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NEW JERSEY ADMINISTRATIVE CODE  
TITLE 13  
LAW AND PUBLIC SAFETY  
CHAPTER 45A  
ADMINISTRATIVE RULES OF THE DIVISION  
OF CONSUMER AFFAIRS

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**SUBCHAPTER 1.  
DECEPTIVE MAIL ORDER PRACTICES**

**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.

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

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

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

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

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

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

“Porterhouse steak” means meat derived from the short loin of cattle and which exhibits not less than 1 ¼ inch in diameter of tenderloin (psoas muscle).

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

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

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

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

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

“Skirt steak” means meat derived from the diaphragm of cattle.

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

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

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

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

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

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

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

- 1) For beef—cheeks, tongue, gullets or esophagus, heart, neck, shoulder, brisket or breast, foreshank, chuck, diaphragm, rib, plate, hind shank, round, rump, loin, flank or pillar of diaphragm:
  - i) As used in relation to beef herein and as set forth in Chart 1 herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 2) For veal—cheeks, tongue, gullets or esophagus, heart, neck, shank, breast, shoulder, rib, loin, sirloin, rump or leg:
  - i) As used in relation to veal herein and as set forth in Chart 2 herein.

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

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

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

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

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

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

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

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

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

- 3) For lamb—cheeks, tongue, gullets or esophagus, heart, neck, shank, breast, shoulder, rib, loin or leg:
  - i) As used in relation to lamb herein and as set forth in Chart 3 herein.

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

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

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

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

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

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

- 4) For pork—cheeks, tongue, gullets or esophagus, heart, tail, jowl, shoulder, shoulder picnic, shoulder butt, feet, side, spareribs, loin, loin-shoulder end or loin-rib end, loin-center cut, loin-loin end, fat back, ham or hock:
  - i) As used in relation to pork herein and as set forth in Chart 4 herein.

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

“Ham” is the posterior portion of the hog side removed by a cut  $2\frac{1}{4}$  to  $2\frac{3}{4}$  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  $1\frac{3}{4}$  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  $\frac{3}{4}$  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 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  $\frac{1}{4}$  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  $\frac{1}{3}$  the size of the additional name in height.

**13:45A-3.7 USE OF UNITED STATES DEPARTMENT OF AGRICULTURE GRADING TERMS**

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

**13:45A-3.8 USE OF UNITED STATES DEPARTMENT OF AGRICULTURE GRADING TERMS FOR PORK**

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

**13:45A-3.9 LABELING OR ADVERTISING WHEN CERTAIN UNITED STATES DEPARTMENT OF AGRICULTURE GRADING TERMS USED**

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

BEEF ROUND  
UNITED STATES COMMERCIAL

**13:45A-3.10 LABELING OF CERTAIN MEAT FOOD PRODUCTS**

- a) Any meat food product in the form of chopped and shaped steaks, patties, loaves, loaf mixes, and so forth which is uncooked and contains fat, extenders and/or added water, flavorings, batter, breading, and so forth shall display a label clearly and conspicuously exhibiting the product name, qualifying statement, if appropriate, and ingredient statement.
- b) The ingredients in such meat food product shall be listed by their common usual names in the descending order of the amount of each ingredient used in formulating the product together with the percentage of each such ingredient contained therein, for example:

“BEEF PATTY, Beef fat and cereal added”

Ingredients: Beef 77%, Beef Fat added 8%, Cereal 7%, Added water 6%,  
Flavoring 1%, Monosodium Glutamate 1%, total fat not in excess of 30%

or

“BREADED VEAL STEAK, Beef fat added, chopped and shaped”

Veal 61%, Breading and Batter not in excess of 30% (Flour, Water, Salt, Nonfat Dry Milk, Baking Powder, Dry Eggs, Monosodium Glutamate, Dextrose, Flavorings,) Beef fat added 8%, Monosodium Glutamate 1%. Total fat not in excess of 30%.

- c) Any meat food product to which this Section is applicable shall not contain more than 30 per cent fat and the label for such product shall so indicate.
- d) The amount of batter and breading used as a coating for breaded product shall not exceed 30 per cent of the weight of the finished breaded product and the label for such product shall so indicate.

### **13:45A-3.11 FABRICATED STEAK**

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

### **13:45A-3.12 SUPPLY OF MEAT ADVERTISED**

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

### **13:45A-3.13 FROZEN MEAT**

All meat other than that which is used in hamburger, ground beef, ground pork, ground veal or ground lamb which has been frozen at any time prior to such meat being offered or exposed for sale at retail shall be clearly and conspicuously labeled or advertised as “Frozen” or “Frozen

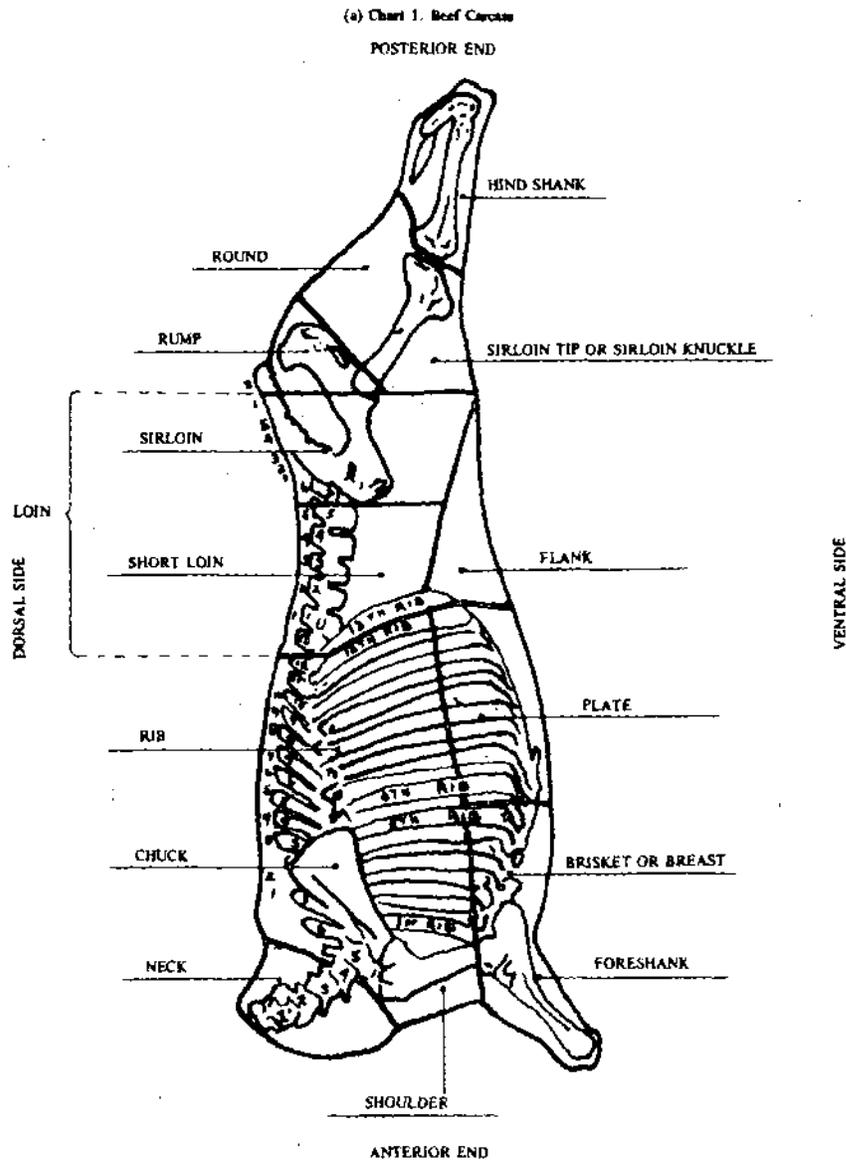
and thawed”, whichever is appropriate, and such term shall be contiguous to and in the same size and style lettering and on the same background as the product name.

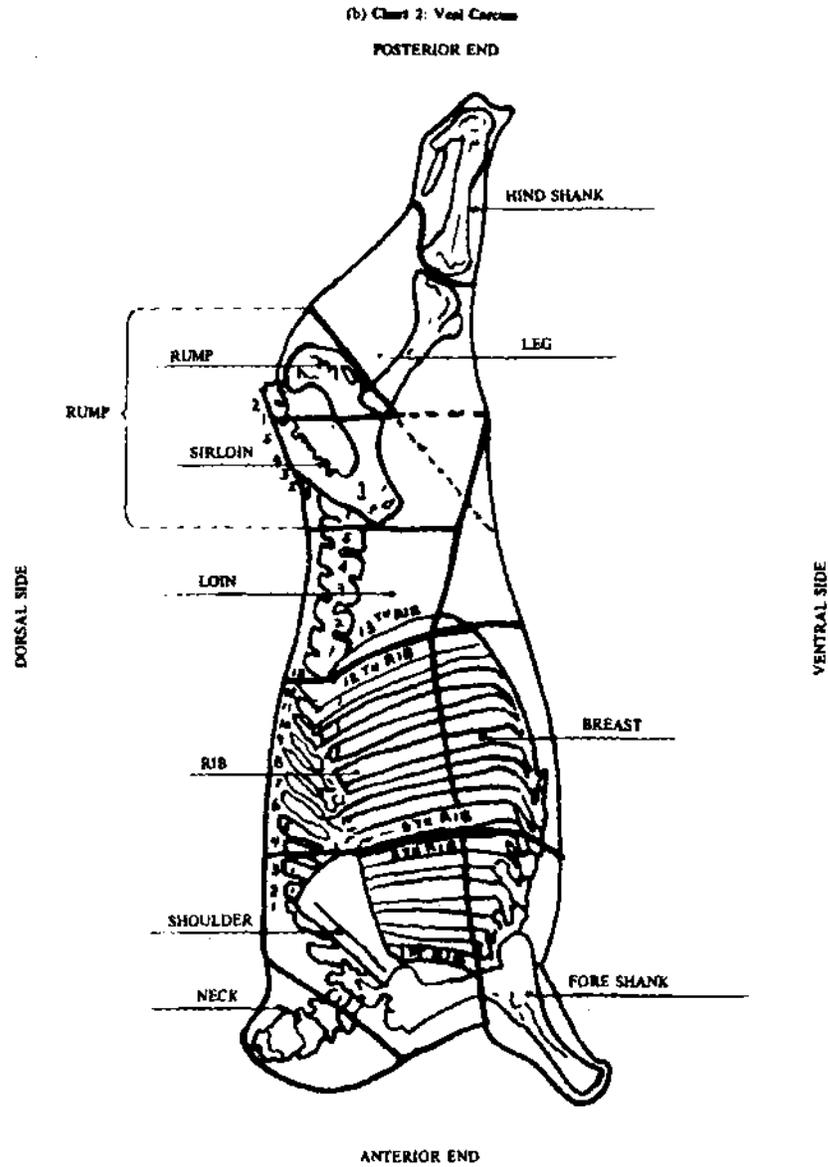
### **13:45A-3.14 VIOLATIONS**

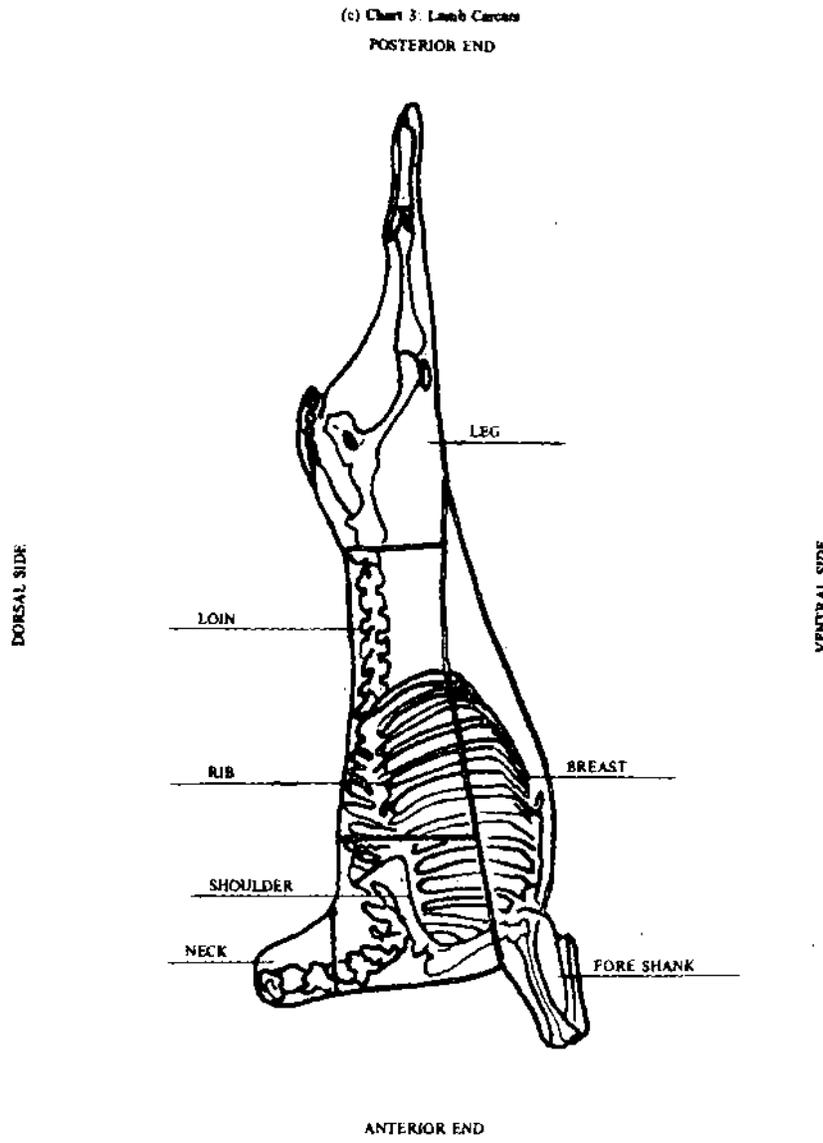
Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

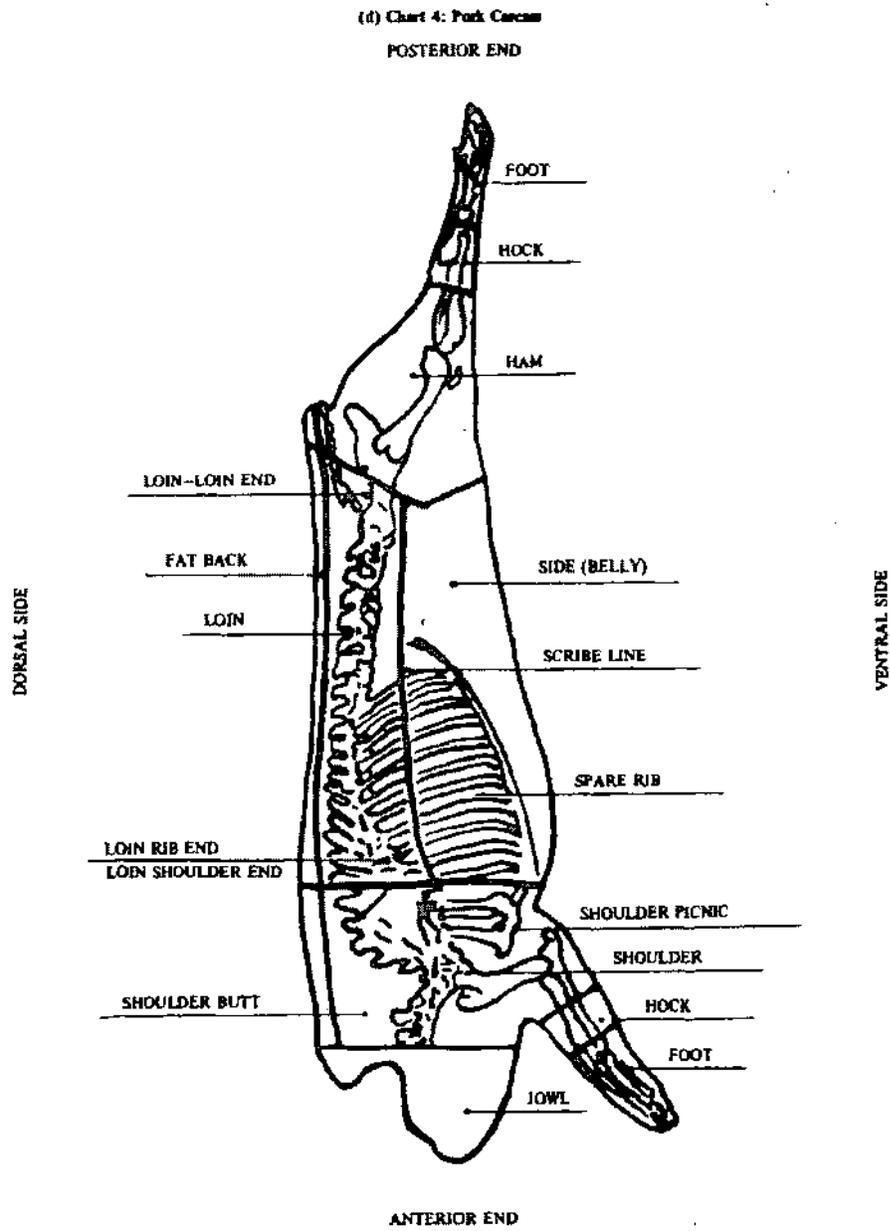
**13:45A-3.15 MEAT CHARTS**

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









**13:45A-1.1 GENERAL PROVISIONS**

- b) 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.
  
- c) 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.
  
- d) 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.

- e) 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.
- f) 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.
- g) 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.

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## **SUBCHAPTER 4. RULES CONCERNING HAZARDOUS PRODUCTS**

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### **13:45A-4.1 UNCONSCIONABLE COMMERCIAL PRACTICE**

- a) 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. or to advertise a consumer product that has been the subject of a safety advisory, warning, or recall issued by any governmental agency or the manufacturer of the product, without clearly and conspicuously disclosing in the advertisement, at the place in the store where the product is or, if the product is no longer sold, where it was displayed, and at the customer service area, that the product is the subject of a safety advisory, warning, or recall and the general nature of the safety hazard that prompted the advisory, warning, or recall.

- b) It shall be an unconscionable practice for any person, including any business entity, to advertise or market to, or otherwise solicit the sale from, a resident of this State, a consumer product that is illegal to possess or use in this State or a consumer product that is illegal to possess or use in this State without a valid permit or license, where the possession or use, or the possession or use without a valid permit or license, would subject the person possessing or using the product to criminal prosecution, without clearly and conspicuously disclosing that the product is illegal to possess or use in this State, or to possess or use in this State without a valid permit or license, as the case may be.
- c) It shall be an unconscionable practice for any person, including any business entity, to advertise or market to, or otherwise solicit the sale from, a resident of this State or to expose for sale, offer for sale, or sell in this State, a consumer product consisting of a motor vehicle that is not required to be registered with any state or Federal agency, whose possession or use in this State is subject to restrictions or limitations, including mandated safety devices, specific to such product imposed by State law or rule, without clearly and conspicuously disclosing that the product is subject to restrictions or limitations imposed by State law or rule and the general nature of such restrictions or limitations.

### **13:45A-4.2 DEFINITIONS**

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

“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 by a consumer in or around a permanent or temporary household or residence, a school, in recreation or otherwise.

“Motor vehicle” means a vehicle propelled otherwise than by muscular power, in, upon or by which a person or property is or may be transported upon land.

**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.

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

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**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 provided 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.

**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 for the delivery date referred to in (a) above shall be filled in by the seller at the time the contract of sale is entered into by the parties or when the sales documents are issued, 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"). The date for delivery shall not be pre-printed in the contract prior to the time the contract of sale is entered into by the parties or when the sales documents are issued.

**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," "no cancellations" or "no refunds," 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.

**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.

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## SUBCHAPTER 6. INTERNET DATING SERVICES

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### 13:45A-6.1 PURPOSE AND SCOPE

- a) The purpose of this subchapter is to require Internet dating services to make disclosures in addition to those required by P.L. 2007, c. 272, N.J.S.A. 56:8-168 et seq. (Act), in order to effectuate the purposes of the Act.
  
- b) The subchapter applies to Internet dating services that offer dating services over the Internet to residents of the State and accept membership applications from residents of the State.

### 13:45A-6.2 DEFINITIONS

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

“Criminal background screening” means a name search for a person’s criminal convictions initiated by an on-line dating service provider and conducted by one of the following means:

1. By searching available and regularly updated government public record databases for criminal convictions, so long as such databases, in the aggregate, provide substantial national coverage; or
  
2. By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.

“Internet dating service” means a person or entity directly or indirectly in the business of offering, promoting or providing access to dating, relationship, compatibility, matrimonial or social referral services principally on or through the Internet for profit, where the profit is derived from fees from members, advertising, or any other source.

“Member” means a customer, client or participant who submits to an Internet dating service information required to access the service for the purpose of engaging in dating, relationship, compatibility, matrimonial or social referral.

“New Jersey member” means a member who provides a New Jersey address or zip code when registering with the service.

**13:45A-6.3 CRIMINAL BACKGROUND INFORMATION**

- a) An Internet dating service that conducts criminal background screenings on its members shall, in addition to the disclosures required by P.L. 2007, c. 272 (N.J.S.A. 56:8-171(d)), disclose, clearly and conspicuously, to all New Jersey members:
- 1) The means that it uses to conduct the criminal background screenings;
  - 2) A description of how the criminal background screening is conducted, including how the means disclosed pursuant to (a)1 above are utilized, whether it updates criminal background screening information, and if so, how often the update is performed;
  - 3) Whether it allows a member who has been identified as having a conviction for any crime, including, but not limited to, any sex offense, that would qualify the offender for registration pursuant to section 2 of P.L. 1994, c. 133 (N.J.S.A. 2C:7-2) or under another jurisdiction's equivalent statute to have access to its service to communicate with any New Jersey member; and
  - 4) What crimes, if any, disqualify a member from having access to its service to communicate with any New Jersey member.
- b) The disclosures required by (a) above shall be provided in bold letters in at least 12-point type on the website pages on which a New Jersey member is requested to provide personal information. The disclosures may be provided on a single webpage, such as the home page, provided that a link to the disclosures is conspicuously displayed on all the webpages on which a New Jersey member is requested to provide personal information.

**13:45A-6.4 DATE OF CRIMINAL BACKGROUND INFORMATION**

An Internet dating service that discloses that it conducts a criminal background screening on members shall conspicuously display on the webpage containing a member's profile the service's policy, or a link to the policy, regarding the updating of criminal background screening information.

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**SUBCHAPTER 7.  
(RESERVED)**

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## **SUBCHAPTER 8. PREPAID CALLING CARDS**

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### **13:45A-8.1 SCOPE**

- a) The provisions of this subchapter apply to providers offering or selling prepaid calling service or prepaid calling cards to persons in the State and distributors of such cards for resale to persons in the State.
- b) The provisions of this subchapter shall not apply to prepaid calling cards printed prior to August 1, 2008 and point-of-sale material relating to such cards printed prior to that date.
- c) All prepaid calling cards printed after August 1, 2008 and all sales material and voice prompts created, printed, distributed or aired after that date shall be subject to this subchapter.

### **13:45A-8.2 DEFINITIONS**

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

“Advertisement” means the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way, to induce directly or indirectly any person to purchase any prepaid calling card or calling services, 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.

