

CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION  
OF CONSUMER AFFAIRS

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

Chapter 45A, Administrative Rules of the Division of Consumer Affairs was originally filed July 2, 1973, as R.1973 d.176, effective August 1, 1973. See: 5 N.J.R. 151(b), 5 N.J.R. 290(a). Petition for Rulemaking of prescription drug pricing. See: 22 N.J.R. 3166(b).

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 Subchapter 2 was repealed and new rules adopted effective August 17, 1987 as R.1987 d.341.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 Subchapter 2 was repealed and new rules adopted effective May 15, 1989 as R.1989 d.253.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

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

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

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

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

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

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

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

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

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

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

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

Subchapter 14 became effective August 23, 1976 as R.1976 d.265. See: 8 N.J.R. 304(a), 8 N.J.R. 439(e). Amendments became effective October 10, 1980 as R.1980 d.444. See: 12 N.J.R. 130(a), 12 N.J.R. 672(d). Subchapter 14 expired on October 9, 1985 pursuant to Executive Order No. 66(1978). New Rules became effective December 16, 1985 as R.1985 d.643. See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

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

Subchapter 16 became effective April 1, 1980 as R.1980 d.111. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b). Subchapter 16 expired April 1, 1985, and a new Subchapter 16 became effective May 20, 1985 pursuant to Executive Order No. 66(1978) as R.1985 d.255. See: 17 N.J.R. 679(a), 17 N.J.R. 1325(a).

Pursuant to N.J.S.A. 45:17A-15, Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was adopted as R.1981 d.294, effective August 6, 1981. See: 13 N.J.R. 235(b), 13 N.J.R. 520(b). Subchapter 17 was repealed by R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

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

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

Subchapter 21, originally Representations Concerning and Requirements for the Sale of Kosher Food, was adopted as R.1984 d.113, effective April 2, 1984. See: 16 N.J.R. 220(a), 16 N.J.R. 741(a). Amendments were adopted as R.1984 d.402, effective September 4, 1984. See: 16 N.J.R. 1696(a), 16 N.J.R. 2371(a). Subchapter 21 was repealed and new rules regarding "the Sale of Kosher Products" were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.433, effective September 4, 1990, and R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 1439(a), 22 N.J.R. 2747(c), 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Subchapter 21 was repealed and new rules were adopted as R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

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

Subchapter 23 was adopted as new rules by R.1985 d.306, effective June 17, 1985. See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

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

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

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

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

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

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. DECEPTIVE MAIL ORDER PRACTICES**

13:45A-1.1 General provisions

**SUBCHAPTER 2. (RESERVED)**

**SUBCHAPTER 3. SALE OF MEAT AT RETAIL**

- 13:45A-3.1 Definitions
- 13:45A-3.2 Labeling and advertising requirements
- 13:45A-3.3 Exemption for certain meats
- 13:45A-3.4 Exemptions for meat inspected under United States Department of Agriculture
- 13:45A-3.5 Name in addition to the species and primal cut
- 13:45A-3.6 Advertising when additional name used
- 13:45A-3.7 Use of United States Department of Agriculture grading terms
- 13:45A-3.8 Use of United States Department of Agriculture grading terms for pork
- 13:45A-3.9 Labeling or advertising when certain United States Department of Agriculture grading terms used
- 13:45A-3.10 Labeling of certain meat food products
- 13:45A-3.11 Fabricated steak
- 13:45A-3.12 Supply of meat advertised
- 13:45A-3.13 Frozen meat
- 13:45A-3.14 Violations
- 13:45A-3.15 Meat charts

**SUBCHAPTER 4. BANNED HAZARDOUS PRODUCTS**

- 13:45A-4.1 Unconscionable commercial practice
- 13:45A-4.2 Consumer product defined
- 13:45A-4.3 Violations

**SUBCHAPTER 5. DELIVERY OF HOUSEHOLD FURNITURE AND FURNISHINGS**

- 13:45A-5.1 Deceptive practices; generally
- 13:45A-5.2 Contract forms; date of order
- 13:45A-5.3 Contract form; delayed delivery
- 13:45A-5.4 Violations, sanctions

**SUBCHAPTERS 6 THROUGH 8. (RESERVED)**

**SUBCHAPTER 9. MERCHANDISE ADVERTISING**

- 13:45A-9.1 Definitions
- 13:45A-9.2 General advertising practices
- 13:45A-9.3 Price reduction advertisements; merchandise advertised at a price of less than \$100.00
- 13:45A-9.4 Price reduction advertisements; items of merchandise specifically advertised at a price of more than \$100.00
- 13:45A-9.5 Price reduction advertisements; merchandise advertised as a savings of a percentage or a range of percentages
- 13:45A-9.6 Pricing; prohibition on fictitious pricing and methods of substantiation
- 13:45A-9.7 Application of regulation

**SUBCHAPTER 10. SERVICING AND REPAIRING OF HOME APPLIANCES**

- 13:45A-10.1 Definitions
- 13:45A-10.2 Required information
- 13:45A-10.3 Deceptive practices
- 13:45A-10.4 Exceptions
- 13:45A-10.5 Violations

**SUBCHAPTER 11. (RESERVED)**

**SUBCHAPTER 12. SALE OF ANIMALS**

- 13:45A-12.1 Definitions
- 13:45A-12.2 General provisions
- 13:45A-12.3 Required practices related to the health of animals and fitness for sale and purchase

