost of Options and Extras Not Included in MSRP	$____ Security Deposit $____ Optional Warranty or Insurance Charge
$____ Title and Registration Fees for: ____ First Year of Lease, or ____ Full Term of Lease	
$____ Gross Capitalized Cost of Vehicle	It has been explained to me that if I terminate this lease early, I may have to pay significant costs.
$____ 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 Vehicle) or
$____ Total Cost of Lease (With Option to Purchase)

____ ____ (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)

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.

Dated _____

_____
Lessee's (Consumer's) Signature

_____
Co-Lessee's Signature

_____
Lessor's Signature

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).

SUBCHAPTER 29. PROPERTY CONDITION DISCLOSURE

Authority

N.J.S.A. 56:8-1 et seq., specifically N.J.S.A. 56:18–19.1.

Source and Effective Date

R.2004 d.193, effective May 17, 2004.
See: 35 N.J.R. 1644(a), 36 N.J.R. 2534(a).

Subchapter Historical Note

Subchapter 29, Property Condition Disclosure, was adopted as R.2004 d.193. See: Source and Effective Date.

13:45A–29.1 Property Condition Disclosure Form

(a) This section implements the provisions of P.L. 1999, c.76, N.J.S.A. 56:8–19.1, concerning the exemption of real estate brokers, broker-salespersons and salespersons from provisions of the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq.

(b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

"Real estate licensee" means a real estate broker, broker-salesperson or salesperson licensed under N.J.S.A. 45:15–1 et seq.

"Property condition disclosure statement" means a writing, as set forth in (d) below, signed by the seller and containing information on the condition of the property being sold.

(c) A real estate licensee shall not be subject to punitive damages, attorneys fees, or both under N.J.S.A. 56:8–19 for the communication of any false, misleading or deceptive information to a buyer which had been provided to the real estate licensee by or on behalf of the seller of real estate located in the State of New Jersey if the real estate licensee:

1. Had no actual knowledge of the false, misleading or deceptive character of the information; and

2. Made a reasonable and diligent inquiry to ascertain whether the information is of a false, misleading or deceptive character. A real estate licensee will have been deemed to have made a "reasonable and diligent inquiry" in circumstances including, but not limited to, those in which the false information communicated to the buyer can be shown to have been:

i. Provided in a report or upon a representation by a person, licensed or certified by the State of New Jersey, including, but not limited to, an appraiser, engineer, architect, home inspector, plumber or electrical contractor, of a particular physical condition pertaining to the real estate derived from inspection of the real estate by that person;

ii. Provided in a report or upon a representation by any governmental official or employee, if the particular information of a physical condition is likely to be within the knowledge of that governmental official or employee; or

iii. Obtained from the seller in a property condition disclosure statement as set forth in (d) below, so long as the buyer is informed by the real estate licensee that the seller is the source of the information, and that prior to advising the buyer that the seller is the source of information, the real estate licensee visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller.

(d) The property condition disclosure statement shall be in the following form and contain, at a minimum, the following information. Additional information may be requested if, in the opinion of the real estate licensee, and under the facts and circumstances of a particular real estate transaction, it would be appropriate to do so.

SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

Property Address: _____

_____

Seller: _____

The purpose of this Disclosure Statement is to disclose, to the best of Seller's knowledge, the condition of the Property, as of the date set forth below. The Seller is aware that he or she is under an obligation to disclose any known material defects in the Property even if not addressed in this printed form. Seller alone is the source of all information contained in this form. All prospective buyers of the Property are cautioned to carefully inspect the Property and to carefully inspect the surrounding area for any off-site conditions that may adversely affect the Property. Moreover, this Disclosure Statement is not intended to be a substitute for prospective buyer's hiring of qualified experts to inspect the Property.

If your property consists of multiple units, systems and/or features, please provide complete answers on all such units, systems and/or features even if the question is phrased in the singular, such as if a duplex has multiple furnaces, water heaters and fireplaces.

OCCUPANCY

Yes	No	Unknown	
		[ ]	1. Age of House, if known _____
[ ]	[ ]		2. Does the Seller currently occupy this property? If not, how long has it been since Seller occupied the property? _____
			3. What year did the seller buy the property? _____
[ ]	[ ]		3a. Do you have in your possession the original or a copy of the deed evidencing your ownership of the property? If "yes," please attach a copy of it to this form.

ROOF

Yes	No	Unknown	
		[ ]	4. Age of roof _____
[ ]	[ ]		5. Has roof been replaced or repaired since seller bought the property?
[ ]	[ ]		6. Are you aware of any roof leaks?
			7. Explain any "yes" answers that you give in this section: _____ _____

ATTIC, BASEMENTS AND CRAWL SPACES (Complete only if applicable)

Yes	No	Unknown	
[ ]	[ ]		8. Does the property have one or more sump pumps?
[ ]	[ ]		8a. Are there any problems with the operation of any sump pump?
[ ]	[ ]		9. Are you aware of any water leakage, accumulation or dampness within the basement or crawl spaces or any other areas within any of the structures on the property?
[ ]	[ ]		9a. Are you aware of the presence of any mold or similar natural substance within the basement or crawl spaces or any other areas within any of the structures on the property?
[ ]	[ ]		10. Are you aware of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? If "yes," describe the location, nature and date of the repairs: _____ _____ _____
[ ]	[ ]		11. Are you aware of any cracks or bulges in the basement floor or foundation walls? If "yes," specify location. _____
[ ]	[ ]		12. Are you aware of any restrictions on how the attic may be used as a result of the manner in which the attic or roof was constructed?
[ ]	[ ]		13. Is the attic or house ventilated by: _____ a whole house fan? _____ an attic fan?
[ ]	[ ]		13a. Are you aware of any problems with the operation of such a fan?
			14. In what manner is access to the attic space provided? _____ staircase _____ pull down stairs _____ crawl space with aid of ladder or other device _____ other
			15. Explain any "yes" answers that you give in this section: _____ _____