“Government fees” means any and all fees, taxes and charges assessed pursuant to State or Federal law, regulation or other mandate or requirement, including universal service fees and charges.

“Pay phone surcharge” means the surcharge that a provider may charge a customer when that consumer places a call with a card from a pay phone using a toll-free access number. The pay phone surcharge shall be deducted from a card’s balance.

“Permitted fee” means the fees and surcharges that a provider may charge to, or deduct from, a card’s balance for the use of that card, in addition to the rate per minute to the particular

destination called, which includes and is limited to any pay phone surcharge, any recharge convenience fee, any directory assistance fee and any government fees.

“Person” means a natural person, partnership, corporation, limited liability company, or any other entity.

“Prepaid calling card” or “card” means any right of use purchased for a sum certain that contains an access number and authorization code that enables a consumer to use a prepaid calling service. Such rights of use may be embodied on a card or other physical object or may be purchased by an electronic or telephonic means through which the purchaser obtains access numbers and authorization codes that are not physically located on a card or other object. “Prepaid calling card” shall not be construed to include cards or other rights of use that provide access to:

- 1) Telecommunications service if the card or other rights of use and telecommunications service are provided:
  - i) For free or at no additional charge as a promotional item accompanying a product or service purchased by a consumer; or
  - ii) Pursuant to an awards, loyalty, rebate or promotional program without any separate monetary consideration being given by the consumer solely in exchange therefor; or
- 2) A wireless telecommunications service account if the purchaser has a pre-existing relationship with the wireless service provider or establishes a carrier-consumer relationship via the purchase of a device.

“Prepaid calling card distributor” or “distributor” means and includes: any person who purchases or receives prepaid calling cards or service from a prepaid calling service provider, a telecommunications carrier or other distributor and sells or distributes those cards or service to one or more distributors of prepaid calling cards, or to one or more prepaid calling card retailers; and any person who otherwise actively engages in the promotion, advertising or dissemination of prepaid calling cards or service and who is not a provider. “Prepaid calling card distributor” shall not include any prepaid calling card retailers engaged exclusively in point-of-sale transactions with consumers.

“Prepaid calling card retailer” means any person who sells or offers to sell prepaid calling cards directly to consumers.

“Prepaid calling service” or “service” means any prepaid telecommunications service that allows consumers to originate calls through a local, long distance or toll-free access number and authorization code, whether manually or electronically dialed. Prepaid calling service shall not be construed to include any service that provides access to a wireless telecommunications service account through which the purchaser has a pre-existing relationship with the wireless service provider or establishes a carrier-customer relationship via the purchase of a device.

“Provider” means any person providing prepaid calling service to the public using its own, or a resold, telecommunications network or voice over Internet technology.

“Telecommunications network” means the combination of network elements that are required to transmit information in the form of voice, data or video between or among points specified by the user in local or long distance applications without change in the form or content of the information sent and received.

“Toll-free number” means an 800 number, or other telephone number widely understood to be toll-free, which, when called as the destination number or as an access number, shall not result in the calling party being assessed, by virtue of completing the call, any fee, charge or higher rate for the call unless such fee, charge or higher rate is disclosed pursuant to N.J.A.C. 13:45A-8.3(c).

### **13:45A-8.3 DISCLOSURE REQUIREMENTS**

- a) The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services:
  - 1) Any advertisement of the price, rate or unit value in connection with the sale of prepaid calling cards or services shall include a disclosure of any geographic, area code or exchange limitation to the advertised price, rate or unit value, as well as a disclosure of any additional surcharges, call setup charges or fees applicable to the advertised price, rate or unit value;
  - 2) The person responsible for issuing a card, whether it be the provider or distributor, or both, shall cause the following information to be conspicuously printed on the card or, if

the rights to use the service are not embodied in a card or other physical object, the information shall be furnished as provided in (a)3 below:

- i) The name of the provider and, if applicable, the distributor issuing the card;
  - ii) A toll-free customer service number and notice that at that number the user can obtain the number of minutes remaining on the card for a call to a particular destination number;
  - iii) A network access number, if available, to access service and the charge, if any, for use of that, number;
  - iv) The authorization code or PIN, if required to access service, which shall be concealed by opaque security film with a scratch layer, or other means, until uncovered by the user;
  - v) The expiration date, if any, which shall be a fixed date, or the expiration period, which shall be a specified period measured from first use of the card;
  - vi) If applicable, that the card or service is subject to maintenance and other fees and charges;
  - vii) Instructions on how to use the card; and
  - viii) Instructions on how to obtain complete information about the use of the card, including fees and charges for, and any restrictions or limitations on the use of, the card;
- 3) The person responsible for the packaging of a card, whether it be the provider or distributor, or both, shall cause the following information to be conspicuously printed on the packaging, if any, or on a clear and conspicuous poster or other writing in plain language at the point of sale, and through the customer service number, a web site or other electronic medium, the following information:
- i) The name of the provider and, if applicable, the distributor issuing the card;
  - ii) The value of the card or service, in dollars or minutes;
  - iii) The amount and frequency of any permitted fee that may be applicable to the use of the card or service for calls originating within the United States;

- iv) Notice that additional per minute rates or charges, including surcharges, taxes or fees, including monthly or other periodic fees, maintenance fees, per-call access, connection fees or disconnection fees, may apply to use of the card or the service for calls to or from international telephone numbers, indicating the applicable respective amounts and which such rates or charges, if any, are assessed on a call prior to the dialing of a destination number;
  - v) If advertising for a card identifies one or more regions, countries, cities or other destinations that may be called by using the card the rates for calls made to the destination or destinations advertised for the card or, in lieu of disclosing each rate, the highest rate for any calls to the destinations advertised for that card;
  - vi) Notice that additional or different per minute rates, charges or fees may apply to calls made to or from international cellular and international wireless telephone numbers;
  - vii) Where a toll-free number is not the exclusive access number, notice that per minute rates may be higher, or a surcharge may be imposed, for calls made via toll-free numbers;
  - viii) Notice that a pay phone surcharge may be imposed or that the per minute rate may be higher on a call made from a pay phone;
  - ix) The minimum charge per call, if any;
  - x) The definition of the term "unit," if applicable;
  - xi) The billing decrement and monetary rounding policies as provided in N.J.A.C. 13:45A-8.8;
  - xii) The recharge policy, if any;
  - xiii) The refund policy, if any; and
  - xiv) The expiration policy, if any;
- 4) The person responsible for advertisements that are not at the point of sale or on a website or other electronic medium shall cause the following information to be disclosed in such advertising:
- i) The name of the provider or distributor issuing the card;

- ii) A toll-free customer service number and notice that at that number the user can obtain complete information about the use of the card, including fees and charges, any restrictions or limitations on the use of the card and the number of minutes remaining on the card for a call to a particular destination number; and
  - iii) The expiration policy, if any;
- 5) The value of the card and the amount of the various charges, however denominated, that are required to be disclosed by (a)2 and 3 above, shall be expressed in the same format. That is, if the value of a card is expressed in minutes, all charges shall be expressed in minutes based on calls from New Jersey to the advertised destination. If the value of the card is expressed in dollars, all charges shall be expressed in dollars;
  - 6) Any claims made in the information required by (a)3 above regarding the number of minutes available to one or more destinations shall contain an explanation as to how the maximum number of minutes was determined. Such number of minutes shall be available to the consumer under the conditions stated;
  - 7) Where any rates or claims listing the maximum number of minutes available to one or more particular destinations are made in the information required by (a)3 above that is furnished in writing, and such rates or claims are subject to change, the provider or distributor shall include in such written information, the fact that rates are subject to change, the date the written information was printed, the date through which the rates or claims are in effect, if applicable, and how the consumer can contact the provider to determine current rates and terms of service;
  - 8) Where any rates or claims listing the maximum number of minutes available to one or more particular destinations are made in the information required by (a)3 above that is furnished through the customer service number, a web site or other electronic medium, the rates or minutes shall be those in effect when the information is furnished; and
  - 9) If a language other than English is predominantly used on a prepaid calling card or its packaging, or in point-of-sale advertising or promotion for the prepaid calling card or prepaid calling service, the information required by (a)3 above shall also be disclosed in that language on the card, packaging, advertisement or promotion.

### **13:45A-8.4 PROHIBITED PRACTICES**

- a) A provider shall not charge, apply or deduct from a card's balance any fees, taxes, surcharges or other amounts for use of the card, except:
  - 1) The rate per minute for the particular destination called;

- 2) Any permitted fees; and
  - 3) Any rate per minute, fee or charge disclosed pursuant to N.J.A.C. 13:45A-8.3(a)3.
- b) Prepaid calling card distributors shall not distribute any prepaid calling card, which they know violates any provision of N.J.A.C. 13:45A-8.3.
- c) Prepaid calling card retailers shall not sell or offer for sale any prepaid calling card, which they know provides fewer minutes than the number of minutes promoted or advertised for that card, including the number of minutes listed on the card, any advertising or point-of-sale material related to the card or any voice prompt indicating the number of minutes available for a call with the card.

### **13:45A-8.5 REQUIRED TOLL-FREE TELEPHONE NUMBER**

- a) A provider shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:
- 1) Customer service may be provided by a combination of a live operator, interactive voice response and electronic voice recording of customer inquiries and complaints, but live operator service shall be available 24 hours a day, seven days a week. If an electronic voice recorder is used, the provider shall attempt to contact the customer no later than the next day following the date of the recording;
  - 2) The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. If a language other than English is predominantly used on a card or any advertising for a card or service, such card or advertising shall contain a notice in that other language whether customer service is available in that other language;
  - 3) The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:
    - i) All rates, surcharges, taxes and fees;
    - ii) The minutes and, if applicable, the dollar balance, available and remaining on the card, for use in a single, uninterrupted call to a single, requested destination through the card and prepaid calling service;
    - iii) The provider's recharge, refund and expiration policies; and

- iv) In the event of a dispute, the information specified in N.J.A.C. 13:45A-8.9(a); and
- 4) A provider shall not impose a fee or surcharge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

### **13:45A-8.6 VERBAL DISCLOSURE REQUIREMENTS**

- a) Providers shall provide a verbal announcement, which may be automated, immediately after a destination number is entered and prior to the processing of the call, stating the minutes remaining on the prepaid calling services account or prepaid calling card for a call to the number entered and offering the caller the opportunity to cancel the call, followed by a pause giving the caller reasonable time to terminate the call without incurring any charge for the call.
- b) The voice prompt shall state only the number of minutes available for that call to the dialed destination. The caller must be able to receive 100 percent of the minutes of prepaid calling service that have been announced on the voice prompt for such call. The provider or distributor may not disclaim liability under this section by providing notice that the announced minutes are subject to, or before the application of, fees or charges or by utilizing other disclaimers or limitations. Other than information about the number of minutes available to the destination dialed by the consumer on the particular call, providers shall not advertise or promote minutes or rates available for calls to other destinations through voice prompts after the entry of the destination number dialed by the caller.
- c) The consumer shall not be charged for any busy signal or unanswered call.
- d) When, during a call, the prepaid account or card balance is about to be completely depleted, the provider shall provide a voice prompt or other audible signal at least one minute or billing increment before the time expires.
  - 1) If the voice prompt or other audible signal occurs more than one minute before the call time expires, then the voice prompt or audible signal shall indicate the minutes of call time remaining.

### **13:45A-8.7 AVAILABILITY OF MINUTES ADVERTISED OR PROMOTED**

All minutes or rates, or both, promoted or advertised on any prepaid calling card, any point-of-sale material relating to that card or otherwise relating to any prepaid calling service, shall be available and achievable by the consumer and there shall be no limitations on the period of time for which the promoted or advertised minutes or rates, or both, will be available to the consumer unless those limitations are clearly and conspicuously disclosed in the same location on the

card, advertising or point-of-sale material where the minutes or rates, or both, are promoted or advertised.

### **13:45A-8.8 BILLING DECREMENT ROUNDING AND MONETARY ROUNDING**

- a) The billing decrement required to be disclosed under N.J.A.C. 13:45A-8.3(a)3xii shall be the policy that applies to the use of the prepaid calling card or calling service for calls from New Jersey to the advertised destination no matter where the caller is when the call is placed. The disclosure shall also give notice, if applicable, that additional or different billing decrement policies may apply to usage of the prepaid calling card or prepaid calling service to or from other destinations.
- b) A provider or distributor shall not be required to print a billing decrement rounding policy when calls are rounded no higher than to the nearest minute.
- c) A provider or distributor shall not be required to print a monetary rounding policy when rates are rounded no higher than the nearest cent.

### **13:45A-8.9 CALL DETAIL INFORMATION; RECORDS**

- a) In the event of a dispute between a customer and a provider concerning the duration or occurrence of a call, which cannot otherwise be resolved, the provider shall provide the customer with the following information about the disputed call or calls:
  - 1) The area code or country code of the originating telephone number;
  - 2) The area code or country code of the terminating telephone number; and
  - 3) The date, time and call duration.
- b) A provider shall maintain for at least two years records of all consumer complaints received by live customer service representatives.
- c) A provider shall maintain for at least two years a sample of all prepaid calling cards, card packaging and advertisements, including point-of-sale advertisements; copies of all detailed rate decks for all of provider's cards, including detailed breakdowns of all rates, charges and fees applicable for calls to all destinations on the rate deck and all records showing all modifications made to the rate decks during such period; records of provider's calling card platform settings showing whether voice prompts announcing call duration have been set to correspond with actual call duration; recordings of voice prompts announcing rates, fees or charges; and the following call detail information: the dialing and signaling information that

identifies the inbound access telephone number called, the number of the originating telephone, the date and time the call originated, the date and time the call terminated, the called telephone number and the PIN and/or account number associated with the call and the PIN decrement records.

### **13:45A-8.10 ACTIVATION AND RECHARGING**

- a) If a card is not available for use until activated by a point-of-sale terminal or comparable means, notice shall be provided on the card or on the front of the card's packaging in language that reasonably explains that the card has no value until activated.
- b) If a customer contacts the provider to recharge the card, the provider shall inform the customer, upon request, of the per minute rate and all charges and/or fees that apply to the use of the card for calls within the continental United States made from New Jersey, including, but not limited to, maintenance fees, pay phone surcharge and connection fees.

### **13:45A-8.11 MINIMUM ACTIVE PERIOD; MAINTENANCE FEES**

- a) A card shall expire at the earlier of the expiration date or the end of the expiration period stated on the card. Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of sale, or if recharged, from the date of the last recharge.
- b) No maintenance or dormancy fee shall be charged against a card for any period prior to the time it is first used to dial a destination number.

### **13:45A-8.12 REQUIRED REFUNDS**

A provider that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card and shall be provided to the consumer within 60 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

### **13:45A-8.13 SURCHARGES**

- a) A provider shall not charge any fee or surcharge that is not disclosed as required by this subchapter or that exceeds the amount disclosed by the provider.

- b) A provider shall not charge a consumer for, or impose a fee or surcharge on, any call if the consumer is not connected to the number called. For this purpose, a call shall not be considered connected to the number called if the consumer receives a busy signal or the call is unanswered.
- c) In the case of prepaid calling cards or services utilized at a pay phone, the provider shall provide voice prompt notification of any applicable pay phone surcharges, in addition to the notice required by N.J.A.C. 13:45A-8.3(a)3vii, so long as the provider affords users of prepaid calling cards or services reasonable time to terminate the call after notification of applicable pay phone surcharges without incurring any charge for the call.

### **13:45A-8.14 ACCESS NUMBER**

A provider shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

### **13:45A-8.15 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.

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## **SUBCHAPTER 9. GENERAL ADVERTISING**

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### **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 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, catalog, 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.

“Free-to-pay conversion” means, in an offer or agreement to sell or provide any merchandise, a provision under which a consumer receives the merchandise for free for an initial period and will incur an obligation to pay for the merchandise if he or she does not take affirmative action to cancel before the end of that period.

“Free trial” or “risk free trial” means an offer or agreement to provide merchandise to a consumer for a period of time without any terms or conditions.

“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.

### **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 sub-paragraph:
- 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. Disclaimers permitted or required under this section, such as “terms and conditions apply” and “quantities limited,” shall be set forth in a type size and style that is clear and conspicuous relative to the other type sizes and styles used in the advertisement.
- 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 nonbusiness 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 or, if after a good faith effort an advertiser cannot procure for the holder of the raincheck the advertised merchandise within the 60-day period, failure to offer the holder of the raincheck a different item of merchandise of substantially the same kind, quality and price as the original advertised merchandise; and
  - ii) Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for not less than 10 days after giving such notice or to the end of the 60-day period for which the raincheck is valid, whichever is longer, for all merchandise with an advertised unit price greater than \$15.00;
  - 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; and
  - iv) Conspicuously post its raincheck policy on a sign in at least one of the following locations:
    - (1) Affixed to a cash register or location of the point of sale;

- (2) So situated as to be clearly visible to the buyer;
  - (3) Posted at each store entrance used by the public;
  - (4) At the location where the merchandise was offered for sale;
  - (5) In an advertisement for merchandise; or
  - (6) Printed on the receipt of 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) The advertising of a free-to-pay conversion as a "risk free trial," or a "free trial," or as any other offer that requires the consumer to do nothing other than accept merchandise or a service without any obligation, unless the advertisement clearly states the length of the period the offer is without obligation or that terms and conditions apply.

**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; however, this requirement shall not apply to merchandise discount offers made in accordance with N.J.A.C. 13:45A-9.8.

**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."

**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.
- b) Percentage-off discounts made in accordance with N.J.A.C. 13:45A-9.8 shall be exempt from the requirements of (a) above.

**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.

### **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.

**13:45A-9.8 RETAIL DISCOUNTS IN SCANNER STORES; PERCENTAGE-OFF DISCOUNTS; POINT-OF-SALE DISCOUNTS; MULTI-TIERED PRICING OFFERS; TARGETED DISCOUNTS**

- a) Retail establishments which use scanners that have the capability of providing percentage-off discounts, and wish to offer percentage-off discounts at the point of sale shall set forth the regular price and the price after any discounts are taken relating to the merchandise purchased by the consumer on the register receipt given to the consumer at the point of sale.
- b) An advertiser who offers a percentage-off discount is not required to disclose the basis of the percentage reduction or the regular price or price range in an advertisement pursuant to N.J.A.C. 13:45A-9.5 provided that:
  - 1) The retail price per unit of merchandise is less than \$100.00; and
  - 2) The regular price and the price after any discounts are taken are set forth on the register receipt given to the consumer at the point of sale.
- c) An advertiser may discount merchandise at the point of sale without marking the merchandise with the discounted price provided that the following information is posted conspicuously in the form of a notice at the point of display:
  - 1) A description of the merchandise or the range or category of merchandise and the price to which the discount shall apply;
  - 2) A notice that the discount will be taken at the time of purchase; and

- 3) The specific amount or type of discount applicable, such as “\$10.00 off” or “25% off posted price.”
- d) Advertisements and point of display materials involving multi-tiered pricing offers made by advertisers shall contain the following:
  - 1) All retail prices or discounts comprising the offer and the types of purchases to which they apply, for example:
    - i) “Treefree Paper Towels—Get first roll at 79 2nd roll at 690 and each additional roll at 590”;
    - ii) “Wonder Hot Dog Rolls—\$1.09 only; 790 with purchase of Plochman’s Mustard”; and
  - 2) Any limitations applicable to the offer, such as the type, brand or size of the merchandise or restrictions on the number of units which may be purchased.
- e) Advertisements containing targeted discounts shall conspicuously state that the offer is limited to a certain category of consumer and shall specifically identify those consumers. If the merchandise to be discounted is also being advertised at a reduced price for all consumers, the advertisement shall clearly distinguish between the types of offers made by the advertiser and identify those consumers who are entitled to each offer.
  - 1) Any targeted discounts or pricing information posted at the point of display shall clearly and conspicuously state that the offer is limited, and shall identify the customers who are entitled to take advantage of the offer.

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

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### **13:45A-10.1 DEFINITIONS**

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

“Home appliance” means any electrical, mechanical or thermal article produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence including, but not limited to, air conditioners, cameras, computers, dehumidifiers,

dishwashers, dryers, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereo equipment, television and washers.

“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.

### **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 shall include a clear statement of:
    - i) Any basic “diagnostic” charges or any additional set fee;
    - ii) The methods used to determine any additional charge including the charge for labor and parts;
    - iii) The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller; and
  - 4) Whether the item being purchased is refurbished.
- 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.

### **13:45A-10.3 DECEPTIVE PRACTICES**

- a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of repairing and servicing home appliances:
  - 1) Commencing work other than diagnostic work or work included in a diagnostic fee without having obtained the consumer's signature or the signature of the consumer's agent on a written itemized estimate of the labor and parts necessary, including specific notation of exchange price on parts where applicable. If such written consent cannot be obtained, repair work may be commenced only if the consumer has been advised of the estimate and has consented thereto and the person advising the consumer has noted the conversation on the estimate as well as the date, time and phone number at which he reached the consumer.
  - 2) Failure to provide the consumer with a copy of the above authorization and any other servicer's receipt or document requiring the consumer's signature, as soon as the consumer signs such document.
  - 3) Making any deceptive or misleading statements, including but not limited to false or unrealistic promises and groundless estimates of a character likely to influence, persuade or induce a consumer to authorize the repair or service of a home appliance.
  - 4) Charging the consumer for work done or parts supplied in excess of the estimated price without the oral or written consent of the consumer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the supplier of services shall make a notation on the documentation previously signed by the consumer of the date, time, name of the person authorizing the additional repairs and the telephone number, if any, together with a specification of the additional parts and labor and the total additional cost.
  - 5) Failure to offer to return replaced parts to the consumer at the time of completion of the work, provided that the parts by virtue of their size, weight or other similar factors or for

any safety reasons are not practical to return, unless the estimate and bill make specific reference to an exchange price for a particular part.

#### **13:45A-10.4 EXCEPTIONS**

- a) The provisions of N.J.A.C. 13:45A-10.2 and 10.3 above shall not apply to the repair and servicing of the following if the repair or servicing required is such as to constitute an emergency which presents an imminent hazard or threat to life or health:
- 1) Gas or oil consuming appliances;
  - 2) Central heating and cooling systems;
  - 3) Heat pumps;
  - 4) Self contained combination heating and cooling systems.

#### **13:45A-10.5 VIOLATIONS**

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

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### **SUBCHAPTER 11. (RESERVED)**

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### **SUBCHAPTER 12. SALE OF ANIMALS**

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#### **13:45A-12.1 DEFINITIONS**

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

“Animal” means a dog or cat.

“Consumer” means any natural person purchasing a dog or cat from a pet dealer.

“Division” means the Division of Consumer Affairs, Department of Law and Public Safety.

“Kennel” means the business of boarding dogs or cats or breeding dogs or cats for sale.

“Person” means any person as defined by N.J.S.A. 56:8-1(d).

“Pet dealer” means any person engaged in the ordinary course of business in the sale of animals for profit to the public or any person who sells or offers for sale more than five animals per year.

“Pet shop” means a place of business for selling, offering for sale or exposing for sale dogs or cats.

“Quarantine” means to hold in segregation from the general animal population any dog or cat because of the presence or suspected presence of a contagious or infectious disease.