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

- 13:45A-13.1 Statement of general purpose and intent
- 13:45A-13.2 Definitions
- 13:45A-13.3 General provisions
- 13:45A-13.4 Qualifications of county or municipal director
- 13:45A-13.5 Termination of authority to exercise delegated authority
- 13:45A-13.6 Delegated powers
- 13:45A-13.7 Limitations; litigation
- 13:45A-13.8 Restrictions; powers
- 13:45A-13.9 (Reserved)

**SUBCHAPTER 14. UNIT PRICING OF CONSUMER COMMODITIES IN RETAIL ESTABLISHMENTS**

- 13:45A-14.1 General provisions
- 13:45A-14.2 Definitions
- 13:45A-14.3 Persons and operations exempted from complying with Unit Price Disclosure Act
- 13:45A-14.4 Regulated consumer commodities and their approved units of measure
- 13:45A-14.5 Exempt consumer commodities
- 13:45A-14.6 Calculation of the numerical unit price of a regulated consumer commodity
- 13:45A-14.7 Unit price labels approved for display
- 13:45A-14.8 Unit price signs and unit price lists
- 13:45A-14.9 Unit price tags
- 13:45A-14.10 Means of disclosing unit price information
- 13:45A-14.11 Placement of unit price information on consumer commodities by nonretailers
- 13:45A-14.12 Extension of time to comply with these regulations
- 13:45A-14.13 Nonintentional technical errors
- 13:45A-14.14 Waiver of unit price requirements
- 13:45A-14.15 Penalties

**SUBCHAPTER 15. DISCLOSURE OF REFUND POLICY IN RETAIL ESTABLISHMENT**

- 13:45A-15.1 Definitions
- 13:45A-15.2 Unlawful practices
- 13:45A-15.3 Exemption
- 13:45A-15.4 Remedy

**SUBCHAPTER 16. HOME IMPROVEMENT PRACTICES**

- 13:45A-16.1 Definitions
- 13:45A-16.2 Unlawful practices

**SUBCHAPTER 17. (RESERVED)**

**SUBCHAPTER 18. PLAIN LANGUAGE REVIEW**

- 13:45A-18.1 Fee for contract review

**SUBCHAPTER 19. PETITION FOR RULEMAKING**

- 13:45A-19.1 Petition for promulgating, amending or repealing rules

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

- 13:45A-20.1 Delayed effective date of regulation
- 13:45A-20.1A Definitions
- 13:45A-20.2 Licensure
- 13:45A-20.3 Fees: new or renewal license
- 13:45A-20.4 Place of business
- 13:45A-20.5 Sale or exchange
- 13:45A-20.6 Records
- 13:45A-20.7 Advertising

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

- 13:45A-21.1 Definitions
- 13:45A-21.2 Disclosure requirements
- 13:45A-21.3 Labeling requirements
- 13:45A-21.4 Recordkeeping requirements
- 13:45A-21.5 Filing requirements
- 13:45A-21.6 Inspections of dealers
- 13:45A-21.7 Unlawful practices
- 13:45A-21.8 Presumptions

**SUBCHAPTER 22. (RESERVED)****SUBCHAPTER 23. DECEPTIVE PRACTICES  
CONCERNING WATERCRAFT REPAIR**

- 13:45A-23.1 Definitions
- 13:45A-23.2 Deceptive practices: watercraft repairs

**SUBCHAPTER 24. TOY AND BICYCLE SAFETY**

- 13:45A-24.1 Purpose and scope
- 13:45A-24.2 Reporting of toy-related injuries
- 13:45A-24.3 Toy recall notices
- 13:45A-24.4 Bicycle safety notices

**SUBCHAPTER 25. SELLERS OF HEALTH CLUB  
SERVICES**

- 13:45A-25.1 "Health club" defined
- 13:45A-25.2 Registration; fees
- 13:45A-25.3 Exemption from registration
- 13:45A-25.4 Exemption from security requirement
- 13:45A-25.5 Documentation of maintenance of security
- 13:45A-25.6 Violations; sanctions

**SUBCHAPTER 26. AUTOMOTIVE DISPUTE  
RESOLUTION**

- 13:45A-26.1 Purpose and scope
- 13:45A-26.2 Definitions
- 13:45A-26.3 Statements to consumer; other notices
- 13:45A-26.4 Lemon Law Unit
- 13:45A-26.5 Preliminary steps
- 13:45A-26.6 Eligibility
- 13:45A-26.7 Application
- 13:45A-26.8 Filing fee
- 13:45A-26.9 Processing of applications
- 13:45A-26.10 Notification and scheduling of hearings
- 13:45A-26.11 Computation of refund
- 13:45A-26.12 Final decision
- 13:45A-26.13 Appeals
- 13:45A-26.14 Manufacturer's reporting requirements
- 13:45A-26.15 Index of disputes

**SUBCHAPTER 26A. MOTOR VEHICLE ADVERTISING  
PRACTICES**

- 13:45A-26A.1 Scope
- 13:45A-26A.2 Application
- 13:45A-26A.3 Definitions
- 13:45A-26A.4 Bait and switch

- 13:45A-26A.5 Advertisements; mandatory disclosure requirements in all advertisements for sale
- 13:45A-26A.6 Advertisements; mandatory disclosure in advertisements for lease of a new or used motor vehicle
- 13:45A-26A.7 Unlawful advertising practices
- 13:45A-26A.8 Certain credit and installment sale advertisements
- 13:45A-26A.9 On-site disclosures
- 13:45A-26A.10 Record of transactions

**SUBCHAPTER 26B. AUTOMOTIVE SALES PRACTICES**

- 13:45A-26B.1 Definitions
- 13:45A-26B.2 Unlawful practices

**SUBCHAPTER 26C. AUTOMOTIVE REPAIRS**

- 13:45A-26C.1 Definitions
- 13:45A-26C.2 Deceptive practices; automotive repairs

**SUBCHAPTER 26D. TIRE DISTRIBUTORS AND  
DEALERS**

- 13:45A-26D.1 General provisions
- 13:45A-26D.2 Deceptive practices
- 13:45A-26D.3 Violations

**SUBCHAPTER 26E. MOTORIZED WHEELCHAIR  
DISPUTE RESOLUTION**

- 13:45A-26E.1 Purpose and scope
- 13:45A-26E.2 Definitions
- 13:45A-26E.3 Manufacturer warranty
- 13:45A-26E.4 Wheelchair Lemon Law Unit
- 13:45A-26E.5 Repair of nonconformity
- 13:45A-26E.6 Eligibility
- 13:45A-26E.7 Application
- 13:45A-26E.8 Filing fee
- 13:45A-26E.9 Processing of applications
- 13:45A-26E.10 Notification and scheduling of hearings
- 13:45A-26E.11 Computation of refund
- 13:45A-26E.12 Final decision
- 13:45A-26E.13 Appeals
- 13:45A-26E.14 Manufacturer's informal dispute resolution system
- 13:45A-26E.15 Index of disputes

**SUBCHAPTER 27. (RESERVED)****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

**SUBCHAPTER 1. DECEPTIVE MAIL ORDER  
PRACTICES****13:45A-1.1 General provisions**

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., this rule makes unlawful thereunder some specific practices in the mail order or catalog business.

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

sion or electronic mail and then permit six weeks to elapse without either:

1. Delivering or mailing the merchandise order; or
2. Making a full refund; or
3. Sending the consumer a letter or notice advising the consumer of the duration of an expected delay or the substitution of merchandise of equivalent or superior quality, and offering to send a refund within one week if so requested. If a proposal to substitute merchandise is made, it shall describe, in specific detail, how the substituted merchandise differs from the merchandise ordered; or
4. Sending the consumer substituted merchandise of equivalent or superior quality, together with:
  - i. A written notice offering, without reservation, to accept the return of the merchandise at the seller's expense within 14 days of receipt of the merchandise and, upon request, the consumer's choice of either, a refund of cash paid, including the amount of postage to return the item, or a credit; and
  - ii. A postage-paid letter or card on which the consumer may indicate whether he wishes the purchase price to be refunded or credited to his account within 14 days of receipt of the letter or card by the seller. The consumer's request entered on such a letter or card must be honored by the seller; and
  - iii. The written notice and postage-paid letter or card, as stated in (b)4i and ii above, need not be sent with the merchandise, 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.

excess of 30% (Flour, Water, Salt, Nonfat Dry Milk, Baking Powder, Dry Eggs, Monosodium Glutamate, Dextrose, Flavorings,) Beef fat added 8%, Monosodium Glutamate 1%. Total fat not in excess of 30%.

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

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

#### **13:45A-3.11 Fabricated steak**

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

#### **13:45A-3.12 Supply of meat advertised**

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

#### **13:45A-3.13 Frozen meat**

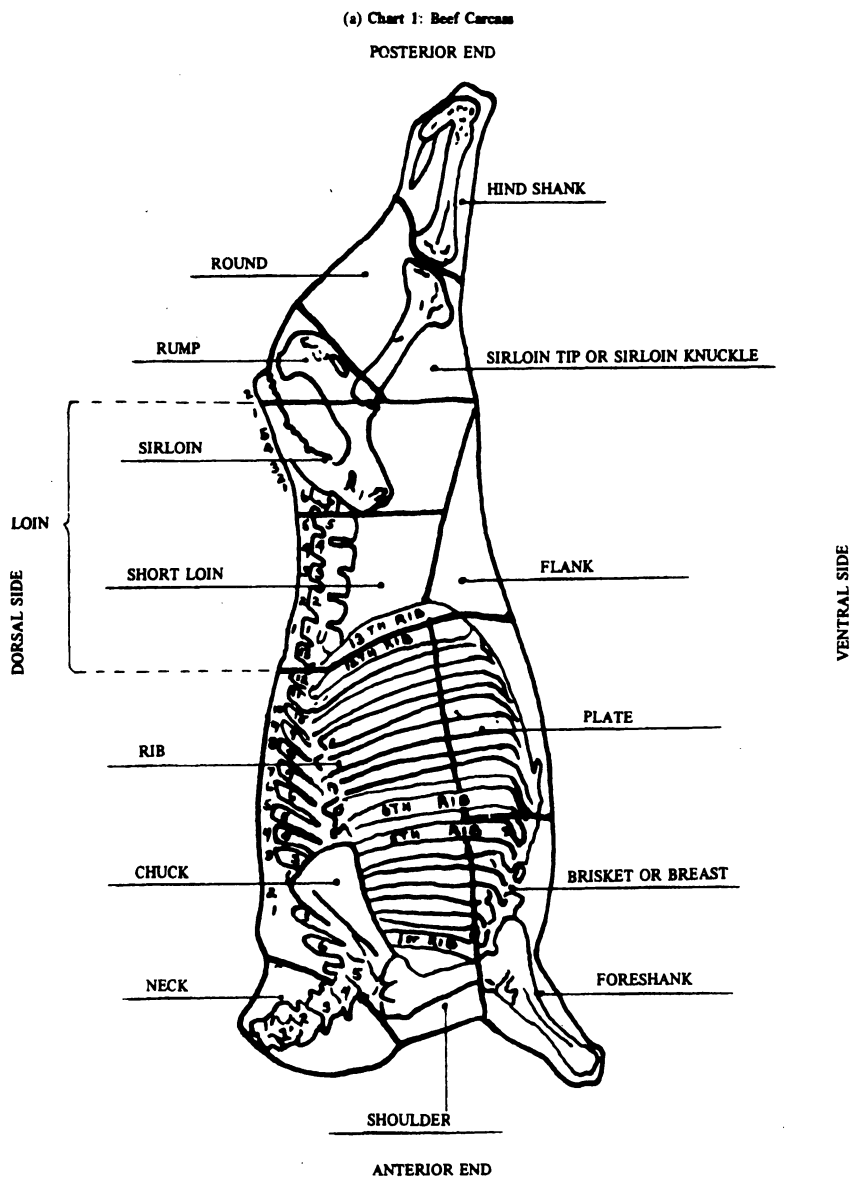
All meat other than that which is used in hamburger, ground beef, ground pork, ground veal or ground lamb which has been frozen at any time prior to such meat being offered or exposed for sale at retail shall be clearly and conspicuously labeled or advertised as "Frozen" or "Frozen and thawed", whichever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