“Unfit for purchase” means any disease, deformity, injury, physical condition, illness or defect which is congenital or hereditary and severely affects the health of the animal, or which was manifest, capable of diagnosis or likely to have been contracted on or before the sale and delivery of the animal to the consumer. The death of an animal within 14 days of its delivery to the consumer, except death by accident or as a result of injuries sustained during that period shall mean such animal was unfit for purchase.

### **13:45A-12.2 GENERAL PROVISIONS**

- a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:
  - 1) To sell an animal within the State of New Jersey without an animal history and health certificate and without providing the consumer with a completed animal history and health certificate. The animal history and health certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:
    - i) The animal’s breed, sex, age, color, and birth date;

- ii) The name and address of the person from whom the pet dealer purchased the animal;
- iii) The breeder's name and address, and the litter number of the animal;
- iv) The name and registration number of the animal's sire and dam;
- v) The date the pet dealer took possession of the animal;
- vi) The date the animal was shipped to the pet dealer, where such date is known by the dealer;
- vii) The date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal;
- viii) A statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, and the date of administering the vaccinations and inoculations; and
- ix) A 10-point bold-face type warning in the following form:

**WARNING**

The animal which you have purchased (check one)  has  has not been previously vaccinated or inoculated. Vaccination or inoculation neither guarantees good health nor assures absolute immunity against disease. Examination by a veterinarian is essential at the earliest possible date to enable your veterinarian to insure the good health of your pet.

- 2) To fail to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale and/or to fail to permit inspection thereof by an authorized representative of the Division upon two days' notice (exclusive of Saturday and Sunday).
- 3) To include in the animal history and health certificate any false or misleading statement.

- 4) To directly or indirectly refer, promote, suggest, recommend or advise that a consumer consult with, use, seek or obtain the services of a licensed veterinarian unless the consumer is provided with the names of not less than three licensed veterinarians of whom only one may be the veterinarian retained by the pet dealer for its purposes.
- 5) To describe or promote the operation of the business as a "kennel" unless the business operation falls within the definition contained in N.J.A.C. 13:45A-12.1 or the operation of the business as a "kennel" has been authorized by the issuance of a license pursuant to N.J.S.A. 4:19-15.8. In the absence of meeting such criteria, a pet dealer shall be considered to be engaged in the operation of a "pet shop" and shall, where the name for the business operation includes the word "kennel," indicate the following disclaimer in proximate location to the name for the business operation in all promotional or advertising activities:

"This business only engages in the operation of a pet shop."

- 6) To use or employ a name for the business operation which suggests or implies that such business operation is engaged in or is associated with any organization which registers or certifies the pedigree or lineage of animals and/or to represent, expressly or by implication, approval by or affiliation with such organization, unless the following disclaimer, as appropriate, appears in proximate location to the name for the business operation:

"This business only engages in the operation of a pet shop."

"This business only engages in the operation of a kennel."

- 7) To state, promise or represent, directly or indirectly, that an animal is registered with an animal pedigree registry organization if such registration has not already been accomplished or that an animal is capable of being so registered, followed by a failure either to effect such registration or provide the consumer with the documents necessary therefor 120 days following the date of sale of such animal, if the animal has not already been returned to the pet dealer. In the event that a pet dealer fails to effect registration or to provide the necessary documents within 120 days following the date of sale, the consumer shall, upon written notice to the pet dealer, be entitled to choose one of the following options:
  - i) To return the animal and to receive a refund of the purchase price plus sales tax; or
  - ii) To retain the animal and to receive a partial refund of 75 percent of the purchase price plus sales tax.

- 8) A pet dealer's failure to comply with the consumer's election pursuant to (a)7 above within 10 days of written notice thereof shall be deemed a separate deceptive practice for purposes of this section.
- 9) To fail to display conspicuously on the business premises a sign not smaller than 22 inches by 18 inches which clearly states to the public in letters no less than one inch high the following:

### KNOW YOUR RIGHTS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. Read your animal history and health certificate, the Statement of New Jersey Law Governing the Sale of Dogs and Cats and your Contract. In the event of a complaint you may contact: Division of Consumer Affairs, Post Office Box 45025, 124 Halsey Street, Newark, New Jersey 07101. (201)504-6200.

- b) It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions contained in (a) above.

### **13:45A-12.3 REQUIRED PRACTICES RELATED TO THE HEALTH OF ANIMALS AND FITNESS FOR SALE AND PURCHASE**

- a) Without limiting the prosecution of any other practices that may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:
  - 1) A pet dealer shall have each animal examined by a veterinarian licensed to practice in the State of New Jersey prior to the sale of the animal. The name and address of the examining veterinarian, together with the findings made and treatment (if any) ordered as a result of the examination, shall be noted on each animal's history and health certificate as required by N.J.A.C. 13:45A-12.2(a)1vii.
  - 2) A pet dealer shall label and identify each cage as to the:
    - i) Sex and breed of animal;
    - ii) Date and place of birth of each animal; and

- iii) Name and address of the attending licensed New Jersey veterinarian and the date of initial examination.
- 3) A pet dealer shall be required to quarantine any animal diagnosed as suffering from a contagious or infectious disease, illness or condition until such time as a licensed New Jersey veterinarian determines that such animal is free from contagion or infection. All animals requiring quarantining shall be placed in a quarantine area separated from the general animal population.
- 4) A pet dealer shall be permitted to inoculate and vaccinate animals prior to purchase only on the order of a veterinarian licensed to practice in the State of New Jersey. A pet dealer, however, shall be prohibited from representing, directly or indirectly, that he is qualified to engage in or is engaging in, directly or indirectly, the following activities: diagnosing, prognosing, treating, administering, prescribing, operating on, manipulating or applying any apparatus or appliance for disease, pain, deformity, defect, injury, wound or physical condition of animals after purchase for the prevention of, or to test for, the presence of any disease in such animals. These prohibitions include but are not limited to the giving of inoculations or vaccinations after purchase, the diagnosing, prescribing and dispensing of medication to animals and the prescribing of any diet or dietary supplement as treatment for any disease, pain, deformity, defect, injury, wound or physical condition.
- 5) A pet dealer shall have any animal which has been examined more than 14 days prior to purchase reexamined by a licensed New Jersey veterinarian for the purpose of disclosing its condition at the time of purchase. Such examination shall take place within 72 hours of delivery of the animal to the consumer unless the consumer waives this right to reexamination in writing. The written waiver shall be in the following form and a copy shall be given to the consumer prior to the signing of any contract or agreement to purchase the animal:

### KNOW YOUR RIGHTS

To ensure that healthy animals are sold in this State, New Jersey law requires that a dog or cat be examined by a licensed New Jersey veterinarian prior to its sale by a pet dealer and within 72 hours of the delivery of the dog or cat to a consumer who has purchased the animal where the initial examination took place more than 14 days prior to the date of purchase. A pet dealer need not have the animal reexamined if you, the consumer, decide that you do not want such a reexamination performed.

If you do not want a reexamination performed, please indicate your decision below.

WAIVER OF REEXAMINATION RIGHT

I understand that I have the right to have my animal reexamined within 72 hours of its delivery to me. I do not want to have such a reexamination performed.

\_\_\_\_\_  
 Consumer's Name  
 (Print)

\_\_\_\_\_  
 Consumer's Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Pet Dealer's or Agent's Name  
 (Indicate Title or Position)  
 (Print)

\_\_\_\_\_  
 Pet Dealer's or Agent's Signature

\_\_\_\_\_  
 Date

- 6) If at any time within 14 days following the sale and delivery of an animal to a consumer, a licensed veterinarian certifies such animal to be unfit for purchase due to a non-congenital cause or condition or within six months certifies an animal to be unfit for purchase due to a congenital or hereditary cause or condition, a consumer shall have the right to elect one of the following options:
  - i) The right to return the animal and receive a refund of the purchase price, including sales tax, plus reimbursement of the veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed two times the purchase price, including sales tax, of the animal;
  - ii) The right to retain the animal and to receive reimbursement for veterinary fees incurred prior to the consumer's receipt of the veterinary certification, plus the future

- cost of veterinary fees to be incurred in curing or attempting to cure the animal. The pet dealer's liability under this option shall not exceed two times the purchase price, including sales tax of the animal;
- iii) The right to return the animal and to receive in exchange an animal of the consumer's choice, of equivalent value, plus reimbursement of veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed two times the purchase price, including sales tax, of the animal;
  - iv) In the event of the animal's death within 14 days of its delivery to the consumer due to a non-congenital cause or condition, or within six months after delivery to the consumer due to a congenital or hereditary cause or condition, except where death occurs by accident or injury sustained during either period, the right to receive a full refund of the purchase price plus sales tax for the animal, or in exchange an animal of the consumer's choice of equivalent value, plus reimbursement of veterinary fees incurred prior to the death of the animal. The pet dealer's liability for veterinary fees under this option shall not exceed two times the purchase price, including sales tax of the animal.
- 7) The pet dealer shall accept receipt of a veterinary certification of unfitness that has been delivered by the consumer within 14 days following the consumer's receipt thereof, such certification to contain the following information:
- i) The name of the owner;
  - ii) The date or dates of examination;
  - iii) The breed, color, sex and age of the animal;
  - iv) A statement of the veterinarian's findings;
  - v) A statement that the veterinarian certifies the animal to be "unfit for purchase";
  - vi) An itemized statement of veterinary fees incurred as of the date of the certification;
  - vii) Where the animal is curable, the estimated fee to cure the animal;
  - viii) Where the animal has died, a statement setting forth the probable cause of death;
- and

- ix) The name and address of the certifying veterinarian and the date of the certification.
- 8) It shall be the responsibility of the consumer to obtain the veterinary certification of unfitness within the required amount of time provided by (a)6 above, unless the pet dealer fails to provide the notice required by (a)11 below. If the pet dealer fails to provide the notice required by (a)11 below, the consumer shall be entitled to the recourse provided for in (a)6 above.
- 9) When a consumer presents a veterinary certification of unfitness to the pet dealer, the pet dealer shall confirm the consumer's election in writing. The election shall be in the following form and a copy shall be given to the consumer upon signing:

#### UNFITNESS OF ANIMAL-ELECTION OF OPTION

I understand that, upon delivery of my veterinarian's certification of unfitness, I have the right to elect one of the following options. I am aware of those options and I understand each of them. I have chosen the following option:

1. Return of my animal and receipt of a refund of the purchase price, including sales tax for the animal, plus reimbursement of the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed two times the purchase price including sales tax of my animal.
2. Retention of my animal and reimbursement for the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness, plus the future cost to be incurred in curing or attempting to cure my animal. The total reimbursement for veterinarian's fees shall not exceed two times the purchase price including sales tax of my animal.
3. Return of my animal and receipt of an animal of my choice of equivalent value in exchange plus reimbursement of veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed two times the purchase price including sales tax of my animal.

- 4. DEATH OF ANIMAL ONLY, (check one)  Receipt of a full refund of the purchase price, including sales tax for the animal, or in exchange an animal of my choice of equivalent value plus reimbursement of the veterinary fees incurred prior to the death of the animal. The reimbursement for veterinarian’s fees shall not exceed two times the purchase price including the sales tax of the animal.

\_\_\_\_\_  
 Consumer’s Name  
 (Print)

\_\_\_\_\_  
 Consumer’s Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Pet Dealer’s or Agent’s Name  
 (Indicate Title or Position)  
 (Print)

\_\_\_\_\_  
 Pet Dealer’s or Agent’s Signature

\_\_\_\_\_  
 Date

- 10) A pet dealer shall comply with the consumer’s election as required by (a)7i through iv above not later than 10 days following receipt of a veterinary certification. In the event that a pet dealer wishes to contest a consumer’s election, he shall notify the consumer and the Director of the Division of Consumer Affairs in writing within five days following the receipt of the veterinarian’s certification, and he may require the consumer to produce the animal for examination by a veterinarian of the dealer’s choice at a mutually convenient time and place. The Director shall, upon receipt of such notice, provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to determine why the option elected by the consumer should not be allowed.
- 11) A pet dealer shall give the following written notice to a consumer prior to the delivery of the animal. Such notice, signed by both the pet dealer and the consumer, shall be embodied in a separate document and shall state the following in 10 point boldface type:

KNOW YOUR RIGHTS—A STATEMENT OF NEW JERSEY LAW GOVERNING  
THE SALE OF DOGS AND CATS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. In the event that a licensed veterinarian certifies your animal to be unfit for purchase within 14 days following receipt of your animal or within six months in the case of a congenital or hereditary cause or condition, you may:

- i) Return your animal and receive a refund of the purchase price including sales tax; or
- ii) Keep your animal and attempt to cure it; or
- iii) Return your animal and receive an animal of your choice of equivalent value.

Veterinary fees limited to two times the purchase price of the animal, including sales tax, which were related to the condition rendering the animal unfit for sale, must be paid by the dealer in the event that you choose to keep the animal. If you choose to return the animal, veterinary fees incurred prior to receipt of the veterinary certification, limited to two times the purchaser price of the animal, including sales tax, which were related to the condition rendering the animal unfit for sale, must be paid by the dealer.

Further, in the event of your animal's death within this 14-day period, except when death occurs by accident or as a result of injuries sustained after delivery, you may choose to receive either a full refund of the purchase price, plus sales tax, or an animal of equivalent value. In addition, veterinary fees, limited to two times the purchase price, including sales tax must be paid by the pet dealer.

In order to exercise these rights, you must present to the pet dealer a written veterinary certification that the animal is unfit for purchase and an itemized bill of all veterinary fees incurred prior to your receipt of the certification. Both of these items must be presented no later than five days after you have received the certification of unfitness. In the event that the pet dealer wishes to contest the

certification or the bill, he may request a hearing at the Division of Consumer Affairs. If the pet dealer does not contest the matter, he must make the refund or reimbursement not later than ten days after receiving the veterinary certification. Although your dog or cat is required to be examined by a licensed veterinarian prior to sale, symptoms of certain conditions may not appear until after sale. If your dog or cat appears ill, you should have it examined by a licensed veterinarian of your choice at the earliest possible time.

If the pet dealer has promised to register your animal or to provide the necessary papers and fails to do so within the 120 days following the date of sale, you are entitled to return the animal and receive a full refund of the purchase price plus sales tax or to keep the animal and receive a refund of 75 percent of the purchase price plus sales tax. In the event you elect to keep the animal and the dealer provides the 75 percent refund, the dealer is no longer obligated to register the animal or to provide the necessary papers to do so.

- 12) A pet dealer shall maintain copies of all notices required pursuant to (a)11 above signed by both the pet dealer and the consumer, for at least one year from the date the notice was signed and shall ensure that such notices are readily available for inspection, upon request, by an authorized representative of the Division of Consumer Affairs.
- 13) It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions of this section except as specifically authorized under (a)5 above.

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### **SUBCHAPTER 13.**

## **POWERS TO BE EXERCISED BY COUNTY AND MUNICIPAL OFFICERS OF CONSUMER AFFAIRS**

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#### **13:45A-13.1 STATEMENT OF GENERAL PURPOSE AND INTENT**

The within regulations are promulgated pursuant to authority conferred by L.1975 c.376 and are intended to operate as working guidelines for county and municipal consumer protection agencies in the exercise of those powers conferred herein. Any and all powers delegated hereby shall be exercised in strict accordance herewith and with such directives as may from time to time be issued by the Attorney General through the Director of the Division of Consumer Affairs.

**13:45A-13.2 DEFINITIONS**

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

“Act” means the New Jersey Consumer Fraud Act L.1960 c.39 (C56:8-1 et seq.) as amended and supplemented.

“Director” means the Director of the Division of Consumer Affairs.

“Person” means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

**13:45A-13.3 GENERAL PROVISIONS**

- a) The powers hereinafter delegated shall be exercised consistent herewith in the name of a county or municipal director of consumer affairs. Such a director shall be established by resolution adopted by a county board of chosen freeholders or by ordinance adopted by the governing body of a municipality. In the event that such ordinance or resolution has been adopted prior hereto, the same shall be deemed valid for the purpose of creating a county or municipal director as required hereby.
- b) The powers delegated herein shall be exercised either by the director of a county office of consumer affairs or by a municipal director of consumer affairs. In the event a county office and a municipal office work on a matter concurrently, the Director shall supervise each in order to insure consistent policies and practices.

**13:45A-13.4 QUALIFICATIONS OF COUNTY OR MUNICIPAL DIRECTOR**

- a) A county or municipal director of consumer affairs in order to exercise those powers hereinafter delegated shall:
  - 1) Be established by formal appointment by resolution adopted by the county board of chosen freeholders or by ordinance adopted by the governing body of the municipality;
  - 2) Successfully complete such initial educational and training courses as may be established by the director and such supplemental courses as may from time to time be prescribed;

- 3) Require that all staff employees or representatives dealing with the investigation or mediation of consumer complaints successfully complete such educational and training courses as may be established by the director. In the event that such staff employees or representatives shall fail to successfully complete such courses or shall be employed prior to the giving of such course, such employees or representatives may continue in such employment under the direct supervision and control of an individual who has successfully completed the course;
- 4) File such reports with the Division of Consumer Affairs as may be required by the director.

### **13:45A-13.5 TERMINATION OF AUTHORITY TO EXERCISE DELEGATED AUTHORITY**

- a) The authority to exercise those powers hereinafter delegated to a county or municipal director of consumer affairs may be suspended or revoked for:
  - 1) Failure to comply with the requirements contained in section 4 of this subchapter;
  - 2) Failure to comply with any requirement or limitation regarding the exercise of those powers hereinafter delegated;
  - 3) Failure to administer a county or local office of consumer protection in accordance with such directives as may be issued by the director.

### **13:45A-13.6 DELEGATED POWERS**

- a) A county or local director of consumer affairs, subject to the limitations hereinafter set forth may:
  - 1) Initiate investigations whenever it shall appear to such director that a person has engaged in, is engaging in or is about to engage in any act declared unlawful by the act as amended and supplemented or in any act or practice which violates any regulation promulgated by the Attorney General to the act. Such investigations may be commenced either on the complaint of an individual consumer or where, after independent inquiry made by the county or municipal director, it appears that a violation of the act or any regulation adopted pursuant thereto has occurred or may occur in the future.
  - 2) Require any person to file a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person and such other data and information as may be necessary to determine

whether a violation of the act or a regulation adopted pursuant thereto has occurred or will occur.

- 3) Examine under oath any person in connection with the sale or advertisement of any merchandise.
- 4) Examine any merchandise or sample thereof, record, book, document, account, or paper as may be deemed necessary.
- 5) Pursuant to an order of the superior court, impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with these regulations, and retain the same until the completion of all proceedings in connection with which the same are produced.
- 6) Issue subpoenas to any person in aid of any investigation to determine whether a violation of the act or any regulation adopted by the Attorney General thereto has occurred or will occur. A subpoena shall be issued in the name of the county or municipal director in a form substantially identical to that annexed hereto as example 1 and shall be signed by counsel to such director.
  - i) In the event that any person shall fail to comply with a subpoena issued pursuant to this subsection, the county or municipal director may apply to the superior court for an order granting such relief as authorized by L.1960, c.39 section 6 (N.J.S.A. 56:8-6).
- 7) Initiate such litigation in the courts in the name of the director seeking such relief as may be authorized by the act. In the event that litigation is to be commenced by a county or municipal director of consumer affairs, notice thereof shall be given to the director by serving a copy of the proposed complaint and any supporting documents to be filed with the court not less than 15 days prior to the filing of such action. Where litigation is to be commenced by seeking a temporary restraining order on an emergent basis, the director shall be notified of such action consistent with the rules of court governing such applications.

### **13:45A-13.7 LIMITATIONS; LITIGATION**

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

**13:45A-13.8 RESTRICTIONS; POWERS**

- a) A county or municipal director of consumer affairs shall not:
- 1) Promulgate substantive regulations governing the sale or advertisement of merchandise or defining unlawful practices; provided, however, nothing herein contained shall be deemed to prohibit the adoption of internal administrative procedures governing the handling and processing of complaints received from consumers.
  - 2) Conduct any administrative hearing of a quasijudicial 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)**

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**APPENDIX**

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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 other such penalties as provided by law

Dated: \_\_\_\_\_, 197\_\_\_\_\_

\_\_\_\_\_  
Counsel to Director of Consumer Affairs

\_\_\_\_\_  
Director of Consumer Affairs  
(County or Municipality)



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

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**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.

### **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.

**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 unit of measure:

Commodity	Approved Unit of Measure
1) Aluminum foils, wax and plastic wraps .....	100 sq. ft.
2) Baby food .....	reconstituted ounce, pound, quart
3) Baking mixes and supplies, pancake mixes .....	pound
4) Bread and pastry products: prepackaged outside of seller's premises .....	pound
5) Bottle and canned beverages, carbonated and non-carbonated .....	quart
6) Butter and oleomargarine .....	pound
7) Candy (excluding 5 ounces or less).....	pound
8) Canned poultry, fish and meat products.....	pound

- 9) Cocoa ..... pound
- 10) Coffee (instant and ground) ..... pound
- 11) Cereal ..... pound
- 12) Cheese ..... pound
- 13) Cold cuts; prepackaged meats and salads..... pound
- 14) Cookies and crackers..... pound
- 15) Condiments: ketchups, mustards, mayonnaise  
 (including pickles, relishes, olives, etc.) ..... quart, pound
- 16) Deodorants, dry, spray, and roll-on ..... pound, pint
- 17) Detergents, soap, laundry products .....quart, pound, per wash load  
 (dry bulk, liquid) ..... 100 count
- 18) Flour ..... pound
- 19) Fruits and vegetables: jars, cans ..... pound  
 boxes (not fresh products) ..... pound
- 20) Grains and beans ..... pound
- 21) Hair conditioners, creme rinses, shampoos (not dyes) ..... pound, pint
- 22) Household cleaners, waxes, deodorizers ..... pound, quart  
 starches, bleaches ..... 100 count
- 23) Instant breakfast food ..... pound
- 24) Jellies, jams, preserves ..... pound
- 25) Juices and juice drinks, fresh, canned..... quart
- 26) Molasses ..... quart, pound

- 27) Mouthwash ..... quart
- 28) Non-alcoholic drink mixes ..... quart, pound
- 29) Oil (cooking)..... quart
- 30) Peanut butter ..... pound
- 31) Pet food and supplies (canned, dried, moist)  
     limited to dog and cat food; kitty litter)..... pound
- 32) Plastic and paper bags ..... 100 count
- 33) Salad dressings ..... quart, pound
- 34) Salt ..... pound
- 35) Sanitary paper products including, but not limited to,  
     napkins, facial tissues, paper towels, bathroom tissues ..... 100 count
- 36) Sauces (tomato, spaghetti, meat) ..... quart, pound
- 37) Seasonings and spices, flavoring extracts, imitation flavorings ..... pint, pound
- 38) Shaving cream ..... pound
- 39) Snack foods ..... pound
- 40) Soups (canned, dried)..... pound
- 41) Solid shortenings ..... pound
- 42) Spaghetti, macaroni, noodles and pasta ..... pound
- 43) Sugar ..... pound
- 44) Syrups ..... quart, pound
- 45) Tea..... 100 count, pound

46) Toothpaste .....ounce, pound

**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. 13:47K-4;
- 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 cent or 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.