#### **13:45A-3.14 Violations**

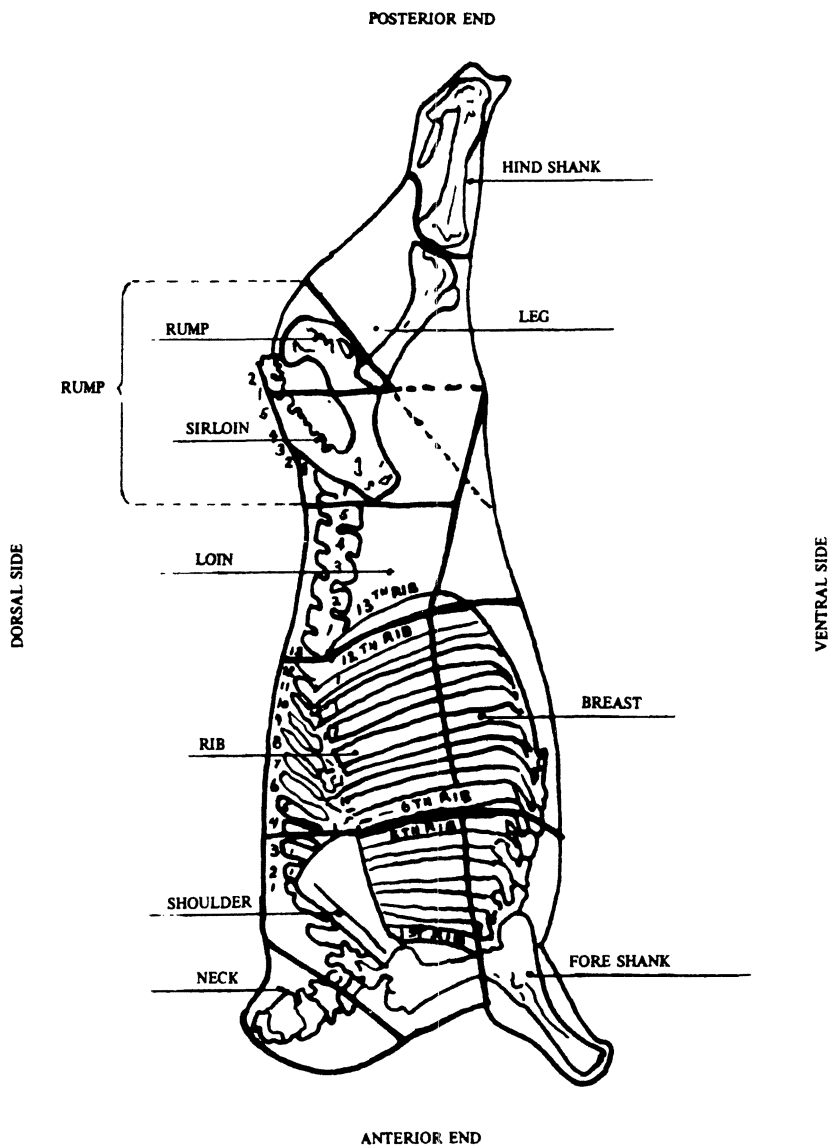
Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