### **13:45A-14.8 UNIT PRICE SIGNS AND UNIT PRICE LISTS**

- a) Whenever this subchapter permits a person to display a sign or list in conjunction with the exposing or offering for sale at retail of a regulated consumer commodity, a sample format of the sign or list shall be submitted to the director; for approval prior to the display of the sign or list.
- b) In determining whether to approve the sign or list, the director shall be guided by the following standards:
  - 1) The sign or list shall be divided so as to create a left and right side.
  - 2) The left side of a sign or list shall be known as the unit price side and shall contain the following information:
    - i) The term “unit price”;
    - ii) The numerical unit price;
    - iii) The approved unit of measure including if appropriate the “ply” count or thickness of the consumer commodity.
  - 3) The right side shall be known as the retail price side and shall contain the following information:
    - i) The term “retail price” or “you pay” or similar term;
    - ii) The numerical retail price;
    - iii) The quantity or size of the consumer commodity expressed in terms of the approved unit of measure.
  - 4) A description of the commodity to be sold shall appear on the sign or list.
  - 5) Additional stock or code information may appear on the unit price sign or list.

- 6) All letters or numbers shall be in conspicuous figures and shall be clear and legible.
  - i) The list shall display the unit price and retail price in numbers of equal size.
  - ii) The sign shall display the unit price and retail price in equal size if in numbers of less than five inches. For signs with numbers for the retail price larger than five inches, the unit price shall be no less than three inches in size or one-half the retail price size, whichever is greater.
- 7) The overall design of the sign or label shall convey the consumer information in a clear, readable and conspicuous fashion. Any stock or code information shall not obscure or deemphasize the consumer information.

### **13:45A-14.9 UNIT PRICE TAGS**

Whenever these regulations require a unit price tag to be attached directly to the consumer commodity, a sample format of the tag shall be submitted to the director for approval prior to the display of the tag. In reviewing submitted price tags, the director shall apply those standards set forth in N.J.A.C. 13:45A-14.7 governing the format for unit price labels.

### **13:45A-14.10 MEANS OF DISCLOSING UNIT PRICE INFORMATION**

- a) Whenever a regulated consumer commodity is exposed or offered for sale at retail, the unit price and retail price shall be disclosed in the following manner:
  - 1) If the commodity is displayed upon a shelf, the unit price label shall appear directly below the commodity, or, alternatively, a unit price tag shall be attached to the commodity. If the use of a unit price label or unit price tag is impossible or impractical, a unit price sign or list may be used provided such sign or list is conspicuously located at or near the commodity.
  - 2) If the commodity is displayed in a special fashion such as in an end display, portable rack or large bin, the unit price tag shall be attached to the commodity, or, alternatively, a unit price sign or list shall be conspicuously placed at or near the point where the commodity is displayed. Nothing in this section should be construed to prohibit the use of hand-letter unit price signs on special displays so long as such signs contain the disclosures required in (a)1 above.
  - 3) If a commodity is refrigerated, the unit price label shall be affixed to the case, to a shelf edge, or a unit price label shall be attached to the commodity. In the event such attachments are not possible, then a unit price sign or list may be used if the sign or list

is displayed in proximity to the articles for sale. Where such proximate display is impossible, a unit price list for such articles must be kept available and a sign posted at the site of the articles for sale as to such availability.

### **13:45A-14.11 PLACEMENT OF UNIT PRICE INFORMATION ON CONSUMER COMMODITIES BY NONRETAILERS**

Nothing in this subchapter shall prohibit a manufacturer, supplier or wholesaler from affixing to a consumer commodity the unit price information required by these regulations.

### **13:45A-14.12 (RESERVED)**

### **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.

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**SUBCHAPTER 15.  
(RESERVED)**

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**SUBCHAPTER 16.  
HOME IMPROVEMENT PRACTICES**

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**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.

**13:45A-16.1A DEFINITIONS**

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

“Home improvement” means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or noncommercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or noncommercial property and includes any of the above activities performed under emergency conditions.

“Home improvement contract” means an oral or written agreement between a seller and an owner of residential or noncommercial property, or a seller and a tenant or lessee of residential or noncommercial property, if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the seller is to perform labor or render services for home improvements, or furnish materials in connection therewith.

“Residential or non-commercial property” means a structure used, in whole or in substantial part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures.

“Sales representative” means a person employed by or contracting with a seller for the purpose of selling home improvements.

“Seller” means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

### **13:45A-16.2 UNLAWFUL PRACTICES**

- a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder.
  - 1) Model home representations: Misrepresent or falsely state to a prospective buyer that the buyer’s residential or noncommercial property is to serve as a “model” or “advertising job”, or use any other prospective buyer lure to mislead the buyer into believing that a price reduction or other compensation will be received by reason of such representations;
  - 2) Product and material representations: Misrepresent directly or by implication that products or materials to be used in the home improvement:
    - i) Need no periodic repainting, finishing, maintenance or other service;

- ii) Are of a specific or well-known brand name, or are produced by a specific manufacturer or exclusively distributed by the seller;
  - iii) Are of a specific size, weight, grade or quality, or possess any other distinguishing characteristics or features;
  - iv) Perform certain functions or substitute for, or ' are equal in performance to, other products or materials;
  - v) Meet or exceed municipal, state, federal, or other applicable standards or requirements;
  - vi) Are approved or recommended by any governmental agency, person, firm or organization, or that they are the users of such products or materials;
  - vii) Are of sufficient size, capacity, character or nature to do the job expected or represented;
  - viii) Are or will be custom-built or specially designed for the needs of the buyer; or
  - ix) May be serviced or repaired within the buyer's immediate trade area, or be maintained with replacement and repair parts which are readily available.
- 3) Bait selling:
- i) Offer or represent specific products or materials as being for sale, where the purpose or effect of the offer or representation is not to sell as represented but to bait or entice the buyer into the purchase of other or higher priced substitute products or materials;
  - ii) Disparage, degrade or otherwise discourage the purchase of products or materials offered or represented by the seller as being for sale to induce the buyer to purchase other or higher priced substitute products or materials;
  - iii) Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale;
  - iv) Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home

- improvements by sample, illustration or model, without the knowledge or consent of the buyer;
- v) Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands; or
  - vi) Misrepresent that certain products or materials are unavailable or that there will be a long delay in their manufacture, delivery, service or installation in order to induce a buyer to purchase other or higher priced substitute products or materials from the seller.
- 4) Identity of seller:
- i) Deceptively gain entry into the prospective buyer's home or onto the buyer's property under the guise of any governmental or public utility inspection, or otherwise misrepresent that the seller has any official right, duty or authority to conduct an inspection;
  - ii) Misrepresent that the seller is an employee, office or representative of a manufacturer, importer or any other person, firm or organization, or a member of any trade association, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract;
  - iii) Misrepresent the status, authority or position of the sales representative in the organization he represents;
  - iv) Misrepresent that the sales representative is an employee or representative of or works exclusively for a particular seller; or
  - v) Misrepresent that the seller is part of any governmental or public agency in any printed or oral communication including but not limited to leaflets, tracts or other printed material, or that any licensing denotes approval by the governmental agency.
- 5) Gift offers:
- i) Offer or advertise any gift, free item or bonus without fully disclosing the terms or conditions of the offer, including expiration date of the offer and when the gift, free item or bonus will be given; or
  - ii) Fail to comply with the terms of such offer.

- 6) Price and financing:
- i) Misrepresent to a prospective buyer that an introductory, confidential, close-out, going out of business, factory, wholesale, or any other special price or discount is being given, or that any other concession is made because of a market survey or test, use of materials left over from another job, or any other reason;
  - ii) Misrepresent that any person, firm or organization, whether or not connected with the seller, is especially interested in seeing that the prospective buyer gets a bargain, special price, discount or any other benefit or concession;
  - iii) Misrepresent or mislead the prospective buyer into believing that insurance or some other form of protection will be furnished to relieve the buyer from obligations under the contract if the buyer becomes ill, dies or is unable to make payments;
  - iv) Misrepresent or mislead the buyer into believing that no obligation will be incurred because of the signing of any document, or that the buyer will be relieved of some or all obligations under the contract by the signing of any documents;
  - v) Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract;
  - vi) Misrepresent or fail to disclose that the offered or contract price does not include delivery or installation, or that other requirements must be fulfilled by the buyer as a condition to the performance of labor, services, or the furnishing of products or materials at the offered or contract price;
  - vii) Mislead the prospective buyer into believing that the down payment or any other sum constitutes the full amount the buyer will be obligated to pay;
  - viii) Misrepresent or fail to disclose that the offered or contract price does not include all financing charges, interest service charges, credit investigation costs, building or installation permit fees, or other obligations, charges, cost or fees to be paid by the buyer;
  - ix) Advise or induce the buyer to inflate the value of the buyer's property or assets, or to misrepresent or falsify the buyer's true financial position in order to obtain credit; or

- x) Increase or falsify the contract price, or induce the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit.
- 7) Performance:
- i) Deliver materials, begin work, or use any similar tactic to unduly pressure the buyer into a home improvement contract, or make any claim or assertion that a binding contract has been agreed upon where no final agreement or understanding exists;
  - ii) Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or
  - iii) Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.
- 8) Competitors:
- i) Misrepresent that the work of a competitor was performed by the seller;
  - ii) Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor; or
  - iii) Use or imitate the trademarks, trade names, labels or other distinctive marks of a competitor.
- 9) Sales representations:
- i) Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veterans' organization, or misrepresent the extent of such aid or assistance;
  - ii) Knowingly fail to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading; or

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

10) Building permits:

- i) No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances; or
- ii) Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer by the seller when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

11) Guarantees or warranties:

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

12) Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of \$500.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including, but not limited to, the following:

- i) The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;
- ii) A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of

- principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a description of such products or materials shall be clearly set forth in the contract;
- iii) The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials, the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated;
  - iv) The dates or time period on or within which the work is to begin and be completed by the seller;
  - v) A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement; and
  - vi) A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.
- 13) Disclosures and obligations concerning preservation of buyers' claims and defenses:
- i) If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer;
  - ii) No home improvement contract shall require or entail the execution of any note, unless such note shall have conspicuously printed thereon the disclosures required by either State law (N.J.S.A. 17:16C-64.2 (consumer note)) or Federal law (16 C.F.R. section 433.2) concerning the preservation of buyers' claims and defenses.

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## **SUBCHAPTER 17. HOME IMPROVEMENT CONTRACTOR REGISTRATION**

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### **13:45A-17.1 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. as amended by P.L. 2004, c. 16 (N.J.S.A. 56:8-136 et seq.) by providing procedures for the regulation of home improvement contractors and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's registration procedures for those persons who fall under the requirements of this law.

- b) These rules shall apply to home improvement contractors in this State unless otherwise exempt under N.J.A.C. 13:45A-17.4.

### **13:45A-17.2 DEFINITIONS**

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

“Advertise” means to communicate to the public by means of any print, electronic or any other media, including, but not limited to, newspapers, magazines, periodicals, journals, circulars, flyers, business cards, signs, radio, telephone, facsimile machine, television, computer or the Internet. “Advertise” includes having a person’s name in a classified advertisement or directory in this State under any classification of home improvement as defined in this section but does not include simple residential alphabetical listings in standard telephone directories.

“Director” means the Director of the Division of Consumer Affairs.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Employee” means employee as defined in N.J.A.C. 18:35-7.1.

“Home improvement” means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or noncommercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or noncommercial property and includes any of the above activities performed under emergency conditions.

“Home improvement contract” means an oral or written agreement for the performance of a home improvement between a contractor and an owner of residential or noncommercial property, or a contractor and a tenant or lessee of residential or noncommercial property, if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

“Home improvement contractor” or “contractor” means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

“Residential or non-commercial property” means a structure used, in whole or in substantial part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures.

### **13:45A-17.3 REGISTRATION REQUIRED**

- a) Unless exempt under N.J.A.C. 13:45A-17.4:
  - 1) No person shall engage in the business of making or selling home improvements in this State unless registered with the Division in accordance with this subchapter; and
  - 2) No person shall advertise indicating that the person is a contractor in this State unless the person is registered with the Division in accordance with this subchapter.
- b) Unless exempt under N.J.A.C. 13:45A-17.4, contractors hired by other contractors to make or sell any home improvements shall register with the Division in accordance with this subchapter.
- c) Officers and employees of a registered home improvement contractor shall not be required to register separately from the registered business entity provided that the officers and employees sell or make home improvements solely within their respective scopes of performance for that registered business entity.
- d) Officers and employees of a home improvement contractor that is exempt under N.J.A.C. 13:45A-17.4 shall not be required to register provided that the officers and employees sell

or make home improvements solely within their respective scopes of performance for that exempt business entity.

### **13:45A-17.4 EXEMPTIONS**

- a) The following persons are exempt from the registration requirements of this subchapter:
- 1) Any person registered pursuant to “the New Home Warranty and Builders’ Registration Act,” P.L. 1977, c.467 (N.J.S.A. 46:3B-1 et seq.), but only in conjunction with the building of a new home as defined in N.J.A.C. 5:25-1.3;
  - 2) Any person performing a home improvement upon a residential or non-commercial property owned by that person, or by the person’s family;
  - 3) Any person performing a home improvement upon a residential or non-commercial property owned by a bona fide charity or other non-profit organization;
  - 4) Any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, locksmith, burglar alarm business, fire alarm business, or any other person in any other related profession requiring registration, certification, or licensure by the State, who is acting within the scope of practice of that profession;
  - 5) Any person employed by a community association or cooperative corporation who is making home improvements within the person’s scope of employment at the residential or non-commercial property that is owned or leased by the community association or cooperative corporation;
  - 6) Any public utility as defined under N.J.S.A. 48:2-13;
  - 7) Any person licensed as a home financing agency, a home repair contractor or a home repair salesman pursuant to N.J.S.A. 17:16C-77, provided that the person is acting within the scope of such license; and
  - 8) Any home improvement retailer with a net worth of more than \$50,000,000 or any employee of such home improvement retailer who is making or selling such home improvements within the person’s scope of employment of the home improvement retailer.

**13:45A-17.5 INITIAL AND RENEWAL APPLICATIONS**

- a) Each home improvement contractor required to be registered under this subchapter shall initially register with the Division by submitting the following on forms provided by the Director:
- 1) The name and street address of each place of business of the home improvement contractor and any fictitious or trade name to be used by the home improvement contractor;
  - 2) The type of business organization;
  - 3) The name, residence and business street address of each officer, director, principal and person with an ownership interest of 10 percent or more in the home improvement contractor business, including the percentage of ownership held;
  - 4) The name and number of any professional or occupational license, certificate or registration issued by this State or any other governmental entity to any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business;
  - 5) Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been adjudged liable in an administrative or civil action involving any of the situations in (a)5i through vi below. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business engaged in an unlawful practice or practices related to any of the named situations in (a)5i through vi below regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency. As described above, this paragraph covers the following situations:
    - i) Obtained any registration, certification or license by fraud, deception or misrepresentation;
    - ii) Engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
    - iii) Engaged in gross negligence, gross malpractice or gross incompetence;

- iv) Engaged in acts of negligence, malpractice or incompetence involving selling or making a home improvement; and
  - v) Engaged in professional or occupational misconduct;
- 6) Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
  - 7) Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has had their authority to engage in the activity regulated by the Director revoked or suspended by any other state, agency or authority;
  - 8) Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has violated or failed to comply with the provisions of any act, regulation or order administered or issued by the Director;
  - 9) Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business believes they are unable to meet the requirements of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq. or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety and welfare; and
  - 10) The name and street address of an agent in the State of New Jersey for service of process.
- b) An application that is not completed because of the applicant's failure to cure a deficiency or to comply with the Director's request for additional information within six months from the date of the first deficiency notice or the date of the first written request for additional information shall be deemed to have been abandoned.
  - c) In addition to the information required in (a) above, the applicant shall include the following with the initial application:
    - 1) A properly completed disclosure statement that complies with the requirements of N.J.A.C. 13:45A-17.6;

- 2) Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12; and
  - 3) The initial registration fee in the amount specified in N.J.A.C. 13:45A-17.14.
- d) A registered home improvement contractor shall include the following with the annual renewal application:
- 1) A completed renewal application that will be on a form specified by the Director;
  - 2) Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12;
  - 3) The renewal registration fee in the amount specified in N.J.A.C. 13:45A-17.14; and
  - 4) If the completed renewal application is received by the Division after the renewal application's due date as specified on the renewal application, the late fee in the amount specified in N.J.A.C. 13:45A-17.14.

### **13:45A-17.6 DISCLOSURE STATEMENT**

- a) Each applicant shall file a disclosure statement with the Director stating whether it or any of its officers, directors, principals or persons with an ownership interest of 10 percent or more in the home improvement contractor business has been convicted of any violations of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, or the equivalent under the laws of any other jurisdiction:
- 1) Any crime of the first degree;
  - 2) Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or
  - 3) Any other crime which is a violation of N.J.S.A. 2C:5-1 or 2C:5-2 (conspiracy), N.J.S.A. 2C:11-2 (criminal homicide), N.J.S.A. 2C:11-3 (murder), N.J.S.A. 2C:11-4 (manslaughter), N.J.S.A. 2C:12-1 (assault), N.J.S.A. 2C:12-3 (terroristic threats), N.J.S.A. 2C: 13-1 (kidnapping), N.J.S.A. 2C:14-2 (sexual assault), subsection a. or b. of N.J.S.A. 2C:17-1 (arson and related offenses), subsection a. or b. of N.J.S.A. 2C:17-2 (causing or risking widespread injury or damage), N.J.S.A. 2C: 15-1 (robbery), N.J.S.A. 2C:18-2 (burglary), N.J.S.A. 2C:20-4 (theft by deception), N.J.S.A. 2C:20-5 (theft by

extortion), N.J.S.A. 2C:20-7 (receiving stolen property), N.J.S.A. 2C:20-9 (theft by failure to make required disposition of property received), N.J.S.A. 2C:21-2 (criminal simulation), N.J.S.A. 2C:21-2.1 (fraud relating to driver's license or other document issued by governmental agency to verify identity or age; simulation), N.J.S.A. 2C:21-2.3 (fraud relating to motor vehicle insurance identification card; production or sale), N.J.S.A. 2C:21-3 (frauds relating to public records and recordable instruments), N.J.S.A. 2C:21-4 (falsifying or tampering with records), N.J.S.A. 2C:21-6 (fraud relating to credit cards), N.J.S.A. 2C:21-7 (deceptive business practices), N.J.S.A. 2C:21-12 (defrauding secured creditors), N.J.S.A. 2C:21-14 (receiving deposits in a failing financial institution), N.J.S.A. 2C:21-15 (misapplication of entrusted property and property of government of financial institution), N.J.S.A. 2C:21-19 (wrongful credit practices and related offenses), N.J.S.A. 2C:27-2 (bribery in official and political matters), N.J.S.A. 2C:27-3 (threats and other improper influence in official and political matters), N.J.S.A. 2C:27-5 (retaliation for past official action), N.J.S.A. 2C:27-9 (public servant transacting business with certain persons), N.J.S.A. 2C:27-10 (acceptance or receipt of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:27-11 (offer of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:28-1 (perjury), N.J.S.A. 2C:28-2 (false swearing), N.J.S.A. 2C:28-3 (unsworn falsification to authorities), N.J.S.A. 2C:28-4 (false reports to law enforcement officials), N.J.S.A. 2C:28-5 (tampering with witnesses and informants; retaliation against them), N.J.S.A. 2C:28-6 (tampering with or fabricating physical evidence), N.J.S.A. 2C:28-7 (tampering with public records or information), N.J.S.A. 2C:28-8 (impersonating a public servant or law enforcement officer), N.J.S.A. 2C:30-2 (official misconduct), N.J.S.A. 2C:30-3 (speculating or wagering on official action or information), N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance), N.J.S.A. 2C:35-10 (possession, use or being under the influence or failure to make lawful disposition of a controlled dangerous substance), N.J.S.A. 2C:37-2 (promoting gambling), N.J.S.A. 2C:37-3 (possession of gambling records), or N.J.S.A. 2C:37-4 (maintenance of a gambling resort).

### **13:45A-17.7 DUTY TO UPDATE INFORMATION**

- a) Whenever any information required to be included in the application changes, or if additional information should be added after the filing of the application, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 20 calendar days of the change or addition. Whenever any other information filed with the Director pursuant to the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., or this subchapter has changed, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 20 calendar days of the change or addition.
- b) Whenever any information required to be included in the disclosure statement changes, or if additional information should be added after the filing of the statement, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 30 calendar days of the change or addition.

**13:45A-17.8 REQUIREMENT TO COOPERATE**

Home improvement contractor applicants seeking to register with the Division and registered home improvement contractors shall have the continuing duty to provide any assistance or information; to produce any records requested by the Director; and to cooperate in any inquiry, investigation or hearing conducted by the Director.

**13:45A-17.9 REFUSAL TO ISSUE, SUSPENSION OR REVOCATION OF REGISTRATION; HEARING; OTHER SANCTIONS**

- a) The Director may refuse to issue or renew, or may suspend or revoke any registration issued by the Division upon proof that an applicant or registrant or any of its officers, directors, principals or persons with an ownership interest of 10 percent or more in the home improvement contractor business:
- 1) Has obtained any registration, certification or license by fraud, deception or misrepresentation;
  - 2) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
  - 3) Has engaged in gross negligence, gross malpractice or gross incompetence;
  - 4) Has engaged in repeated acts of negligence, malpractice or incompetence involving selling or making a home improvement;
  - 5) Has engaged in professional or occupational misconduct;
  - 6) Has been adjudged liable in an administrative or civil action involving any finding or admission which would provide a basis for discipline pursuant to (a)1 through 5 above regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency;
  - 7) Has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

- 8) Has had his or her authority to engage in the activity regulated by the Director revoked or suspended by any other state, agency or authority for reasons consistent with this section;
  - 9) Has violated or failed to comply with N.J.S.A. 56:8-136 et seq. or any provision of this subchapter or the provisions of any act, regulation or order administered or issued by the Director; or
  - 10) Is unable to meet the requirements of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety and welfare.
- 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.
- e) 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 owned by a registrant to a customer of that registrant, shall be marked on both sides with the following information:

- 1) The name of the registered home improvement contractor in lettering at least one inch in height; and
  - 2) "HIC reg. #" followed by the registration number of the registrant in lettering at one inch in height.
- f) 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. 56:8-149 and shall be displayed in all caps in at least 10-point boldface type as follows: FOR INFORMATION ABOUT CONTRACTORS AND THE CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS AT 1-888-656-6225.

### **13:45A-17.12 MANDATORY COMMERCIAL GENERAL LIABILITY INSURANCE**

- a) 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. 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.

### **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.

**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 or an amended 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 petitioner’s interest in the request, the proposed text of the new rule or amended 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 60 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):
  - 1) Deny the petition and provide a written statement of its reasons to the petitioner;
  - 2) Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
  - 3) Refer the matter for further deliberations, which shall conclude within 90 days of referral, and either grant or deny the petition under (e)1 or 2 above.
- f) A specific period of more than 90 days for further deliberations under (e)3 above and/or to initiate a rulemaking proceeding under (e)2 above may be agreed upon, in writing, by the petitioner and the Director or the board, bureau or other agency located within the Division. An agreement to extend either period, or both periods, shall constitute an action on the petition subject to the notice requirements of (g) below.
- g) Within 60 days of receipt of a petition, the agency shall mail to the petitioner and submit to the Office of Administrative Law a notice of action on the petition in compliance with N.J.A.C. 1:30-4.2(d).

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

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**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.

“Resale” means a sale by a person other than the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

“Resell” means to offer for resale or to consummate a resale.

“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 broker” means any person situated and operating in this State who is involved in the business of reselling tickets of admission to places of entertainment and who charges a premium in excess of the price, plus taxes, printed on the tickets. For purposes of this subchapter, the term “ticket broker” shall not include an individual not regularly engaged in the business of reselling tickets, who resells less than 30 tickets during any one-year period, and who obtained the tickets for his or her own use, or the use of his or her family, friends or acquaintances.

**13:45A-20.1A (RESERVED)****13:45A-20.2 REGISTRATION**

- a) An application for registration shall be on a form prescribed by the Director.
- b) An application for registration shall not be approved unless the Director finds that the submitted application form is complete in all respects.
- c) An application for registration 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 registrant shall file a new and additional bond in the sum of \$10,000 within 30 days of the commencement of a suit to recover on the bond.
  - 4) Any failure by the registrant to file such a new and additional bond within such period shall constitute cause for the revocation of the registration previously issued to the registrant.
- d) The Director shall afford an applicant who has been rejected for registration, 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 registration:
  - 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 CERTIFICATE OF REGISTRATION**

- a) An application for a new or renewal certificate of registration 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 registrant for a copy of the certificate of registration issued for the purpose of display in a branch office in this State shall be accompanied by a fee of \$50.00.
- d) A request for a change of business address in this State shall be accompanied by a fee of \$10.00.

**13:45A-20.4 PLACE OF BUSINESS**

- a) A registrant shall request the prior approval of the Director for any change in the business address.
- b) A registration shall not be transferred or assigned.
  - 1) A corporate registrant shall notify the Director prior to any change in the ownership interest in the registered business including but not limited to a transfer of 10 percent or more of stock interest held therein.
- c) A registrant shall clearly and conspicuously post his or her certificate of registration in each of his or her places of business in this State.

**13:45A-20.5 SALE OR EXCHANGE**

- a) A place of entertainment or its agent shall print on the face of each ticket and include in any advertising for any event the price charged therefor.
- b) No person other than a registered ticket broker shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a maximum premium in excess of 20 percent of the ticket price or \$3.00, whichever is greater, plus lawful taxes. No registered ticket broker or season ticket holder shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a premium in excess of 50 percent of the price paid to acquire the ticket, plus lawful taxes.

- c) Notwithstanding the provisions of (b) above, nothing shall limit the price for the resale or purchase of a ticket for admission to a place of entertainment sold by any person other than a registered ticket broker, provided such resale or purchase is made through an Internet website.
- d) It shall be a prohibited practice for a ticket broker to fail to disclose to a purchaser of tickets when he or she is using a tentative order policy, or “try and get” or fail to refund any deposit made by a purchaser of those tickets within a reasonable time when the broker fails to obtain such tickets.
- e) It shall be a prohibited practice for a ticket broker as a condition of selling or exchanging a ticket for a particular entertainment event, to require a buyer to purchase other tickets.
- f) It shall be a prohibited practice for a registrant to accept or demand any other things of value in excess of the lawful purchase price of a ticket.
- g) Any buyer who pays any monies towards the purchase of a ticket and fails to receive the promised ticket on the promised delivery date shall be given notification by the ticket broker of the failure to deliver tickets and shall be given the option of receiving a full refund within 30 days or consenting to an extension of the delivery date.
- h) A ticket broker 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.
- i) No ticket broker shall engage in or continue in the business of reselling tickets for admission to a place of entertainment without meeting the following requirements:
  - 1) Owning, operating or maintaining a permanent office, branch office, bureau, agency, or other place of business, not including a post office box, for the purpose of reselling tickets;
  - 2) Obtaining a certificate of registration to resell or engage in the business of reselling tickets from the director;
  - 3) Listing the ticket broker’s registration number in any form of advertisement or solicitation in which tickets are being sold for the purpose of purchase by the general public for events in this State;
  - 4) Maintaining records of ticket sales, deposits and refunds for a period of not less than two years from the time of any of these transactions;

- 5) Disclosing to the purchaser, by means of verbal description or a map, the location of the seats represented by the tickets;
- 6) Disclosing to the purchaser the cancellation policy of that broker;
- 7) Disclosing that a service charge is added by the ticket broker to the stated price on the tickets and is included by the broker in any advertisement or promotion for an event;
- 8) Disclosing to the purchaser, whenever applicable, that the ticket broker has a guarantee policy. If a ticket broker guarantees delivery of tickets to a purchaser and fails to deliver the tickets, the ticket broker shall provide a full refund for the cost of the tickets;
- 9) Disclosing to the purchaser of tickets when he is utilizing a tentative order policy, popularly known as a "try and get." When a ticket broker fails to obtain tickets on a "try and get" basis, the broker shall refund any deposit made by a purchaser of those tickets within seven business days after the event for which the tickets were sought;
- 10) When guaranteeing tickets in conjunction with providing a tour package, a ticket broker who fails to provide a purchaser with those tickets shall refund fully the price of the tour package and tickets; and
- 11) Providing to a purchaser of tickets who cancels an order a full refund for the cost of the tickets less shipping charges, if those tickets are returned to the broker within three days after receipt; provided, that when tickets are purchased within seven days of an event, a refund shall be given only if the tickets are returned within one day of receipt; and further provided, that no refund shall be given on any tickets purchased within six days of an event unless the ticket broker is able to resell the tickets.

### **13:45A-20.6 RECORDS**

- a) A ticket broker shall keep full and accurate sets of records maintained in accordance with generally accepted accounting practices and principles.
- b) Records of a ticket broker shall clearly set forth:
  - 1) The prices at which all tickets have been bought and sold by the ticket broker; and
  - 2) The names and addresses of the persons from whom the ticket broker purchased the tickets and to whom the ticket broker sold the tickets.
- c) Records of a ticket broker 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 broker 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 broker'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 broker shall include a sales journal which reflects a record of daily sales.
- e) Records set forth in this subchapter shall be maintained for a period of at least two years and shall be made available for inspection by the Division at any reasonable time and upon reasonable notice.

### **13:45A-20.7 ADVERTISING**

- a) A ticket broker 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 registrant shall clearly and conspicuously disclose his registration number in any public advertisement or advertising material.

- c) Advertising for any event by a ticket broker 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.

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

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**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.

“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.

“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 a document stating the date of the slaughter and the times and dates the meat/poultry was soaked in water. Information must be in English with Arabic numerals. It may also contain information in other languages. The document must accompany the meat/poultry until the meat/poultry 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 kosher supervision shall post in a location on its premises, readily visible to the consumer, the completed kosher supervision disclosure statement provided by the Division.
- c) A dealer selling food represented as kosher for Pass-over 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, 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 kosher 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 Pass-over, the copy of the disclosure form as provided in (c) above.
- e) A dealer completing the disclosures as stated in (a), (b), 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 kosher supervision shall maintain a permanently bound logbook that shall include for each inspection visit of the person or organization providing supervision, 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.

### **13:45A-21.3 LABELING REQUIREMENTS**

- a) All meat/poultry slaughtered to be sold as kosher shall be so identified at the slaughterhouse and, if applicable, by the wholesaler. The identification must include, at a minimum, the name of the person or organization sanctioning the slaughter and whether the meat/poultry was soaked and salted. Meat/poultry identified as not being soaked and salted

must be accompanied by a wash letter. The wash letter must accompany the meat/poultry up to the time of final fabrication of the meat/poultry.

- b) Portions of meat/poultry, that have been fabricated by a wholesaler, must have kosher identification affixed to it. The identification shall bear the name and address of the wholesaler, the name of the person or organization that sanctioned the kosher slaughter, the date of the fabrication of the meat and whether the meat has been soaked and salted. If the meat/poultry was not soaked and salted the wholesaler must provide a copy of the wash letter. All identification must be affixed to portions or packages prior to release from the wholesaler's premises.
- c) All excised fats, veins or meat trimmings which will be sent to a renderer or discarded shall be put into receptacles marked DISCARD. Such fats, veins and trimmings shall not then be sold or used as kosher.
- d) A dealer shall not remove kosher identification of any food until immediately prior to the sale or use of the product.
- e) A dealer who represents in its disclosure that it does not soak and salt its meat/poultry but washes it within every 72-hour period, shall disclose legibly on the wash letter provided by the slaughterhouse or wholesaler, the date and time of day, A.M. or P.M., of each washing, and the name of the person performing the washing. This applies to all meat/ poultry sent from slaughterhouses, wholesalers, butcher shops or any other place until the meat/poultry has been fully fabricated.
- f) A dealer shall indicate the date of packaging on the label of meat/poultry that has not been soaked and salted.
- g) A dealer shall ensure that packaged raw meat/poultry shall bear one of the following disclosures: "soaked and salted," "not soaked and salted" or "soaked and salted upon request." The requirement of this subsection may also be fulfilled by placing a sign with that information in direct proximity of the meat/poultry.

### **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 with the Director:
  - 1) If the dealer is under kosher supervision, a letter, in English, from a supervising individual or organization that the dealer is 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 individual or organization 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 kosher supervision, a letter so stating.
- b) Any individual or organization giving kosher 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 kosher supervision, represented status, address or ownership status within 14 calendar 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 kosher supervision without including in the advertisement the name of the supervising individual or agency;
- 7) By representing a food and/or an establishment as being under kosher 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 kosher supervision, shall bear the statement "not under kosher 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.

### **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.

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## **SUBCHAPTER 22. HALAL FOOD**

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### **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.

“Certified” means guaranteed as meeting a standard and endorsed by a halal certifying agency.

“Dealer” means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as halal, including, but not limited to, persons, manufacturers, slaughterhouses, processors, 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 halal.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the Director’s 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 slaughter of animals, preparation, handling and sale of food represented to be halal.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Food” means a food, food product, food ingredient, dietary supplement or beverage.

“Halal certifying agency” means an independent third party, non-profit or a private entity, non-governmental agency or organization, which supervises a business, product or the production or preparation of food and attests it was in conformance with the standards of halal. Such agencies may endorse a business, product or food as halal by giving a halal symbol.

“Meat” means animal and/or poultry meat, meat products or meat byproducts.

“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, and all others along the chain of commerce from the time a food is produced or, in the case of meat or poultry, from the time of slaughter to the time of its sale.

“Properly sealed packages” means those packages which bear a halal symbol 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.

“Wholesaler” means any person selling food to another person where that food is intended for resale.

### **13:45A-22.3 DISCLOSURE STATEMENT; POSTING OF DISCLOSURE**

- a) A dealer selling food represented as halal shall request in writing from the Division the halal disclosure form(s) and halal disclosure statement(s) applicable to its business. When making a request, the dealer shall identify its business practices on a disclosure form statement provided by the Division.
- b) A dealer shall complete and return to the Division within 14 calendar days of receipt the halal disclosure form(s) provided by the Division. A dealer who completes a halal disclosure form shall conform its sales practices to those it set forth on the halal disclosure form that it returns to the Division.
- c) A dealer selling food represented as halal shall complete and post, in a location on its premises readily visible to the consumer, the applicable halal disclosure statement provided by the Division.
- d) In the event of any change in the practices reported to the Division on the halal disclosure form and posted on the halal disclosure statement, a dealer shall immediately manually amend its posted halal disclosure statement to reflect the 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. The Division shall provide the dealer with a new halal disclosure form and a new halal disclosure statement. The dealer shall complete and return the new halal disclosure form to the Division within 14 calendar days and shall complete and post the new halal disclosure statement.
- e) A person may sell both food represented as halal and food not represented as halal as long as the food is properly identified and the fact is noted on the halal disclosure statement.
- f) A person whose sole representation of halal food is limited to the contents of food which is in properly sealed packages prepared by others who labeled the package halal shall be exempt from the requirements of this section.

- g) In addition to the posted halal disclosure statement required by this section, nursing homes, summer camps, caterers or other dealers who serve prepared food pursuant to a contract shall furnish to the consumer or his or her legal representative a copy of the halal disclosure statement prior to the signing of the contract.
- h) Any individual or entity giving halal supervision to any dealer in New Jersey shall file annually with the Director a document listing the name, address and type of each establishment that is supervised.

### **13:45A-22.4 ORAL DISCLOSURE**

In establishments such as hospitals or other places where representations that food is halal are not made until after the consumer has made a request for halal food, the disclosure may be orally provided to the consumer either prior to serving the food or together with the food when served.

### **13:45A-22.5 RELIANCE ON REPRESENTATION; GOOD FAITH; DEFENSE**

- a) A person subject to the requirements of N.J.A.C. 13:45A-22.3 and 22.4 shall not have committed an unlawful practice if it can be shown, by a preponderance of the evidence, that the person relied in good faith upon the representations that the food is halal made by the following:
  - 1) A slaughterhouse;
  - 2) A manufacturer;
  - 3) A processor;
  - 4) A packer; or
  - 5) A distributor.

### **13:45A-22.6 RECORDKEEPING REQUIREMENTS**

- a) Dealers shall keep complete and accurate records of all food purchased as halal including:
  - 1) The name and address of the slaughterhouse, wholesaler or other source from which the food is purchased;
  - 2) The dates of purchase;

- 3) The quantities of food purchased;
  - 4) The identity or nature of food; and
  - 5) Copies of all invoices and bills of sale.
- b) In addition to the requirements of (a) above, dealers who are slaughterhouses shall maintain a record of:
- 1) The source of the animals;
  - 2) The name(s) of the person who slaughters the animals;
  - 3) The name(s) of the responsible supervisor, if any; and
  - 4) The method of slaughter.
- c) A dealer shall retain such records on its premises for a two-year period following the date of purchase.
- d) A dealer shall turn over all the records required in (c) above upon the sale of the dealer's business to the purchaser of the business. The dealer may provide legible certified true copies of the records in lieu of originals.

### **13:45A-22.7 PRESUMPTIONS**

Possession by a dealer of any food which does not conform with the disclosure statement required by N.J.A.C. 13:45A-22.3 is presumptive evidence that the dealer possesses that food with the intent to sell it in nonconformance with the disclosure.

### **13:45A-22.8 INSPECTION OF DEALERS**

- a) Inspections of dealers and dealers' premises shall be conducted by authorized inspectors of the Division.
- b) For purposes of conducting an inspection, an inspector shall have the right of entry to, upon and through the business premises of any dealer which represents food as halal.

**13:45A-22.9 (RESERVED)****13:45A-22.10 UNLAWFUL PRACTICES**

- a) In addition to any violation of any other statutes or regulations, the following shall constitute an unlawful practice by a dealer 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-22.3;
  - 2) Failure to request a halal disclosure statement form from the Division;
  - 3) Failure to return the completed disclosure statement within 14 calendar days of receipt;
  - 4) Failure to conform sales practices with the posted disclosures;
  - 5) Failure to conform posted disclosures with the disclosure filed with the Division;
  - 6) Failure to comply with the recordkeeping requirements of N.J.A.C. 13:45A-22.6;
  - 7) Use by any person of a recognized halal food symbol without first obtaining written authorization by the person or halal certification agency representing that symbol;
  - 8) Failure to permit an inspector entry upon the business premises of a dealer or to interfere in any way with an inspection;
  - 9) Failure to respond in a timely fashion to an inquiry conducted by the Division;
  - 10) 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;
  - 11) 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
  - 12) 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.

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**APPENDIX A  
(RESERVED)**

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**APPENDIX B  
(RESERVED)**

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**APPENDIX C  
(RESERVED)**

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**APPENDIX D  
(RESERVED)**

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**SUBCHAPTER 23.  
DECEPTIVE PRACTICES CONCERNING WATERCRAFT REPAIR**

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**13:45A-23.1 DEFINITIONS**

“Customer” means the owner, or any family member, employee or any other person whose use of the watercraft is authorized by the owner.

“Director” means the Director of the Division of Consumer Affairs.

“Repair of watercraft” means all maintenance and repair to such watercraft, its engine or motor, but excluding lubrication, oil changes, installing light bulbs, and other such minor accessories and services. No service or accessory to be installed shall be excluded for purpose of this rule if the Director determines that the performance of the service or the installation of an

accessory requires mechanical expertise has given rise to a high incidence of fraud or deceptive practices or involves a part of such watercraft essential to its safe operation.

“Watercraft” includes but is not limited to any craft, boat or vessel, powerboat, sailboat, motor sailer, mono hull, catamaran or trimaran, documented or registered (if required) in the State of New Jersey or by any other agency having authority to document or register watercraft.

“Watercraft repair dealer” means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on any watercraft, its propulsion system (internal combustion or electrical, inboard or outboard) or the replacement of parts including, but not limited to, hull planking, fiberglass sections and standing rigging, and shall include, but not be limited to, boat dealers, repair shops (fixed, mobile or marina) and marinas where such maintenance, diagnosis or repair services are available. Excluded are those persons who engage in the business of repairing watercraft of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

### **13:45A-23.2 DECEPTIVE PRACTICES: WATERCRAFT REPAIRS**

- a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and to afford customers of watercraft repair dealers similar rights and protections afforded to customers of automotive repair dealers, N.J.A.C. 13:45A-7.1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of a watercraft repair dealer, whether such act or omission is done by the watercraft repair dealer, its employees, agents, partners, officers, or members, or by any third party who performs such service at the request of the watercraft repair dealer.
  - 1) Making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known or, which by the exercise of reasonable care should be known to be untrue or misleading.
  - 2) Commencing work for compensation without securing one of the following:
    - i) Specific written authorization from the customer which states the nature of the repair requested or problem presented; or
    - ii) If the customer’s watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the watercraft repair dealer during other than normal working hours or

- by one other than the customer, or in other than distress circumstances, oral authorization from the customer to proceed with the requested repair or problem presented, evidenced by a notation on the repair order and/or invoice of the repair requested or problem presented, date, time, name of person granting such authorization and the telephone number if any, at which said person was contacted.
- 3) Commencing work for compensation without either:
- i) One of the following:
- (1) Providing the customer with a written estimated price to complete the repair quoted in terms of a not-to-exceed figure; or
  - (2) Providing the customer with a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the repair. If the dealer makes a diagnostic examination, the dealer has a right to furnish such estimate in a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnosis charge must be agreed to in advance by the customer. No cost of diagnosis which would have been incurred in accomplishing the repair shall be billed twice if the customer elects to have the dealer make the repair. Should it be necessary to haul the watercraft and or transport it to the repair facility where the maintenance, diagnosis or estimate is to be made (in all but distress circumstances), charges for such hauling and/or transportation shall be disclosed in advance and itemized separately on the estimate or invoice; or
  - (3) Providing the customer with a written estimated price to complete a specific repair, for example "repack stuffing box"; or
  - (4) Obtaining from the customer a written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or
  - (5) If the customer waives his right to a written estimate in a written statement, signed by the customer obtaining from the customer oral approval of an estimated price of repairs evidenced by a notation on the repair or invoice of the estimated price of repairs, date, time, name of person approving such estimate, and the telephone number if any, at which such person was contacted; or
- ii) If the customer's watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the repair dealer during other than normal working hours or by one other than the customer, obtaining from the customer either:

- (1) A written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or
  - (2) Oral approval of an estimated price of repairs evidenced by a notation on the repair order or invoice of the estimated price of repairs, date, time, name of person approving such estimate and the telephone number, if any, at which such person was contacted.
- 4) Failure to provide a customer with a copy of any receipt or document signed by him, when he signs it.
  - 5) Making false promises of a character likely to influence, persuade or induce a customer to authorize the repair, diagnosis, service or maintenance of any craft or its propulsion system.
  - 6) Charging the customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the customer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the watercraft repair dealer shall make a notation on the repair order and the invoice of the date, time, name of person authorizing the additional repairs and the telephone number called, if any, together with a specification of the additional parts and labor and total additional cost. The watercraft repair dealer shall obtain the consent of any customer before any additional work not estimated is done or parts not estimated are supplied.
  - 7) Failure to return replaced parts to the customer at the time of completion of work, provided that the customer, before work is commenced, requests such return, and provided that the parts, by virtue of their size, weight or other similar factors, are not impractical to return. Those parts and components, that are replaced and that are sold on an exchange basis and those parts that are required to be returned by the watercraft repair dealer to the manufacturer or distributor, are exempt from the provisions of this section.
  - 8) Failure to record on an invoice all repair work performed by a watercraft repair dealer or for a customer, itemizing separately the charges for parts and labor, and clearly stating whether any new, rebuilt, reconditioned or used parts have been supplied. A legible copy shall be given to the customer.
  - 9) The failure to deliver to the customer, with the invoice, a legible written copy of all guaranties, itemizing the parts, components and labor represented to be covered by such guaranty or in the alternative, delivery to the customer of a guaranty covering all parts,

components and labor supplied pursuant to a particular repair order. A guaranty shall be deemed false and misleading unless it conspicuously and clearly discloses in writing the following:

- i) The nature and extent of the guaranty including a description of all parts, characteristics or properties covered by or excluded from the guaranty, the duration of the guaranty and what must be done by a claimant before the guarantor will fulfill his obligation (such as returning the product and paying service or labor charges); and
  - ii) The manner in which the guarantor will perform. The guarantor shall state all conditions and limitations and exactly what the guarantor will do under the guaranty, such as repair, replacement or refund. If the guarantor or recipient has an option as to what may satisfy the guaranty, this must be clearly stated; and
  - iii) The guarantor's identity and address shall be clearly revealed in any documents evidencing the guaranty.
- 10) Failure to clearly and conspicuously disclose the fact that a guaranty provides for adjustment on a pro rata basis, and the basis upon which the guaranty will be pro-rated; that is, the time, the part, component or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on the price other than that paid by the customer, clear disclosure must be made of the amount. However, a fictitious price must not be used even where the sum is adequately disclosed.
- 11) Failure to post in a conspicuous place a sign informing the customer that the watercraft repair dealer is obligated to provide a written estimate when the customer physically presents such watercraft to the dealer during normal working hours and, in any event, before work is commenced except in distress circumstances. In addition, copies of any receipts or document signed by the customer, a detailed invoice, a written copy of any guaranty and the return of any replaced parts that have been requested must be provided. The sign is to read as follows:

"A CUSTOMER OF THIS ESTABLISHMENT IS ENTITLED TO:

1. When a watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof is presented during normal working hours, and in any event before work begins, a written estimate price stated either:
  - (A) PRICE NOT TO EXCEED \$ and given without charge; or

- (B) As an exact figure broken down as to hauling, transporting, parts and labor. This establishment has the right to charge you for this diagnostic service, although, if you then have the repair done here you will not be charged twice for any part of such charge necessary to make the repair.
  - (C) As an exact figure to complete a specific repair.
2. For your protection, you may waive your right to an estimate only by signing a written waiver.
  3. Require that this establishment not start work on your watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof until you sign an authorization stating the nature of the repair or problem if you physically present the watercraft here during normal working hours.
  4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.
  5. The replaced parts, if requested before work is commenced, unless their size, weight or similar factors make return of the parts impractical.
  6. A written copy of any guaranty.”
- 12) Nothing in this section shall be construed as requiring a watercraft repair dealer to provide a written estimate if the dealer does not agree to do the repair.
- 13) Any other unconscionable commercial practice prohibited pursuant to N.J.S.A. 56:8-1 et seq.