#### **13:45A-3.15 Meat charts**

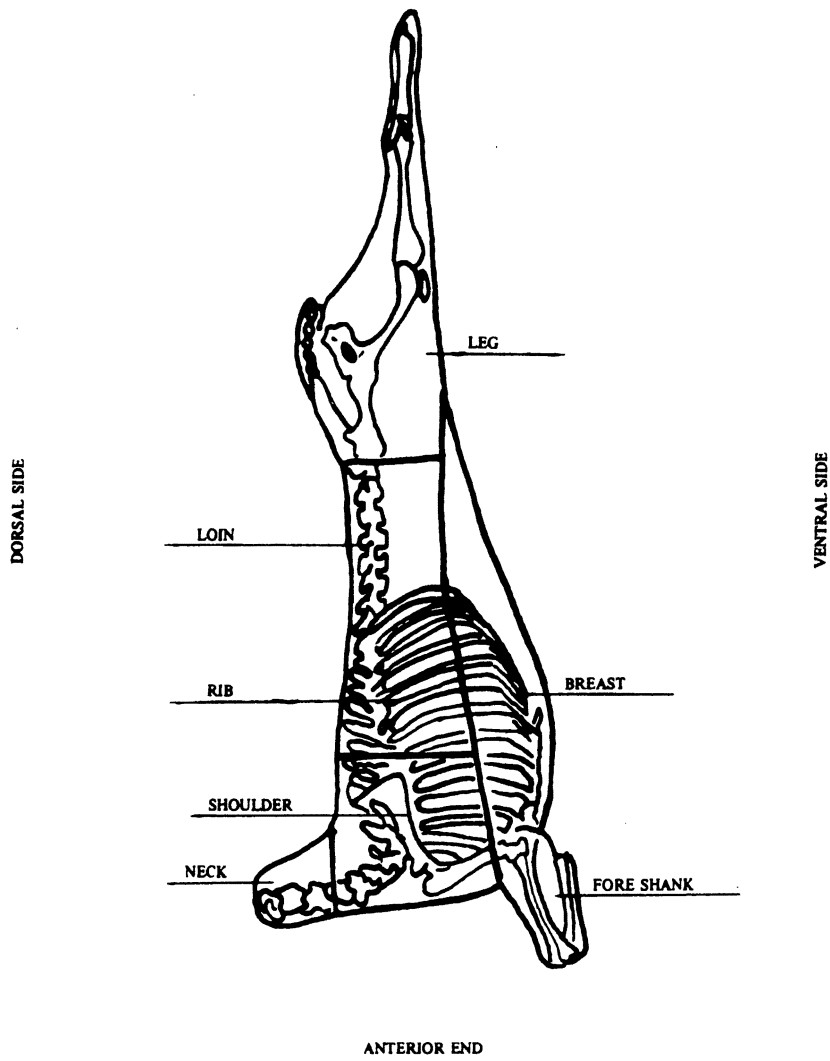
(a) The meat charts referred to in this rule are as follows:



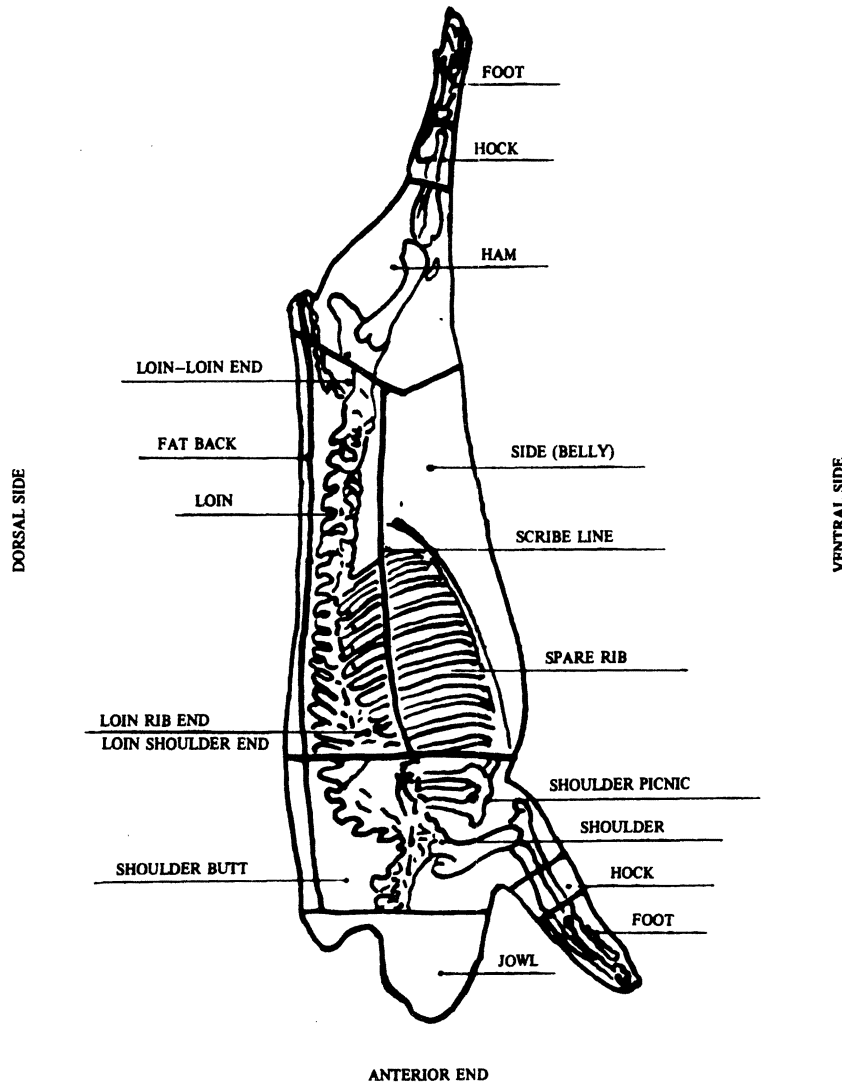
(b) Chart 2: Veal Carcass



(c) Chart 3: Lamb Carcass  
POSTERIOR END



(d) Chart 4: Pork Carcass  
POSTERIOR END



**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 Deceptive 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.

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

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. MERCHANDISE 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-2, 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), other than a public utility regulated by the Board of Public Utilities, who in the ordinary course of business is engaged in the sale or rental of merchandise at retail and who places, either directly or through an advertising agency, an advertisement before the public.

“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.

“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.

“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”.

#### Case Notes

Held that a franchise or business opportunity venture is “merchandise” within intentment of the Consumer Fraud Act; failure of franchiser to provide franchisee with a rule disclosure statement was a per se unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation in violation of the Consumer Fraud Act. *Morgan v. Air Brook Limousine, Inc.*, 211 N.J.Super 84, 510 A.2d 1197 (Law Div.1986).