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## **SUBCHAPTER 24. TOY AND BICYCLE SAFETY**

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### **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;
  - 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; and
  - 4) To implement P.L. 2007, c. 124, by setting forth regulations concerning the dissemination of a list of children's products that have been identified as unsafe.
- 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 healthcare 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 RECALL NOTICES FOR CHILDREN'S PRODUCTS**

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

"Child" means a person less than 14 years of age.

"Children's product" means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

1. The product is designed or intended for the care of, or use by, a child; or
2. The product is designed or intended to come into contact with a child while the product is used.

A product is not a "children's product" for the purposes of this subchapter if it may be used by or for the care of a child, but is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for

the care of a child, or if it is a balloon, medication, drug, or food or is intended to be ingested.

“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.

“Unsafe children’s product” means a children’s product:

1. That has been recalled for any reason by a Federal agency or the product’s manufacturer, distributor, or importer and the recall has not been rescinded; or
  2. Is the subject of a warning issued by a Federal agency that its intended use constitutes a safety hazard and the warning has not been rescinded.
- 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 place in the store where the product is or, if the product is no longer sold, where it was, displayed, and at the customer service area. 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 create, maintain, and update on the website of the Division (<http://www.state.nj.us/lps/ca/recall/index.htm>) a comprehensive list or lists of children's products that have been identified as unsafe children's products.
- f) The Division's list or lists of unsafe children's products shall be taken from the Consumer Product Safety Commission's list or lists, and may be a direct link to the list or lists on the Consumer Product Safety Commission's website.
- g) In addition to posting the list of unsafe children's products on its website, the Division shall make a copy of the list available to the public at no cost upon request made to the Division by telephone at 800-242-5846 (in State) or 973-504-6200 or by fax at 973-273-8035.
- h) 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) In addition to the notices required by N.J.S.A. 39:4-10.3 to be posted, 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. (732) 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.

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## **SUBCHAPTER 24A.**

### **FLAME RESISTANCE STANDARDS FOR TENTS AND SLEEPING BAGS**

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#### **13:45A-24A.1 DEFINITIONS**

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

"Sleeping bag" means a bag providing warmth and insulation that may be lined or padded and is normally designed for sleeping outdoors or in a camp or tent.

"Tent" means a collapsible shelter, for one or more persons, of canvas or other material, either natural or synthetic or any combination thereof, stretched and sustained by poles or rope and intended for recreational camping outdoors.

#### **13:45A-24A.2 FLAME RESISTANCE STANDARDS**

- a) For the purposes of N.J.S.A. 2A:123-16 et seq., a tent that at least meets the flammability standards for tents of the Industrial Fabric Association International CPAI-84 (1995 edition),

including any subsequent revisions, incorporated in this rule by reference, shall be classified as being flame resistant.

- b) For the purposes of N.J.S.A. 2A: 123-16 et seq., a sleeping bag that at least meets the flammability standards for sleeping bags of the Industrial Fabric Association International CPAI-75 (1976 edition), including any subsequent revisions, incorporated in this rule by reference, shall be classified as being flame resistant.
- c) Copies of CPAI-84 and CPAI-75 are available for purchase at the Industrial Fabrics Association International Bookstore: <https://www.ifaipublications.com/ifai.com/store> or 1-800-225-4324.

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

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### **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.
- h) Registered facilities shall post the following notice, which shall be printed in at least 14-point bold-faced type, at any location where a consumer signs a contract:

## NOTICE TO CUSTOMER

You are entitled to a copy of any contract you sign with this facility at the time you sign it.

You may cancel this contract at any time before midnight of the third operating day after receiving a copy of this contract. If you choose to cancel this contract, you must either:

1. Send a signed and dated written notice of cancellation by registered or certified mail, return receipt requested; or

2. Personally deliver a signed and dated written notice of cancellation to:

(INSERT NAME OF HEALTH CLUB)

(INSERT ADDRESS OF HEALTH CLUB)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. If the third operating day falls on a Sunday [page=1179] or holiday, notice is timely given if it is mailed or delivered as specified in this notice on the next operating day. Refunds must be made within 30 days of receipt by the health club of the cancellation notice.

"Operating day" means any calendar day on which patrons may inspect and use the health club's facilities and services during a period of at least eight hours, except holidays and Sundays.

- i) A registered facility shall post the notice required at (h) above on its website if the facility allows consumers to enter into contracts with the facility online.

### **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 of no longer than three months. An exemption from the security requirement shall also be available to a health club that sells contracts for more than three months if it charges a fee for only one month at a time and the contract states that it is voidable by the consumer if the health club closes for more than 30 consecutive days. 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.

#### **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 HEALTH CLUB CONTRACTS**

- a) For the purpose of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Affiliated health club” means a health club located within 25 miles of a member's new permanent residence that will provide the same or similar services and facilities to the member as the originating health club.

“Member” means a buyer of a health club services contract from the originating health club.

“Originating health club” means the health club that is party to a contract sought to be cancelled.

“Originating health club’s facility” means the facility identified in the contract between a member and the originating health club by name and street address as the health club that the member joined.

- b) A health club services contract subject to cancellation pursuant to N.J.S.A. 56:8-42g shall not be cancelled if, after receipt of a notice of cancellation from a member, which notice shall be sent or delivered to the originating health club’s facility, the originating health club reaffirms the contract in writing to the member guarantying that there is an affiliated health club or clubs that will provide to that member the use of the same or similar services and facilities as the originating health club at no additional expense for the remaining term of the contract, giving the name and address of the affiliated club or clubs. This subsection is not applicable if the originating health club closes for a period longer than 30 consecutive days.
- c) If, during the remaining term of a health club services contract that is subject to cancellation but for (b) above, the services and facilities contracted for become unavailable from the affiliated health club without additional expense and the originating health club receives notice from the member to that effect, the originating health club shall refund to the member, within 30 days of receipt of notice, the pro rata portion of the contract price paid to the originating health club that relates to the portion of the contract term for which the services and facilities are unavailable and the member shall have no further obligation under the contract.
- d) The obligation to make the refund provided for in (c) above, is an obligation of the originating health club under the health club services contract secured by any bond or other security it maintains under N.J.S.A. 56:8-41.

### **13:45A-25.7 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.

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## SUBCHAPTER 26. AUTOMOTIVE DISPUTE RESOLUTION

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### 13:45A-26.1 PURPOSE AND SCOPE

- a) The purpose of this subchapter is to implement the Lemon Law, P.L. 1988, c. 123, by establishing an automotive dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method of refund computation, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motor vehicles.
  
- b) This subchapter is applicable to:
  - 1) All manufacturers of passenger automobiles, authorized emergency vehicles and motorcycles registered, sold or leased in the State of New Jersey;
  - 2) All purchasers and lessees of passenger cars, authorized emergency vehicles and motorcycles registered, sold or leased in the State of New Jersey; and
  - 3) Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

### 13:45A-26.2 DEFINITIONS

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

“Co-manufacturer” means, solely with respect to an authorized emergency vehicle as defined in N.J.S.A. 39:1-1, any person that fabricates the authorized emergency vehicle utilizing a component or components of a new motor vehicle made by a manufacturer, other than modifying an existing standard model of a vehicle manufactured by a manufacturer, which component or components are obtained by the co-manufacturer from the manufacturer to fabricate the vehicle for use as an authorized emergency vehicle prior to an initial retail sale or lease of the emergency vehicle.

“Days” means calendar days.

“Dealer” means the person or entity that purchases a motor vehicle from a manufacturer for sale to consumers and in the case of an authorized emergency vehicle, includes the distributor.

“Director” means the Director of the Division of Consumer Affairs.

“Dispute Resolution System” means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

“Distributor” means a wholesaler or other supplier that sells emergency vehicles to fire and police departments, first aid or rescue squads and others who operate emergency vehicles in response to an emergency call.

“Examination” means an examination of the motor vehicle by a service technician performed by or on the behalf of a manufacturer or its dealer.

“Lemon Law” means P.L. 1988, c.123, an Act concerning new motor warranties and repealing P.L. 1983, c.215, as amended by P.L. 1993, c.21.

“Lemon Law Unit” (“LLU”) means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

“Manufacturer” means a person engaged in the business of manufacturing, assembling or distributing motor vehicles who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least 10 new motor vehicles and, in the case of an authorized emergency vehicle, unless the context indicates otherwise, includes a co-manufacturer or post-manufacturing modifier, if known.

“Motor vehicle” means a passenger automobile, authorized emergency vehicle or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased or repaired in the State or outside the State, except the living facilities of motor homes.

“Nonconformity” means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.

“OAL” means the Office of Administrative Law.

“Out of service” means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

“Post-manufacturing modifier” means, solely with respect to an authorized emergency vehicle as defined in N.J.S.A. 39:1-1, any person who modifies the configuration of an existing standard model of a motor vehicle purchased from a manufacturer to adapt the vehicle for use as an authorized emergency vehicle prior to an initial retail sale or lease of the vehicle.

“Term of protection” means within the first 24,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

“Title” means the certificate of ownership of a motor vehicle.

### **13:45A-26.3 STATEMENTS TO CONSUMER; OTHER NOTICES**

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

**IMPORTANT: IF THIS VEHICLE HAS A DEFECT THAT SUBSTANTIALLY IMPAIRS ITS USE, VALUE OR SAFETY OR THAT IS LIKELY TO CAUSE DEATH OR SERIOUS BODILY INJURY IF DRIVEN, AND WAS PURCHASED, LEASED OR REGISTERED IN NEW JERSEY, YOU MAY BE ENTITLED UNDER NEW JERSEY’S LEMON LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS.**

Here is a summary of your rights:

1. To qualify for relief under the New Jersey Lemon Law, you must give the manufacturer or its dealer the opportunity to repair or correct the defect in the vehicle within the Lemon Law’s term of protection, which is the first 24,000 miles of operation or two years after the vehicle’s original date of delivery, whichever is earlier.

2. If the manufacturer or its dealer is unable to repair or correct a defect within a reasonable time, you may be entitled to return the vehicle and receive a full refund, minus a reasonable allowance for vehicle use.
3. It is presumed that the manufacturer or its dealer is unable to repair or correct the defect if substantially the same defect continues to exist after the manufacturer has received written notice of the defect by certified mail, return receipt requested, and has had a final opportunity to correct the defect or condition within 10 calendar days after receipt of the notice. This notice must be received by the manufacturer within the term of protection and may be given only after (i) the manufacturer or its dealer has had two or more attempts to correct the defect; (ii) the manufacturer or its dealer has had at least one attempt to correct the defect if the defect is one that is likely to cause death or serious bodily injury if the vehicle is driven; or (iii) the vehicle has been out of service for repair for a cumulative total of 20 or more calendar days, or in the case of a motor home, 45 or more days.
4. If substantially the same defect continues to exist after the manufacturer has had the final opportunity to repair or correct the defect, you may file an application for relief under New Jersey's Lemon Law.

FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, INCLUDING THE MANUFACTURER'S ADDRESS TO GIVE NOTICE OF THE DEFECT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT POST OFFICE BOX 45026, NEWARK, NEW JERSEY 07101, TEL. NO. (973) 504-6226.

IMPORTANTE: SI ESTE VEHÍCULO TIENE UN DEFECTO QUE SUBSTANCIALMENTE AFECTA SU USO, VALOR O SEGURIDAD, O QUE PUEDE CAUSAR MUERTE O SERIO DAÑO CORPORAL SI SE MANEJA, Y FUE COMPRADO, ARRENDADO O REGISTRADO EN NUEVA JERSEY, USTED PUEDE TENER EL DERECHO BAJO LA LEY DE LIMÓN DEL ESTADO DE NUEVA JERSEY A UN REEMBOLSO DEL PRECIO DE COMPRA O A LOS PAGOS DE SU ARRENDAMIENTO:

Aquí le damos un resumen de sus derechos:

1. Para calificar por compensación bajo la Ley de Limón de Nueva Jersey, usted debe darle al fabricante o a su concesionario la oportunidad de reparar o corregir el defecto del vehículo dentro del término de protección bajo la Ley de Limón, que son las 24,000 millas primeras de operación o dos años después de la fecha original de la entrega del vehículo o lo que suceda primero.

2. Si el fabricante o su concesionario no puede arreglar o corregir el defecto dentro de un tiempo razonable, usted puede tener el derecho de devolver el vehículo y recibir un reembolso completo, menos un descuento por el uso del vehículo.
3. Si se supone que el fabricante o su concesionario no puede reparar o corregir el defecto y si substancialmente el mismo defecto continúa existiendo después que el fabricante ha recibido un aviso del defecto, mandado por correo certificado con recibo de retomo, y ha tenido una oportunidad final para corregir el defecto o condición dentro de los 10 días naturales después de recibir el aviso. Este aviso tiene que ser recibido por el fabricante dentro del término de protección y solo se puede dar después que (i) el fabricante o su concesionario ha intentado dos o más veces de corregir el defecto; (ii) el fabricante o su concesionario ha intentado por lo menos una vez de corregir el defecto si el defecto es uno que puede causar la muerte o serio daño corporal si el vehículo se maneja; o (iii) el vehículo ha estado fuera de servicio por reparos por una acumulación total de 20 días naturales o más, o en el caso de una casa rodante motorizada (motorhome) de 45 días o más.
4. Si substancialmente el mismo defecto continúa existiendo después que el fabricante ha tenido la última oportunidad de reparar o corregir el defecto, usted puede presentar una solicitud para compensación bajo la Ley de Limón de Nueva Jersey.

PARA INFORMACIÓN COMPLETA ACERCA DE SUS DERECHOS Y RECURSOS BAJO ESTA LEY, INCLUYENDO LA DIRECCIÓN DEL FABRICANTE PARA NOTIFICARLE EL DEFECTO, PONGASE EN CONTACTO CON: NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, POST OFFICE BOX 45026, NEWARK, NEW JERSEY 07101, NÚMERO DE TELÉFONO: 973-504-6226

- b) The manufacturer, through its dealer or lessor, shall maintain a record substantiating compliance with (a) above and shall make the record available to the Division upon request.
- c) If a motor vehicle is returned to the manufacturer under the provisions of the Lemon Law or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, the motor vehicle shall not be resold or released in New Jersey unless the following steps are taken:
  - 1) Immediately upon receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall cause the words "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING" to be clearly and conspicuously stamped on the face of the original certificate of title, the manufacturer's statement of origin, or other evidence of ownership.

- 2) Within 10 days of receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall submit a copy of the stamped document to the Special Title Section of the Motor Vehicle Commission (MVC) 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. 56:12-29, 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 MVC of the resale or release of the vehicle by requesting transfer of the branded title to the new owner or lessor, in writing.
  
- d) 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.
  
- e) 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.

### **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

**13:45A-26.5 PRELIMINARY STEPS TO INITIATE A LEMON LAW ACTION WITHIN THE DIVISION OF CONSUMER AFFAIRS LEMON LAW UNIT**

- a) To initiate a claim within the Division of Consumer Affairs Lemon Law Unit under the Lemon Law:
- 1) Written notification of the potential claim shall be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if and only after one of the following occurs during the first 24,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:
    - i) Except as set forth in (a)1iii below, substantially the same nonconformity has been subject to examination or repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist;
    - ii) The motor vehicle has been out of service by reason of repair for one or more nonconformities for a minimum of 20 days, or in the case of a motor home, for a minimum of 45 days, since the original delivery of the motor vehicle, and a nonconformity continues to exist; or
    - iii) In the case of nonconformity that is likely to cause death or serious bodily injury if the vehicle is driven, the nonconformity has been subject to examination or repair at least once by the manufacturer or its dealer and the nonconformity continues to exist; and
  - 2) The manufacturer has one more opportunity to examine, repair or correct the nonconformity within 10 days following receipt of the written notification from the consumer of a potential claim provided for in (a)1 above. 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 consumer may pursue a Lemon Law claim with the Lemon Law Unit.
- b) Nothing contained in this section shall preclude a consumer from alternatively filing an action in Superior Court.
- c) When a motor home or authorized emergency vehicle has been constructed by more than one manufacturer, an examination or repair attempt will not count towards the examination

or repair attempts referred to in (a)1 above, if the repair facility is not authorized to provide services by the manufacturer, co-manufacturer or post-manufacturing modifier who constructed the nonconforming portion of the vehicle.

- d) If a nonconformity in a motor home is addressed more than once due to a consumer's decision to continue travelling and to seek examination or repair of the same nonconformity at another authorized repair facility rather than waiting for the examination or repair to be completed at the initial repair facility, it shall constitute one examination or repair for the purpose of the examination or repair attempts referred to in (a)1 above.

### **13:45A-26.6 ELIGIBILITY**

- a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU:
- 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).

### **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) 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 or that the nonconformity is a defect, which is likely to cause death or serious bodily injury if the vehicle is driven;

- 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, or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, one attempt, 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, or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, two 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.

### **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.

### **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) Each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit (LLU), the name, address, and telephone number of the person designated by the manufacturer to receive notices under the Lemon Law dispute resolution process. The manufacturer shall 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 hand delivery or 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 receiving the transmittal sheet from the Office of Administrative Law indicating the judge assigned to the case, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the Clerk of the Office of Administrative Law at the address stated

on the transmittal sheet, 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.

### **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 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.
- c) In the case of an authorized emergency vehicle, the manufacturer, co-manufacturer or post-manufacturing modifier shall provide the consumer with a full refund of the purchase price of the original emergency vehicle, depending on the source of the nonconformity, including any stated credit or allowance for the consumer's used emergency vehicle, as well as any other charges or fees, including, but not limited to, sales tax, license and registration fees, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a substitute emergency vehicle, if applicable, for the period during which the consumer's emergency vehicle was out of service due to the nonconformity.

### **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 give 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 MVC. The notification to the manufacturer and consumer shall be by hand delivery or 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.

**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:
  - 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 send a questionnaire by hand delivery or 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 decision 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 MVC 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.

### **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 index and statistical record of compliance shall be made available to the public.

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

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### **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.

### **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.

### **13:45A-26A.3 DEFINITIONS**

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

“Advertised motor vehicle” means any new or used motor vehicle offered for sale or lease and specifically identified by an advertised price. With respect to an advertisement which offers a group of new or used vehicles for sale or lease covering a specified price range (for example, “1995 Metros for sale—\$10,000 to 12,999,” or “Lease a new Olds for \$298 a month and up.”), the least expensive motor vehicle in that advertised range is considered to be an advertised motor vehicle.

“Advertised price” means the dollar amount required to purchase or lease a motor vehicle, advertised as:

1. The total price; or
2. The monthly payment price; or
3. The deferred payment price; or
4. A specific discount or savings on the manufacturer’s suggested retail price.

“Advertisement” means any advertisement as defined by N.J.S.A. 56:8-1(a) of any motor vehicle, including any statement appearing in a newspaper, periodical, pamphlet, circular or other publication, paper, sign, radio or television broadcast, electronic medium or delivered to or through any computer, which offers a motor vehicle for sale or lease at retail.

“Advertiser” means any person as defined by N.J.S.A. 56:8-1 (d) who in the ordinary course of business is engaged in the sale, leasing or financing of motor vehicles at retail or who in the course of any 12 month period offers more than three motor vehicles for sale or lease or who is engaged in the brokerage of motor vehicles whether for sale or lease and who causes an advertisement to be made for the retail sale or lease of motor vehicles. An advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertiser shall be deemed an advertiser within the meaning of this subchapter, when the agency or owner’s or publisher’s staff prepares and places an advertisement for publication. The agency, owner, or publisher shall not be liable for a violation of this subchapter when reasonably relying upon data, information or material supplied by the person for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the preparer’s control, including but not limited to, the post-publication performance of the person on whose behalf such advertisement was placed.

“Broker” means a person who in the course of any 12 month period arranges or offers to arrange the retail sale or lease of more than three motor vehicles from the inventory of other business entities.

“Closed-end lease” means a lease in which the lessee is not responsible for the value of the motor vehicle at the end of the lease term unless there is excessive damage, wear and tear, or mileage.

“Dealer” means any person who in the ordinary course of business is engaged in the sale or leasing of motor vehicles at retail or who in the course of any 12-month period offers more than three motor vehicles for sale or lease at retail.

“Demo” means a motor vehicle used exclusively by a dealer or dealer’s employee that has never been titled and to which the new vehicle warranty still applies.

“Dealer-installed option” means optional equipment installed by the dealer at an additional cost.

“Lease” means a contract for the use of a motor vehicle for a period of time exceeding four months whether or not the lessee may become the owner of the motor vehicle at the expiration of the lease.

“Lessee” means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d), who leases a motor vehicle from a broker or dealer.

“Open-end lease” means a lease in which the lessee may owe additional amounts that is, a “balloon” payment, depending on the value of the motor vehicle at the end of the lease term.

“Monroney label” is the label required by Section 3 of the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233.

“Motor vehicle” means any vehicle driven otherwise than by muscular power, excepting such vehicles as those which run only upon rails or tracks.

“MSRP” means the manufacturer’s suggested retail price.

“Period of publication” means two calendar days prior to the date of first publication of an advertisement and midnight of the third calendar day following the date of final publication; in the case of a special offer, the period of publication shall extend until midnight of the date the special offer ends.

“Person” means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d).

“Rebate” means any payment of money by the manufacturer to or on behalf of a consumer who has bought or leased a motor vehicle, whether called “rebate”, “factory rebate”, “cash back”, “money back”, or a term of similar import.

“Sale” means a sale as defined by N.J.S.A. 56:8-1 (e) of any motor vehicle.

“Special offer” means any advertisement of a reduction from the usual selling price for an applicable time period, whether called “sale”, “sale days”, “bargain”, “bargain days”, “special offer”, “discount”, “reduction”, “clearance”, “prices slashed”, “special savings”, or a term of similar import.

“Taxes, licensing costs and registration fees” means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle.

“Used motor vehicle” means any motor vehicle with an odometer reading of greater than 1,000 miles, except for a “demo”.

### **13:45A-26A.4 BAIT AND SWITCH**

- a) The following motor vehicle advertising practices constitute “bait and switch” and are prohibited and unlawful:
  - 1) The advertisement of a motor vehicle as part of a plan or scheme not to sell or lease it or not to sell or lease it at the advertised price.
  - 2) Without limiting other means of proof, the following shall be prima facie evidence of a plan or scheme not to sell or lease a motor vehicle as advertised or not to sell or lease it at the advertised price:
    - i) Refusal to show, display, sell, or lease the advertised motor vehicle in accordance with the terms of the advertisement, unless the vehicle has been actually sold or leased during the period of publication; in that case, the advertiser shall retain records of that sale or lease for 180 days following the date of the transaction, and shall make them available for inspection by the Division of Consumer Affairs.
    - ii) Accepting a deposit for an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle, except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.
    - iii) The failure to make delivery of an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle; except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

**13:45A-26A.5 ADVERTISEMENTS; MANDATORY DISCLOSURE REQUIREMENTS IN ALL ADVERTISEMENTS FOR SALE**

- a) In any advertisement in which an advertiser offers a new motor vehicle for sale at an advertised price, the following information must be included:
- 1) The advertiser's business name and business address;
  - 2) A statement that "price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees, and taxes". If this statement appears as a footnote, it must be set forth in at least 10 point type. For purposes of this subsection, "all costs to be paid by a consumer" means manufacturer-installed options, freight, transportation, shipping, dealer preparation, and any other costs to be borne by a consumer except licensing costs, registration fees, and taxes;
  - 3) The manufacturer's suggested retail price as it appears on the Monroney label, clearly denominated by using the abbreviation "MSRP";
  - 4) The year, make, model, and number of engine cylinders of the advertised motor vehicle;
  - 5) Whether the transmission is automatic or manual; whether the brakes and steering mechanism are power or manual; and whether the vehicle has air conditioning, unless those items are standard equipment on the advertised motor vehicle. This provision shall not apply to advertisements for motorcycles;
  - 6) The last eight digits of the vehicle identification number, preceded by the letters "VIN". This provision shall not apply to radio and television broadcasts, or to advertisements for motorcycles;
  - 7) A list of any dealer installed options on the advertised motor vehicle and the retail price of each, as determined by the dealer.
- b) In any advertisement offering for sale a used motor vehicle at an advertised price, the information described in (a)1, 2, 4, 5 and 6 above must be included, as well as the following additional information:
- 1) The actual odometer reading as of the date the advertisement is placed for publication;  
and

- 2) The nature of prior use unless previously and exclusively owned or leased by individuals for their personal use, when such prior use is known or should have been known by the advertiser.
- c) In any advertisement offering a “demo” for sale, the information listed in (a) above must be included, as well as:
  - 1) Identification as a “demo”; and
  - 2) The actual odometer reading as of the date the advertisement is placed for publication.
- d) It shall be an unlawful practice to fail to include the information required by this section.

**13:45A-26A.6 ADVERTISEMENTS: MANDATORY DISCLOSURE IN  
ADVERTISEMENTS FOR LEASE OF A NEW OR USED MOTOR VEHICLE**

- a) In any advertisement offering a new or used motor vehicle for lease, at an advertised price, the following information shall be included:
  - 1) That the transaction advertised is a lease;
  - 2) The amount of any payment required at the inception of the lease or that no payment is required if that is the case;
  - 3) The number, amounts, due dates or periods of scheduled payments and the total of such payments under the lease;
  - 4) A toll-free number that may be used by consumers to obtain the information required under (f) below; and
  - 5) The business name and, if an individual dealer, the address of the advertiser.
- b) In all written advertisements the information required in (a) above shall be prominently displayed in at least 10 point type and shall be easy to find, read and understand.
- c) If the advertiser elects to use a full disclosure format in a written advertisement, then the information in (f) below shall be prominently displayed in at least 10 point type and must be easy to find, read and understand.

- d) An advertisement which is not in writing shall clearly and audibly state the information in (a) above at a decibel level equal to the highest decibel level used in the advertisement and at a speed equal to or slower than any other statement contained in the advertisement. In a television broadcast, the information shall be prominently and conspicuously displayed for at least five continuous seconds for each model advertised.
- e) The toll free number required pursuant to (a)4 above shall be operational not later than the date on which the advertisement is broadcast or published. The advertiser shall:
- 1) Maintain the toll free number for 48 hours after the last day of the advertisement;
  - 2) Ensure that the toll free number is operational from 9:00 A.M. to 9:00 P.M. Monday through Saturday;
  - 3) Provide the information required under (f) below in a clear and audible manner, to any person who calls the toll free number; and
  - 4) If requested, provide the information required under (f) below in written form to be mailed, postage paid, to the consumer's address.
- f) Information provided through the use of a toll free telephone number shall include:
- 1) The advertiser's business name and address;
  - 2) Identification of the transaction as a lease;
  - 3) Whether or not the advertised price refers solely to a business lease;
  - 4) Whether it is an open-end or closed-end lease;
  - 5) The number, amounts, due dates or periods of scheduled payments and the total of such payments under the lease;
  - 6) All other itemized payments such as security deposits or capitalized cost reduction required at the initiation of the lease;
  - 7) The cost of the lease which shall include the sum of (f)5 and 6 above;

- 8) The manufacturer's suggested retail price as it appears on the Monroney label; when given in writing to the consumer, clearly denominated by using the abbreviation "MSRP";
  - 9) A statement that "price(s) include(s) all costs to be paid by the consumer, except for licensing, registration and taxes." When given in writing to the consumer, it must be set forth in at least 10 point type;
  - 10) Whether the lessee has the option to purchase the advertised motor vehicle and at what price and time; the method of determining the price may be substituted for disclosure of the price;
  - 11) The amount (including termination charge, if any) or method of determining any liability imposed upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased motor vehicle and its realized value at the end of the lease term, if the lessee has such liability;
  - 12) A statement of the items included as standard equipment on the advertised motor vehicle;
  - 13) Whether the transmission is automatic or standard; whether the brakes and steering mechanism are power or manual and whether the vehicle has air conditioning, unless such items are included under (f)12 above. This provision shall not apply to motorcycles;
  - 14) The year, make, model and number of engine cylinders of the advertised vehicle;
  - 15) The last eight digits of the vehicle identification number or "VIN." This provision shall not apply to motorcycles;
  - 16) If the advertised vehicle is a used vehicle, the actual odometer reading at the date of placing the advertisement for publication; and the nature of prior use, unless previously and exclusively owned or leased by individuals for their personal use, when such use is known or should have been known by the advertiser; and
  - 17) If the advertised vehicle is a "demonstration vehicle" or "demo," identification of the vehicle as a "demonstration vehicle" or "demo;" and the actual odometer reading at the date of placing the advertisement for publication.
- g) It shall be an unlawful practice to fail to include the information required by this section.

**13:45A-26A.7 UNLAWFUL ADVERTISING PRACTICES**

- a) In any type of motor vehicle advertising, the following practices shall be unlawful:
- 1) The use of any type size, location, lighting, illustration, graphic depiction or color so as to obscure or make misleading any material fact;
  - 2) The setting forth of an advertised price which has been calculated by deducting a down payment, trade-in allowance or any deductions other than a manufacturer's rebate and dealer's discount;
  - 3) The setting forth of an advertised price which fails to disclose, adjacent to the advertised price, that it has been calculated by deducting a manufacturer's rebate or dealer's discount;
  - 4) The failure to state all disclaimers, qualifiers, or limitations that in fact limit, condition, or negate a purported unconditional offer (such as a low APR or high trade-in amount), clearly and conspicuously, next to the offer and not in a footnote identified by an asterisk. Such disclosure shall be made verbally, in a radio or television advertisement. Identical information pertaining to all motor vehicles in a group of advertised motor vehicles, however, may appear in a footnote, provided the type is no smaller than 10 point;
  - 5) The failure to state the applicable time period of any special offer, in at least 10-point type immediately adjacent to the special offer, unless the special offer is a manufacturer's program;
  - 6) The use of the word "free" when describing equipment or other item(s) to be given to the purchaser or lessee of a motor vehicle, if the "free" item has a value which has increased the advertised price. In using the word "free" in advertising, the advertiser shall comply with the Federal Trade Commission Rule, 16 CFR § 251, and any amendments thereto;
  - 7) The failure to disclose that the motor vehicle had been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by the advertiser; for the purposes of this subsection, "substantial repair or body work" shall mean repair or body work having a retail value of \$1,000 or more;
  - 8) The use of the terms "Public Notice", "Public Sale", "Liquidation", "Liquidation Sale", or terms of similar import, where such sale is not required by court order or by operation of law or by impending cessation of the advertiser's business;

- 9) The use of terms such as "Authorized Sale", "Authorized Distribution Center", "Factory Outlet", "Factory Authorized Sale", or other term(s) which imply that the advertiser has an exclusive or unique relationship with the manufacturer;
- 10) The use, directly or indirectly, of a comparison to the dealer's cost, inventory price, factory invoice, floor plan balance, tissue, or terms of similar import; or the claim that the advertised price is "wholesale" or "at no profit";
- 11) The use of the terms "guaranteed discount", "guaranteed lowest prices" or other term of similar import unless the advertiser clearly and conspicuously discloses the manner in which the guarantee will be performed and any conditions or limitations controlling such performance; this information shall be disclosed adjacent to the claim and not in a footnote;
- 12) The use of the statement "We will beat your best deal", or similar term or phrase if a consumer must produce a contract that the consumer has signed with another dealer or lessor in order to receive the "better" deal;
- 13) The use of such terms or phrases as "lowest prices", "lower prices than anyone else" or "our lowest prices of the year", or similar terms or phrases if such claim cannot be substantiated by the advertiser.

### **13:45A-26A.8 CERTAIN CREDIT AND INSTALLMENT SALE ADVERTISEMENTS**

- a) The following information must be stated in any credit and installment sale advertising. It must appear adjacent to the description of the advertised motor vehicle and not in a footnote or headline unless the information is the same for all motor vehicles advertised. If in a footnote, it must be in at least 10-point type. Failure to include this information shall be an unlawful practice.
  - 1) The total cost of the installment sale, which shall include the down payment or trade-in or rebate, if any, plus the total of the scheduled periodic payments;
  - 2) The annual percentage rate;
  - 3) The monthly payment figure and the number of required payments; and
  - 4) The amount of any down payment or trade-in required or a statement that none is required.

- b) The following motor vehicle advertising practices concerning credit and installment sale advertisements shall be unlawful:
  - 1) The advertising of credit, including but not limited to such terms as “easy credit” or “one-day credit”, other than that actually provided by the advertiser on a regular basis in the ordinary course of business;
  - 2) The use or statement of an installment payment on any basis other than a monthly basis.

### **13:45A-26A.9 ON-SITE DISCLOSURES**

- a) The following information relating to an advertised motor vehicle must be provided at the main entrance(s) to the business premises where the motor vehicle is displayed or in proximity to the vehicle or on the vehicle itself:
  - 1) A copy of any printed advertisement that quotes a price for the sale or lease of that vehicle; alternatively, a tag may be attached to the motor vehicle(s) stating the advertised price as well as the other information required in N.J.A.C. 13:45A-26A.5 or 26A.6.
  - 2) A fuel economy label, if required by the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2006; and
  - 3) The Used Car Buyers Guide, if required by the Federal Trade Commission’s Used Car Rule, 16 C.F.R. Part 455.2.
- b) A dealer shall not advertise a new motor vehicle which does not have the Monroney label, if required by the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233.
- c) It shall be an unlawful practice to fail to comply with the disclosures required by this section.

### **13:45A-26A.10 RECORD OF TRANSACTIONS**

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

- b) If the motor vehicle is sold or leased during the period of publication, the advertiser must so notify consumers who inquire by telephone or in person.
- c) It shall be an unlawful practice to fail to comply with the requirements of this section.

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**SUBCHAPTER 26B.  
AUTOMOTIVE SALES PRACTICES**

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**13:45A-26B.1 DEFINITIONS**

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

“Automotive dealer” means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale of motor vehicles at retail or who in the course of any 12 month period offers more than 3 motor vehicles for sale, lease, or rental, or who is engaged in the brokerage of motor vehicles whether for sale, lease, or rental;

“Documentary service” means, but is not limited to, the preparation and processing of documents in connection with the transfer of license plates, registration, or title, and the preparation and processing of other documents relating to the sale or lease of a motor vehicle.

“Documentary service fee” means any monies or other thing of value, which an automotive dealer accepts from a consumer in exchange for a documentary service.

“Pre-delivery service” means, but is not limited to, items that are often described or labeled as dealer preparation, vehicle preparation, pre-delivery handling and delivery, or any other service of similar import.

“Pre-delivery service fee” means any monies or other thing of value, which an automotive dealer accepts from a consumer in exchange for the performance of a pre-delivery service upon a motor vehicle.

“Sales document” means the first document which an automotive dealer utilizes to evidence an order for, deposit towards, or contract for the purchase of a motor vehicle by a consumer,

and includes but is not limited to, retail orders, sales invoices, sales contracts, retail installment contracts, and other documents of similar import.

### **13:45A-26B.2 PRE-DELIVERY SERVICE FEES**

- a) In connection with the sale of a motor vehicle, which includes the assessment of a pre-delivery service fee, automotive dealers shall not:
- 1) Accept, charge, or obtain from a consumer monies, or any other thing of value, in exchange for the performance of any pre-delivery service for which the automotive dealer receives payment, credit, or other value from any person or entity other than a retail purchaser of the motor vehicle; or
  - 2) Accept, charge, or obtain from a consumer monies, or any other thing of value, in exchange for the performance of any pre-delivery service without first itemizing the actual pre-delivery service, which is being performed and setting forth in writing, in at least 10-point type, on the sales document the price for each specific pre-delivery service.

### **13:45A-26B.3 DOCUMENTARY SERVICE FEE**

- a) In connection with the sale of a motor vehicle, which includes the assessment of a documentary service fee, automotive dealers shall not:
- 1) Represent to a consumer that a governmental entity requires the automotive dealer to perform any documentary service; or
  - 2) Accept, charge, or obtain from a consumer monies, or any other thing of value, in exchange for the performance of any documentary service without first itemizing the actual documentary service, which is being performed and setting forth in writing, in at least 10-point type, on the sale document the price for each specific documentary service.

### **13:45A-26B.4 VIOLATIONS**

Without limiting the prosecution of any other practices, which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violations of this subchapter shall comprise a violation of the Consumer Fraud Act.

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## **SUBCHAPTER 26C. AUTOMOTIVE REPAIRS**

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### **13:45A-26C.1 DEFINITIONS**

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

“Automotive repair dealer” means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on a motor vehicle or the replacement of parts including body parts, but excluding those persons who engage in the business of repairing motor vehicles of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

“Customer” means the owner or any family member, employee or any other person whose use of the vehicle is authorized by the owner.

“Director” means the Director of the Division of Consumer Affairs.

“Motor vehicle” means a passenger vehicle that is registered with the Motor Vehicle Commission of New Jersey or of any other comparable agency of any other jurisdiction, and all motorcycles, whether or not registered.

“Repair of motor vehicles” means all maintenance and repairs of motor vehicles performed by an automotive repair dealer but excluding changing tires, lubricating vehicles, changing oil, installing light bulbs, batteries, windshield wiper blades and other minor accessories and services. No service or accessory to be installed shall be excluded for purposes of this rule if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

### **13:45A-26C.2 DECEPTIVE PRACTICES; AUTOMOTIVE REPAIRS**

- a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of an automotive repair dealer, whether

such act or omission is done by the automotive repair dealer or by any mechanic, employee, partner, officer or member of the automotive repair dealer:

- 1) Making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known, or by which the exercise of reasonable care should be known, to be untrue or misleading.
- 2) Commencing work for compensation without securing one of the following:
  - i) Specific written authorization from the customer, signed by the customer, which states the nature of the repair requested or problem presented and the odometer reading of the vehicle; or
  - ii) If the customer's vehicle is presented to the automotive repair dealer during other than normal working hours or by one other than the customer, oral authorization from the customer to proceed with the requested repair or problem presented, evidenced by a notation on the repair order and/or invoice of the repairs requested or problem presented, date, time, name of person granting such authorization, and the telephone number, if any, at which said person was contacted.
- 3) Commencing work for compensation without either:
  - i) One of the following:
    - (1) Providing the customer with a written estimated price to complete the repair, quoted in terms of a not-to-exceed figure; or
    - (2) Providing the customer with a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the repair. If the dealer makes a diagnostic examination, the dealer has the right to furnish such estimate within a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnostic charge must be agreed to in advance by the customer. No cost of diagnosis which would have been incurred in accomplishing the repair shall be billed twice if the customer elects to have the dealer make the repair; or
    - (3) Providing the customer with a written estimated price to complete a specific repair, for example, "valve job"; or

- (4) Obtaining from the customer a written authorization to proceed with repairs not in excess of a specific dollar amount. For the purposes of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or
  - (5) If the customer waives his right to a written estimate in a written statement, signed by the customer, obtaining from the customer oral approval of an estimated price of repairs, evidenced by a notation on the repair order or invoice of the estimated price of repairs, date, time, name of person approving such estimate, and the telephone number, if any, at which such person was contacted; or
- ii) If the customer's vehicle is presented to the automotive repair dealer during other than normal working hours or by one other than the customer, obtaining from the customer either:
    - (1) A written authorization to proceed with repairs not in excess of a specific dollar amount. For the purposes of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or
    - (2) Oral approval of an estimated price of repairs evidenced by a notation on the repair order or invoice of the estimated price of repairs, date, time, name of person approving such estimate, and the telephone number, if any, at which such person was contacted.
- 4) Failure to provide a customer with a copy of any receipt or document signed by him, when he signs it.
  - 5) Making deceptive or misleading statements or false promises of a character likely to influence, persuade or induce a customer to authorize the repair, service or maintenance of a motor vehicle.
  - 6) Charging the customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the customer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the dealer shall make a notation on the repair order and on the invoice of the date, time, name of person authorizing the additional repairs and the telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost.
  - 7) Failure to return replaced parts to the customer at the time of completion of the work provided that the customer, before work is commenced, requests such return, and

provided that the parts by virtue of their size, weight, or other similar factors are not impractical to return. Those parts and components that are replaced and that are sold on an exchange basis, and those parts that are required to be returned by the automotive repair dealer to the manufacturer or distributor, are exempt from the provisions of this section.

- 8) Failure to record on an invoice all repair work performed by an automotive repair dealer for a customer, itemizing separately the charges for parts and labor, and clearly stating whether any new, rebuilt, reconditioned or used parts have been supplied. A legible copy shall be given to the customer.
- 9) The failure to deliver to the customer, with the invoice, a legible written copy of all guarantees, itemizing the parts, components and labor represented to be covered by such guaranty, or in the alternative, delivery to the customer of a guaranty covering all parts, components and labor supplied pursuant to a particular repair order. A guaranty shall be deemed false and misleading unless it conspicuously and clearly discloses in writing the following:
  - i) The nature and extent of the guaranty including a description of all parts, characteristics or properties covered by or excluded from the guaranty, the duration of the guaranty and what must be done by a claimant before the guarantor will fulfill his obligation (such as returning the product and paying service or labor charges);
  - ii) The manner in which the guarantor will perform. The guarantor shall state all conditions and limitations and exactly what the guarantor will do under the guaranty, such as repair, replacement or refund. If the guarantor or recipient has an option as to what may satisfy the guaranty, this must be clearly stated;
  - iii) The guarantor's identity and address shall be clearly revealed in any documents evidencing the guaranty.
- 10) Failure to clearly and conspicuously disclose the fact that a guaranty provides for adjustment on a pro rata basis, and the basis on which the guaranty will be prorated; that is, the time or mileage the part, component or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on a price other than that paid by the customer, clear disclosure must be made of the amount. However, a fictitious price must not be used even where the sum is adequately disclosed.
- 11) Failure to post, in a conspicuous place, a sign informing the customer that the automotive repair dealer is obliged to provide a written estimate when the customer physically presents his motor vehicle to the automotive repair dealer during normal working hours and, in any event, before work is commenced. In addition, copies of any

receipt or document signed by the customer, a detailed invoice, a written copy of any guaranty and the return of any replaced parts that have been requested must be provided. The sign is to read as follows:

“A CUSTOMER OF THIS ESTABLISHMENT IS ENTITLED TO:

1. When a motor vehicle is physically presented during normal working hours, and, in any event before work begins, a written estimated price stated either:

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

(B) As an exact figure broken down as to parts and labor. This establishment has the right to charge you for this diagnostic service, although if you then have the repair done here, you will not be charged twice for any part of such charge necessary to make the repair.

(C) As an exact figure to complete a specific repair.

2. For your protection, you may have to waive your right to an estimate only by signing a written waiver.
3. Require that this establishment not start work on your vehicle until you sign an authorization stating the nature of the repair or problem and the odometer reading of your vehicle if you physically present the vehicle here during normal working hours.
4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.
5. The replaced parts, if requested before work is commenced, unless their size, weight, or similar factors make return of the parts impractical.
6. A written copy of the guaranty.”

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

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

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

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**13:45A-26D.1 GENERAL PROVISIONS**

- a) For purposes of this rule, all terms that are defined in the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. section 1402 (1970), as may be amended from time to time, are used as defined therein.
- b) "Tire purchaser" means a person who buys or leases a new or newly retreaded tire, or who buys or leases for 60 days or more a motor vehicle containing a new tire or newly-retreaded tire, for purposes other than resale.
- c) Each motor vehicle dealer who sells a used motor vehicle for purposes other than resale, or who leases a motor vehicle for more than 60 days, that is equipped with new tires or newly-retreaded tires, is considered to be a tire dealer.
- d) Each person selling a new motor vehicle to first purchasers for purposes other than resale that is equipped with tires that were not on the motor vehicle when shipped by the vehicle manufacturer is considered a tire dealer.

**13:45A-26D.2 DECEPTIVE PRACTICES**

- a) It shall be a deceptive practice in connection with the sale of tires to consumers resident in New Jersey, or by tire distributors or dealers doing business in New Jersey, unless the tire distributor or dealer who makes the sale provides the retail purchaser with a true copy of the information that the seller, tire distributor or his designee forwards to the manufacturer as required by 49 C.F.R. section 574.8, at the time such information is forwarded.
- b) Such information includes:
- 1) Name and address of the tire purchaser;
  - 2) Tire identification number molded into or onto the sidewall of the tire sold;
  - 3) Name and address of the tire seller.

**13:45A-26D.3 VIOLATIONS**

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

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

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**13:45A-26E.1 PURPOSE AND SCOPE**

- a) The purpose of this subchapter is to implement the Motorized Wheelchair Lemon Law, P.L. 1995, c.233, by establishing a motorized wheelchair dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method for computing the refund, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motorized wheelchairs.
- b) This subchapter applies to:
  - 1) Manufacturers of motorized wheelchairs sold or leased in the State of New Jersey;
  - 2) All purchasers, lessees and consumers as defined in N.J.S.A. 56:12-75(l) of motorized wheelchairs sold or leased in the State of New Jersey; and
  - 3) Motorized wheelchair dealers servicing motorized wheelchairs.

**13:45A-26E.2 DEFINITIONS**

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

“Days” means calendar days.

“Director” means the Director of the Division of Consumer Affairs.

“Dispute Resolution System” means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motorized wheelchair nonconformity(s) through summary administrative hearings.

“Manufacturer” means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer’s motorized wheelchairs, but does not include a motorized wheelchair dealer.

“Motorized wheelchair” means any motor-driven wheelchair, including a demonstrator and all accompanying power accessories utilized to operate the wheelchair, which a consumer purchases or accepts transfer of in this State for the purpose of increasing independent mobility, in the activities of daily living of an individual who has limited or no ambulation abilities, and includes motorized power scooters designed primarily for indoor use and retrofit power units designed to motorize power wheelchairs.

“Motorized wheelchair dealer” or “dealer” means a person who is in the business of selling motorized wheelchairs in New Jersey.

“Motorized wheelchair lessor” or “lessor” means a person who leases or rents a motorized wheelchair to a consumer, or who holds the lessor’s rights, under a written lease or written rental agreement.

“Nonconformity” means a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair, and which is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair. A nonconformity does not include a condition or defect which results from abuse, neglect or unauthorized modification or alteration of the motorized wheelchair by a consumer.

“OAL” means Office of Administrative Law.

“Reasonable attempt to repair” means, within the term of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner, that:

1. A nonconformity within the warranty has been subject to repair by the manufacturer, lessor or any of the manufacturer’s authorized dealers at least three times and the nonconformity continues; or

2. The motorized wheelchair is out of service for an aggregate of at least 20 days because of a nonconformity, after having been returned to the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized dealers for repair.

"Wheelchair Lemon Law" means P.L. 1995, c.233 (N.J.S.A. 56:12-74 et seq.), an Act providing certain protections to consumers who purchase, lease or rent motorized wheelchairs.