#### 13:45A-9.2 General advertising practices

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet reasonably anticipated consumer demand therefor. When an advertisement states a specific period of time during which merchandise will be available for sale, a sufficient quantity of such merchandise shall be made available to meet reasonably anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet reasonably anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. The requirement of this subsection shall not be applicable to merchandise which is advertised:

- i. On an in-store sign only with no corresponding out-of-store sign;
  - ii. As being available in a specific quantity; or
  - iii. As being available in a "limited supply," pursuant to a "closeout sale" or pursuant to a "clearance sale" if such offering meets the definition of a closeout sale; or if represented to be permanently reduced.
2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability. By way of illustration, and not by limitation, the following shall be deemed violative of this subparagraph:
- i. The failure to specifically designate which merchandise items are below cost, if any amount less than all advertised items are below cost, when a statement of below cost sales is set forth in an advertisement;
  - ii. The failure to specifically designate which merchandise items, if any, are damaged or in any way less than first quality condition;
  - iii. The failure to specifically designate merchandise as floor models, discontinued models or one of a kind, when applicable;
  - iv. The failure to clearly designate or describe the retail outlets at which advertised merchandise will or will not be available. Such information need not be disclosed on any in-store advertisement.
3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as "sale," "as advertised," "20% off."
4. In any price advertisement in which a home appliance is offered for sale, the failure of an advertiser to disclose the following information relating to the advertised merchandise: the manufacturer's name or the merchandise trade name, the model or series number and such other information as may be necessary to clearly delineate the advertised item from other similar merchandise produced by the same manufacturer.
5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.
6. The use of the terms "Public Notice," "Public Sale" or words or terms of similar meaning in any advertisement offering merchandise for sale, where such sale is not required by court order or by operation of law, other than a sale conducted by an auctioneer on behalf of a non-business entity.
7. Describing the advertiser through the use of the terms "warehouse," "factory outlet," "discount," "bargain," "clearance," "liquidators," "unclaimed freight," or other words or terms of similar meaning, whether in the advertiser's corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described.
8. Whenever an advertiser provides a raincheck for an advertised item which is not available for immediate purchase, the failure to:
- i. Honor or satisfy such raincheck within 60 days of issuance unless an extension of such time period is agreed to by the holder thereof; and
  - ii. Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for a reasonable time after giving such notice, for all merchandise with an advertised price greater than \$15 per unit; and
  - iii. Offer a raincheck to all customers who are unable, due to the unavailability thereof, to purchase the advertised merchandise during the period of time during which the merchandise has been advertised as available for sale.
9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.
10. The failure of an advertiser to substantiate through documents, records or other written proof any claim made regarding the safety, performance, availability, efficiency, quality or price of the advertised merchandise, nature of the offering or quantity of advertised merchandise available for sale. Such records shall be made available upon request for inspection by the Division or its designee at the advertiser's regular place of business or central office in New Jersey, or, at the advertiser's option, the Division's designated offices, for a period of 90 days following the effective date of the advertisement.
11. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest the comparison between the cost of supply and the price at retail for the advertised merchandise.
12. Use of the term "cost," "wholesale" or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit paid by the advertiser to the manufacturer or distributor of the merchandise. In the computation of the price per unit of the advertised merchandise, freight may be included if the advertiser pays for same and is not reimbursed therefore, but handling and all overhead or operating expenses shall be excluded.

## 13. (Reserved)

Amended by R.1993 d.6, effective January 4, 1993.

See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Added new (a)11.

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).

In (a)1iii excluded merchandise represented to be permanently reduced, and added provision relating to use of the terms "cost" or "wholesale".

## Case Notes

Penalty statute applied retroactively to misrepresentation of food on menu. Division of Consumer Affairs v. Lubrano, 94 N.J.A.R.2d (CMA) 93.

Respondent's motion to depose the Executive Director of the Office of Consumer Protection, in furtherance of defense that inspection processes were arbitrary and capricious, denied due to lack of good cause showing that information could not be otherwise obtained. Div. of Consumer Affairs v. Acme Markets, Inc., 3 N.J.A.R. 210 (1981).

**13:45A-9.3 Price reduction advertisements; merchandise advertised at a price of less than \$100.00**

(a) An advertiser offering a price reduction on merchandise at a price of less than \$100.00 shall, in addition to complying with the provisions of N.J.A.C. 13:45A-9.2:

1. State with specificity in any price reduction advertisement the period of time during which the price reduction shall be applicable, unless that merchandise is advertised in the manner set forth in N.J.A.C. 13:45A-9.2(a)1i through iii;

2. Ensure that the amount of the price reduction is sufficiently large that the consumer, if he or she knew what the former price was, would believe that a genuine bargain or saving was being offered; and

3. Comply with the provisions of N.J.A.C. 13:45A-9.4 if the advertisement makes reference to a former price or price range.

Amended by R.1993 d.6, effective January 4, 1993.

See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Deleted (a)3iii; stylistic revisions.

Repeal and New Rule, 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).

Section was "Price reduction advertisements".

**13:45A-9.4 Price reduction advertisements; items of merchandise specifically advertised at a price of more than \$100.00**

(a) An advertiser offering an item of merchandise specifically advertised for sale at a price of \$100.00 or more shall, in addition to complying with the provisions of N.J.A.C. 13:45A-9.2:

1. State the selling price or price range;

2. State the former price or price range or the amount of the reduction in dollars;

3. State with specificity in any price reduction advertisement the period of time during which the price reduction shall be applicable, unless the merchandise is advertised in the manner set forth in N.J.A.C. 13:45A-9.2(a)1i through iii;

4. Set forth the former price or price range or the amount of reduction in dollars in close proximity to the selling price or price range and the advertised item;

5. Set forth the basis upon which the former price or price range or the amount of reduction in dollars was established in close proximity to the former price or price range of the advertised item. In this regard, terms such as "comparable value," "competitor's price," "our regular price," or words of similar import shall be used to designate the basis for the former price; and

6. Set forth with specificity when in the remote past a former price of an item of merchandise was effective if it was not actively or openly offered for sale within the advertiser's trade area in the regular course of business during at least 28 of the 90 days before the effective date of the advertisement. In this regard, when advertising a seasonal sale, such as Christmas dishes, pool supplies, outdoor furniture, etc., actual dates, specific holidays or terms such as "last season," may be used to describe when the former price was used in the remote past.

(b) A former price or a selling price may be stated in terms of a price range when, and only when:

1. An advertiser operates more than one retail outlet at which advertised merchandise has been or will be available for purchase at different prices in the ordinary course of business. In such case, the price range shall be based upon the sales or offers of sale at the advertiser's retail outlets; or

2. An advertiser advertises two or more items of comparable merchandise as available at reduced prices, in which case the price range shall be based upon former or usual selling prices of the advertised products.

i. The following examples would comply with this paragraph: "Regular price \$110 to \$125—On sale for \$100"; "Brand X 19" color TV—Regularly \$250 to \$300. Now \$150 to \$200."

New Rule, 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).

Former N.J.A.C. 13:45A-9.4, "Application of regulation", recodified to 13:45A-9.7.

**13:45A-9.5 Price reduction advertisements; merchandise advertised as a savings of a percentage or a range of percentages**

(a) An advertiser offering merchandise for sale at a savings of a percentage or a range of percentages (such as "save 20% or 20% to 50% off") shall, in addition to complying with the provisions of N.J.A.C. 13:45A-9.2:

1. State the minimum percentage reduction as conspicuously (such as the same size print) as the maximum percentage reduction when applicable; and

2. Set forth the basis upon which the former price was established pursuant to N.J.A.C. 13:45A-9.6(b), in close proximity to the percentage reduction. In this regard, terms such as "competitor's price" or "our regular price" or words of similar import shall be used to designate the basis for the former price.

New Rule, 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).

### **13:45A-9.6 Pricing; prohibition on fictitious pricing and methods of substantiation**

(a) An advertiser shall not use a fictitious former price. Use of a fictitious former price will be deemed to be a violation of the Consumer Fraud Act.

(b) A former price or price range or the amount of reduction shall be deemed fictitious if it can not be substantiated, based upon proof:

1. Of a substantial number of sales of the advertised merchandise, or comparable merchandise of like grade or quality made within the advertiser's trade area in the regular course of business at any time within the most recent 60 days during which the advertised merchandise was available for sale prior to, or which were in fact made in the first 60 days during which the advertised merchandise was available for sale following the effective date of the advertisement;

2. That the advertised merchandise, or comparable merchandise of like grade or quality, was actively and openly offered for sale at that price within the advertiser's trade area in the regular course of business during at least 28 days of the most recent 90 days before or after the effective date of the advertisement; or

3. That the price does not exceed the supplier's cost plus the usual and customary mark-up used by the advertising merchant in the actual sale of the advertised merchandise or comparable merchandise of like grade or quality in the recent regular course of business.

(c) If the former price specifically references a time in the remote past during which it was offered, it shall be deemed fictitious unless substantiated pursuant to either (b)1 or 3 above.

(d) The following examples of fictitious pricing are provided for illustration only and are not intended to limit the types of advertising the Division shall consider to be fictitious:

1. John Doe is a retailer of Brand X fountain pens which cost him \$5.00 each. His usual markup is 50 percent over cost. That is, his regular retail price is \$7.50. In order subsequently to offer an unusual "bargain," Doe temporarily raises the price of Brand X pens to \$10.00 each. In so doing, Doe realizes that he will only be able to sell a few pens, if any, at this inflated price. But he does not care, because he intends to maintain that price for only a few days. Then he "cuts" the artificially inflated price of \$10.00 to the usual price—\$7.50 at which time he advertises: "Terrific Bargain: X Pens, Were \$10, Now Only \$7.50." This is obviously a false claim. The advertised "bargain" is not genuine.

2. Retailer Doe advertises Brand X pens as having a "Retail Price \$15.00, My Price \$7.50," when, in fact, only a few small suburban boutique-type stores in the area charge \$15.00. All of the larger outlets, like retailer Doe's, located in and around the main shopping areas charge approximately \$7.50. This advertisement would be deceptive because the price charged by the small suburban boutique or specialty stores would have no real significance to Doe's customers, to whom the advertisement of "Retail Value \$15.00" would suggest a prevailing, and not merely an isolated and unrepresentative price in the area in which they shop.

3. Retailer Doe advertises Brand X pen as "Comparable Value \$15.00" when only a small number of unrepresentative specialty stores in the trade area offer Brand Y, an essentially similar pen, for that price. This is a related form of misleading advertising because the price of the comparable merchandise (that is, Brand Y), which is cited for comparison is not representative of the price for Brand Y being charged by representative retail outlets in the advertiser's trade area.

New Rule, 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).

### **13:45A-9.7 Application of regulation**

(a) This subchapter shall apply to the following advertisements:

1. Any advertisement uttered, issued, printed, disseminated or distributed within this State concerning goods and services advertised as available at locations exclusively within this State; and

2. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed to any substantial extent within this State concerning goods and services advertised as available at locations within this State and outside this State; and

3. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed primarily within this State concerning goods and services advertised as available at locations exclusively outside this State; and

4. Any radio and television broadcasts uttered, issued, disseminated or distributed primarily within this State and outside this State, or at locations exclusively outside this State.

(b) An advertiser, a manufacturer, an advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertising seller shall be deemed an advertiser within the meaning of this subchapter, when such entity prepares or places an advertisement for publication. No such entity shall be liable for a violation of this subchapter when the entity reasonably relies upon data, information or materials supplied by an advertising seller for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertising seller. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this subchapter.

(c) An advertiser has no liability under this subchapter for a failure to comply with any requirement thereof if the advertiser shows by a preponderance of evidence that failure to comply resulted from actions of persons other than the advertiser which were not, or should not have been reasonably anticipated by the advertiser; or that such failure was the result of a labor strike or a natural disaster such as, but not limited to, fires, floods and earthquakes.

(d) If any provisions of this subchapter or the application thereof to any person or circumstances is held unconstitutional or beyond the statutory powers of the Attorney General, the remainder of this subchapter and the application of such provisions to other persons or circumstances shall not be affected.

Amended by R.1993 d.6, effective January 4, 1993.

See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Revised (b).

Recodified from 13:45A-9.4 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).

#### Case Notes

Culpability of advertising agencies and newspapers. *Fenwick v. Kay American Jeep, Inc.*, 136 N.J.Super. 114, 344 A.2d 785 (App.Div.1975) reversed 72 N.J. 372, 371 A.2d 13.

## SUBCHAPTER 10. SERVICING AND REPAIRING OF HOME APPLIANCES

### 13:45A-10.1 Definitions

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

“Home appliance dealer” means any person, including any business entity who, in the ordinary course of business, is engaged in the advertising, sale or lease of home appliances.

“Home appliance repairer” means any person, including any business entity who, in the ordinary course of business, is engaged in the service or repair of home appliances.

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-10.2 Required information

(a) Whenever a consumer purchases a home appliance, the home appliance dealer shall supply the consumer with a written copy of any information concerning:

1. Manufacturer's warranties, if any are still applicable;
2. Dealer's warranties, if any;
3. Dealer's service contract, if such is agreed upon, which must include a clear statement of any:
  - i. Basic “diagnostic” charges or any other set fee; and
  - ii. The methods used to determine any additional charge including the charge for labor and parts.

(b) Whenever a consumer requests service on a home appliance from a home appliance repairer, the home appliance repairer shall disclose before the consumer becomes committed to any expense:

1. Any diagnostic charges or other set fees; and
2. The methods used to determine the total charge including the charges for labor and parts.

(c) If the home appliance repairer is also the dealer from whom the appliance was purchased and there was a service contract covering the requested services, the provisions of (b) above shall not apply.

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-10.3 Deceptive practices

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of repairing and servicing home appliances:

1. Commencing work other than diagnostic work or work included in a diagnostic fee without having obtained the consumer's signature or the signature of the consumer's agent on a written itemized estimate of the labor and parts necessary, including specific notation of exchange price on parts where applicable. If such written consent cannot be obtained, repair work may be commenced only

if the consumer has been advised of the estimate and has consented thereto and the person advising the consumer has noted the conversation on the estimate as well as the date, time and phone number at which he reached the consumer.

2. Failure to 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".

## 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.

### 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 from the sale of consumer commodities therein.

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

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

Amended by R.1985 d.643, effective December 16, 1985.

See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

Added text in (a)2 “or a series of retail establishments each.”

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

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

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

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

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

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

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

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

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

(b)36 added "pint".

Amended by R.1995 d.181, effective March 20, 1995.  
See: 27 N.J.R. 302(a), 27 N.J.R. 1192(a).

**13:45A-14.5 Exempt consumer commodities**

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

1. Medicines sold by prescription only;
2. Vitamins;

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

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

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

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

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

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

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

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

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

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

13. Frozen foods.

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

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

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

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

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

\$0.005 cents per unit shall be rounded down to the next lower cent or one-tenth cent. For example:

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

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

#### 13:45A-14.7 Unit price labels approved for display

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

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

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

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

- i. The term "unit price";
- ii. The numerical unit price in bold figures;
- iii. The approved unit of measure, including, if appropriate, the "ply" count or thickness of the regulated commodity.

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

- i. The term "retail price," "you pay" or some similar term;
- ii. The numerical retail price;
- iii. The quantity or size of the commodity being sold, for shelf labels only.
4. A description of the commodity being sold shall appear on the unit price shelf label.

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

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

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

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

#### 13:45A-14.8 Unit price signs and unit price lists

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

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

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

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

- i. The term "unit price";
- ii. The numerical unit price;
- iii. The approved unit of measure including if appropriate the "ply" count or thickness of the consumer commodity.

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

- i. The term "retail price" or "you pay" or similar term;
- ii. The numerical retail price;
- iii. The quantity or size of the consumer commodity expressed in terms of the approved unit of measure.

4. A description of the commodity to be sold shall appear on the sign or list.

5. Additional stock or code information may appear on the unit price sign or list.

6. All letters or numbers shall be in conspicuous figures and shall be clear and legible.

- i. The list shall display the unit price and retail price in numbers of equal size.