### **13:45A-26E.3 MANUFACTURER WARRANTY**

- a) At the time of purchase, lease or rental of a new motorized wheelchair in the State of New Jersey, the manufacturer, either directly or through an authorized dealer or lessor, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer.
- b) In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of a motorized wheelchair that, for a period of one year from the date of first delivery to the consumer, the motorized wheelchair will be free from any condition or defect which substantially impairs the use, value or safety of the wheelchair to the consumer.

### **13:45A-26E.4 WHEELCHAIR LEMON LAW UNIT**

- a) There is established within the Division of Consumer Affairs a section which will process Wheelchair Lemon Law matters, to be known as the Wheelchair Lemon Law Unit (WLLU).
- b) The Wheelchair 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 to the Division of Consumer Affairs regarding Wheelchair Lemon Law matters shall be directed to the attention of the Wheelchair Lemon Law Unit, as follows:

Division of Consumer Affairs  
Wheelchair Lemon Law Unit  
Post Office Box 45026, 124 Halsey Street  
Newark, New Jersey 07101

**13:45A-26E.5 REPAIR OF NONCONFORMITY**

- a) When a consumer believes that a new motorized wheelchair does not conform to an applicable express warranty, the consumer shall:
  - 1) Notify the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers of the nonconformity by mail, each time a nonconformity occurs; and
  - 2) Make the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to the consumer.
  
- b) If, within the terms of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, whichever is earlier, substantially the same nonconformity has been subject to repair three or more times by the manufacturer, lessor or any of the manufacturer's authorized dealers and the nonconformity continues to exist, or the motorized wheelchair has been 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 a nonconformity continues to exist, and the manufacturer refuses to replace or refund the price of the motorized wheelchair after one of the above conditions occurs, then the consumer shall be considered; as having met the criteria necessary to pursue a Wheelchair Lemon Law claim and may then:
  - 1) Refer the matter to the manufacturer for resolution through the manufacturer's dispute resolution settlement procedure;
  - 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.

**13:45A-26E.6 ELIGIBILITY**

- a) To be eligible for the Dispute Resolution System, a consumer shall provide the following items to the WLLU:
  - 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).

### **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 non-refundable.
- 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.

**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) 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 hand delivery or 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. 1:13 A.
- 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 receiving the transmittal sheet from the Office of Administrative Law indicating the judge assigned to the case, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the Clerk of the Office of Administrative Law at the address stated on the transmittal sheet, a response to each of the statements set forth in the consumer application. The response shall also state whether the manufacturer objects to a proceeding on the papers if requested by the consumer.
- g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

### **13:45A-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.

### **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 give notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL. The notification to the manufacturer and consumer shall be by hand delivery or 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:
  - 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 index and statistical record of compliance shall be made available to the public upon written request.

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

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### **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.

**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 over seven 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 Commissioner of the Motor Vehicle Commission 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.
- b) By the 15th of every January, 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 calendar year; and
  - 2) A completed "Certification of Administrative Fees" form, which is appended to this subchapter as Appendix D, incorporated into this rule by reference, indicating the number of used cars sold each month by the dealer during the preceding calendar year.
- 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 45039  
124 Halsey Street  
Newark, New Jersey 07101

### **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:
  - 1) A completed application for dispute resolution (see N.J.A.C. 13:45A-26F.10) which can be obtained from the UCLL Unit; 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) 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
  - 6) 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) 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 hand delivery or 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 receiving the transmittal sheet from the Office of Administrative Law indicating the judge assigned to the case, 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 the address stated on the transmittal sheet, 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 lien-holder, 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.

### **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:
  - 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.

**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.

APPENDIX A

APPENDIX A  
Used Motor Vehicle Limited Warranty

Purchaser (Buyer):	Dealer (Seller):	Vehicle:
Name: _____		Year: _____
Street Address: _____		Make: _____
City _____ State _____ ZIP _____		Model: _____
Telephone Number (with area code): _____		VIN: _____ <small>(Vehicle Identification Number)</small>
Vehicle purchase date: _____ <small>Month Day Year</small>		Odometer reading: _____ <small>Miles</small>

**Warranty:** If used motor vehicle has (check appropriate box):

<input type="checkbox"/>	24,000 miles or less, the warranty is 90 days or 3,000 miles, whichever comes first.
<input type="checkbox"/>	24,001 to 60,000, the warranty is 60 days or 2,000 miles, whichever comes first.
<input type="checkbox"/>	60,001 to 100,000 the warranty is 30 days or 1,000 miles, whichever comes first.

**Terms**

Dealer agrees to repair or replace any covered part of the above vehicle upon failure or malfunction of a **Covered Item** specified in 2 below, subject to the following terms, conditions, exclusions and limitations:

1. **Who is covered by the limited warranty?** Only the purchaser named above. The warranty is not transferable to, nor enforceable by, any other person.
2. **What parts of the vehicle are covered by this limited warranty?** Under the law only "Covered Items" which include the following components of a used motor vehicle:
  - a. **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.
  - b. **Transmission Automatic/Transfer Case**—all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets.
  - c. **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.
  - d. **Front Wheel Drive**—all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets.
  - e. **Rear Wheel Drive**—all internal lubricated parts, propeller shafts, supports and U-joints, axle shaft and bearings, seals and gaskets.
3. **What is excluded from this limited warranty?**
  - a. Any and all parts not expressly specified in Part 2 above;
  - b. This written warranty excludes 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 purchaser's failure to properly maintain the used motor vehicle in accordance with the manufacturer's recommended maintenance schedule. This

limited warranty also excludes damage of a covered item caused as a result of any commercial use of the used motor vehicle, or operation of the vehicle without proper lubrication or coolant, or as a result of any misuse, negligence or alteration of the vehicle by someone other than the dealer.

4. **What is the dealer's obligation during the term of this limited warranty?**  
The dealer or its agent, upon failure or malfunction of a covered item during the term of this warranty, shall correct the malfunction or defect provided the used motor vehicle is delivered to the dealer at his regular place of business, and subject to a deductible amount of \$50 to be paid by the purchaser for each repair of a covered item. If, within the specific warranty period, the dealer or its agent fails to correct a material defect of the used motor vehicle after a reasonable opportunity to repair, the dealer shall repurchase the used motor vehicle and refund to the consumer the full purchase price, 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 vehicle. "A reasonable opportunity to repair" is defined as (a) *The same material defect has been repaired three or more times by the dealer or his agent within the warranty period, but the material defect continues to exist;* or (b) *The used motor vehicle is out of service by reason of waiting for the dealer to begin or complete repair of the material defect for a cumulative total of 20 or more days during the warranty period.*
5. **Extension of duration of warranty.**  
The duration of this warranty 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.
6. **What are the purchaser's obligations?**  
To obtain repairs or replacements under the limited warranty, Purchaser must:
  - a. **Deliver the used motor vehicle to the dealer at his regular place of business;**
  - b. **Pay \$50 to the dealer for each repair of a covered item.**

I acknowledge that I have read all of the provisions of this limited warranty and fully understand and accept it. I further acknowledge receipt of a copy of this limited warranty.

Date: \_\_\_\_\_ Purchaser's Signature: \_\_\_\_\_ Dealer's Signature: \_\_\_\_\_

APPENDIX B

APPENDIX B

“As Is” Disclosure Form

This form applies only to the sale of a used passenger motor vehicle which is seven or less model years old and has more than 60,000 miles but less than 100,000 miles and which the consumer wishes to buy “AS IS” as the result of a price negotiation.

If a used motor vehicle is sold “AS IS,” it means a used motor vehicle sold is by a dealer to a consumer without any warranty, either express or implied, and with the consumer being responsible for the cost of any repairs to that motor vehicle. That means that it is being sold WITHOUT the following warranty which is available under the Used Car Lemon Law (N.J.S.A. 56:8-67): 30 days or 1,000 miles, whichever comes first.”

This is the coverage available under the Used Car Lemon Law which is now being waived (given up) by the purchaser:

Parts of the vehicle which are covered by the limited warranty: Under the law only “Covered Item” which include the following components of a used motor vehicle:

- a. 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.
b. Transmission Automatic/Transfer Case—all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets.
c. 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 of slave cylinders.
d. Front Wheel Drive—all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets.
e. Rear Wheel Drive—all internal lubricated parts, propeller shafts, supports and U-joints, axle shaft and bearings, seals and gaskets.

- 2. Dealer’s obligation during the term of the limited warranty: The dealer or its agent, upon failure or malfunction of a covered item during the term of this warranty, shall correct the malfunction or defect, provided the used motor vehicle is delivered to the dealer, (all repairs must be performed by the selling dealer or its agent) at the dealer’s regular place of business, and subject to a deductible amount of \$50 to be paid by the purchaser for each repair of a covered item. If, within the specific warranty period, the dealer or its agent fails to correct a material defect of the used motor vehicle after a reasonable opportunity to repair it, the dealer shall repurchase the vehicle and refund to the purchaser the full purchase price, 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 vehicle. “A reasonable opportunity to repair” is defined at N.J.S.A. 56:8-71 as: (a) The same material defect has been repaired three or more times by the dealer or his agent within the warranty period, but the material defect continues to exist; or (b) The used motor vehicle is out of service by reason of waiting for the dealer to begin or complete repair of the material defect for a cumulative total of 20 or more days during the warranty period.
3. Purchaser’s obligation: To obtain repairs or replacements under the limited warranty, Purchaser must:
a. Deliver the used motor vehicle to the dealer at its regular place of business;
b. Pay a deductible amount of \$50 to the dealer for each repair of a covered item.

If you buy a car “As Is” you will pay the cost of any and all repairs.

Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_

Vehicle Identification Number \_\_\_\_\_ Odometer Reading \_\_\_\_\_

Date \_\_\_\_\_ Purchaser’s Signature \_\_\_\_\_ Co-Purchaser’s Signature (if applicable) \_\_\_\_\_

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**APPENDIX C**

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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)

APPENDIX D

APPENDIX D



New Jersey Office of the Attorney General
Division of Consumer Affairs
Used Car Lemon Law Unit
124 Halsey Street, 7th Floor, P.O. Box 45039
Newark, NJ 07101
E-mail: lemonlaw@dca.lps.state.nj.us
Web site: www.NJConsumerAffairs.com



Certification of Administrative Fees

Also known as, doing business as or trading as
with address if different:

Dealership's
name and
address as
listed on
N.J.M.V.C.
license:

Telephone number: \_\_\_\_\_
(Include area code)

License number issued by the New Jersey Motor Vehicle Commission: \_\_\_\_\_

Corporation code: \_\_\_\_\_

Please note: If there are multiple businesses sharing the same New Jersey Motor Vehicle Commission license number, please submit one certification for each location.

Please provide the following information:

Year: \_\_\_\_\_

Number of Used Cars Sold

January: \_\_\_\_\_ July: \_\_\_\_\_
February: \_\_\_\_\_ August: \_\_\_\_\_
March: \_\_\_\_\_ September: \_\_\_\_\_
April: \_\_\_\_\_ October: \_\_\_\_\_
May: \_\_\_\_\_ November: \_\_\_\_\_
June: \_\_\_\_\_ December: \_\_\_\_\_

Total number of used cars sold for the year: \_\_\_\_\_

Multiply the number of cars sold by 50 cents = X \$ .50

Total amount due = \$ \_\_\_\_\_

Please make checks payable to: N.J. Division of Consumer Affairs

Payment is due by: January 15

Certification

I, \_\_\_\_\_, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to penalties pursuant to N.J.S.A. 56:8-1 et seq.

Signature of representative of preparer

Date signed

Note: Please reproduce this form yearly.

Form 2 (8/05)

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**SUBCHAPTER 27.**  
**NEW JERSEY UNIFORM PRESCRIPTION BLANKS PROGRAM**

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**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.
- c) Until August 18, 2014, licensed healthcare practitioners authorized to write prescriptions for controlled dangerous substances, legend drugs, or other items shall be permitted to issue written prescriptions on NJPBs purchased by them on or before May 18, 2014.
- d) Until August 18, 2014, healthcare facilities licensed pursuant to N.J.S.A. 26:2H-1 et seq., that are authorized to issue prescription blanks shall be permitted to issue written prescriptions on NJPBs purchased by them on or before May 18, 2014.

**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, and the prescriber’s National Provider Identifier (NPI) number, if the prescriber has obtained an NPI number, 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 shall be pre-printed, 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. The licensed prescriber's Federal DEA registration number shall be pre-printed, legibly written, typed, stamped, or otherwise affixed to the NJPB. 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, DEA number, as appropriate to the particular prescription and NPI number, if the prescriber has obtained an NPI number, at the time of transmission of the prescription, and the pharmacist satisfies the requirements of N.J.A.C. 13:39-7.10, 7.11, or 9.27.
- 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 CFR 1306.11(d), (e), (f) and (g), consistent with the requirements set forth at N.J.A.C. 13:39-7.10, 7.11, or 9.27.
- 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 unique 15-digit identifiers of the NJPB pads as provided in N.J.A.C. 13:45A-27.9(g);
  - 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;
  - 5) The subcontractor company name, address, telephone number, ownership, and equipment list and the details regarding the subcontractor's production of any portion of the NJPB, including the security that will be provided, if an applicant intends to subcontract any portion of the NJPBs; and
  - 6) The name and address of a designated agent in New Jersey for service of process, notices and/or orders.
  
- b) All information submitted by the applicant may be verified by on-site inspection by the Division or its authorized representative.

### **13:45A-27.7 MANUFACTURE AND DISTRIBUTION BY APPROVED VENDORS; WITHDRAWAL OR TERMINATION FROM NJPB PROGRAM**

- a) NJPBs shall be manufactured and distributed by vendors approved by the Division pursuant to N.J.A.C. 13:45A-27.6. A vendor who has failed to comply with the requirements of this subchapter or the NJPB program contract specifications shall not be approved for the manufacture or distribution of NJPBs.

- b) A vendor may withdraw from the NJPB program upon 14 days written notice to the Division. A vendor that voluntarily withdraws from the program shall notify, in writing, at least 30 days prior to withdrawal, each licensed prescriber and healthcare facility that ordered NJPBs from the vendor within the previous six months.
- c) A vendor's approval to participate in the NJPB program may be terminated by the Division upon 14 days written notice for any failure to comply with the requirements as set forth in this subchapter or the NJPB program specifications. The Division shall provide the vendor with the opportunity to respond in writing to any allegation of a failure to comply with NJPB program requirements. A vendor whose approval to participate in the NJPB program is terminated by the Division shall notify, in writing, within seven days of such termination, each licensed prescriber and healthcare facility that ordered NJPBs from the vendor within the previous six months.
- d) A vendor that voluntarily withdraws from the NJPB program or is terminated by the Division shall either destroy or forward all materials, computer disks, plates, mechanicals, negatives, and other equipment related to the production or distribution of NJPBs to another approved vendor or the Division within seven days of notice of withdrawal or termination. If the vendor that withdraws or is terminated from the NJPB program does not forward all materials related to the production and distribution of NJPBs to the Division, the vendor shall provide to the Division a certification verifying the destruction or disposition of such materials.
- e) A vendor that voluntarily withdraws from the program or is terminated by the Division shall submit to the Division a list of all licensed prescribers and healthcare facilities that ordered NJPB pads from the vendor within the previous six months. The list shall be submitted within seven days of notice of withdrawal or termination and shall include all the information that is required to be maintained in the vendor database pursuant to N.J.A.C. 13:45A-27.9(h).
- f) Any person manufacturing or distributing NJPBs without approval by the Division shall be subject to prosecution for theft and/or forgery by appropriate criminal authorities pursuant to N.J.S.A. 2C:20-2 and 2C:21-1 et seq.
- g) Any person manufacturing or distributing NJPBs without approval by the Division shall be subject to an action to cease and desist, and any other action authorized by law.

### **13:45A-27.8 NJPB PRINTING SPECIFICATIONS**

- a) Vendors shall manufacture all NJPBs consistent with the requirements set forth in this subchapter and the printing specifications approved by the Division and supplied to each approved vendor. Vendors shall also manufacture all NJPBs using artwork disks supplied by the Division.

- b) Each NJPB shall be:
- 1) Four inches by five and one-half inches in size; and
  - 2) Printed on either 50-pound white offset smooth finish paper with a brightness of at least 85 or 20-pound paper with a brightness of at least 85. The Division will permit printer vendors whose customers request it to use 24- to 28-pound MOCR paper with a brightness of at least 75; the printer vendors shall notify the Division when they use this alternative paper.
- c) The front side of each NJPB shall be printed with the body copy (line work) in PMS 336 green overprinted on a background of five percent of the green (with an allowable variance no darker than PMS 337 green).
- d) The background of the front side of each NJPB shall be a pantograph of the New Jersey State Seal reversed out of the green screen and shall bleed on all four sides. A one and one-half inch State Seal shall be positioned centrally within the pantograph of State seals.
- e) The upper portion of the front side of each NJPB shall include the following information, printed in black ink:
- 1) A unique 15-digit identifier as provided in N.J.A.C. 13:45A-27.9(g), and a linear barcode (Code 128) that matches the unique 15-digit identifier for each blank;
  - 2) The prescriber or healthcare facility name;
  - 3) The prescriber or healthcare facility National Provider Identifier (NPI) number, if the prescriber or healthcare facility has obtained an NPI number;
  - 4) The prescriber or healthcare facility address, which may be an address other than the address of record, but which shall not be a post office box; and
  - 5) The license, certification or authorization number of the licensed prescriber, or the provider number of the healthcare facility.
- f) The prescribing area of the front side of each NJPB shall contain an "Rx" graphic circumscribed within a rectangle, printed in green ink on the left hand side.
- g) The reverse side of each NJPB shall contain a pantograph of the New Jersey State Seal printed in PMS 299 blue screened down to five percent (with an allowable variance up to PMS 300 blue) which shall bleed on all four sides. A one and one-half inch State Seal shall be positioned centrally as on the front, except that it shall not be in reverse.

- h) NJPBs may be printed without the practitioner's name, address, or NPI number, or the unique provider number of the health care facility, provided the practitioner or health care facility utilizes an electronic health records system to imprint such information on the blanks. Such blanks shall be pre-printed with all other information required to appear on an NJPB pursuant to (e) above, and shall comply with all other printing specifications set forth in this section.
- 1) Prior to manufacturing NJPBs without a practitioner's name, address, or NPI number or health care facility unique provider number, a vendor shall document that the practitioner or health care facility utilizes an electronic health records system. Such documentation shall include the name and manufacturer of the electronic health records system utilized by the practitioner or health care facility. NJPBs for physician assistants, certified nurse midwives and advanced practice nurses shall be imprinted only with the name and license number of the prescriber and his or her collaborating/live physician.
- i) A safety hollow "VOID" hidden word feature background that is designed to prevent replication by a black and white or color copier or by a scanner is required on each NJPB. A repeating pattern of a hollow "VOID" shall appear on the face of the NJPB. Areas intended for data entry shall be in lighter tones to permit easy reading of information without compromising copy protection.
- j) Microprint shall be included on each NJPB. The print shall be in 0.5 point or smaller and shall be readable when viewed at five times magnification or greater, but shall be illegible when photocopied or scanned.
- k) Each NJPB shall be printed with friction activated (thermochromic) ink, that shall appear in an Rx logo on the blank. The ink on the face shall change color or disappear when warmed (reacts to body heat). The ink should return to its original color when cooled.
- l) (Reserved)
- m) Each NJPB shall be printed with a complete list of all security features incorporated into the prescription pad in order to minimize tampering. The security features shall be listed visibly in a box, band, or border on the prescription.
- n) Except as provided in (o) below, the front side of an NJPB may be imprinted with the name and license number of more than one licensed prescriber in the same licensing category provided that:
- 1) The name and license number of each licensed prescriber is printed in a seven point font or greater; and

- 2) The NJPB utilizes a printed method, such as a check-off box, to indicate which prescriber issued the prescription.
- o) NJPBs for physician assistants, certified nurse midwives and advanced practice nurses shall be imprinted only with the name and license number of the prescriber and his or her collaborating/ive physician.
- p) NJPBs for healthcare facilities shall be imprinted with sufficient space to allow a prescriber affiliated with the healthcare facility to write out his or her name, title, license number and collaborating/ive physician, if applicable, in the titlehead portion of the NJPB.
- q) At the request of a licensed prescriber or licensed healthcare facility, NJPBs may be pre-printed with the following:
  - 1) Frequently used non-controlled prescription drugs. The prescription shall be printed in a seven point font or greater. The prescription may be pre-printed with several non-controlled drugs, delineated by check-off boxes, provided that separate directions for use, substitution, and refill instructions shall be clearly delineated for each drug prescribed;
  - 2) A drug identifier bar code placed in the medication prescribing area, provided that the bar code shall not conceal any information contained in the medication prescribing area;
  - 3) On the reverse side of the NJPB, any alternative practice address requested by the prescriber, with a check-off box to indicate the practice site at which the medication was prescribed. Vendors may utilize up to one half of the back of the NJPB to pre-print addresses, provided that at least three quarters of one inch remains at the top of the reverse side of the NJPB to permit the fastening of NJPB into pharmacy prescription binders;
  - 4) The statement "NOT VALID FOR CONTROLLED SUBSTANCES" on the face of the NJPB in black ink; and
  - 5) DEA numbers.
- r) In addition to the pre-printed requests set forth in (q) above, NJPBs may be printed to include the following special order requests in black ink only:
  - 1) In the titlehead portion of the NJPB, the individual prescriber CDS or DEA numbers, Medicare Provider Numbers; Specialty Practice License numbers; fax numbers and/or more than one telephone number;

- 2) Special print, logotype lettering to designate the name of the healthcare facility or group practice on the first line of the NJPB titlehead; and
- 3) On the reverse side of the NJPB, a financial interest disclosure statement for licensees of the State Board of Medical Examiners, pursuant to N.J.A.C. 13:35-6.17.
- s) Any request for a pre-printed or special order NJPB not included in (q) or (r) above shall be approved by the Division before the NJPBs are produced.
- t) Vendors shall not produce NJPBs that contain logos, symbols, icons or graphics, or that contain ink that is of a different color than the colors specified in this section, or that contain pre-printed physician initials in the "Do Not Substitute" or "Substitution Permissible" portion of any NJPB.
- u) NJPBs shall be produced in prescription pads of 50 or 100 NJPBs per pad with chipboard backers.

### **13:45A-27.9 VENDOR REQUIREMENTS**

- a) A vendor may produce NJPB pads for a licensed prescriber or licensed healthcare facility consistent with the requirements of N.J.A.C. 13:45A-27.8, provided that:
  - 1) The request for NJPBs is in writing and contains the original signature of the licensed prescriber; and
  - 2) The vendor verifies that the prescriber's license is active and in good standing and the address of record in the Division's database or in notices sent to the vendors. The Division database shall be updated and provided to all authorized vendors on a quarterly basis.
- b) A vendor may produce NJPB pads for a group practice with the name and license number of more than one licensed prescriber, consistent with the requirements of N.J.A.C. 13:45A-27.8, provided that:
  - 1) The request for NJPBs is in writing and contains the original signatures of all the licensed prescribers listed on the NJPB; and
  - 2) The written request designates one licensed prescriber for receipt of the NJPB shipment.
- c) Vendors shall ensure the identity and authority of the prescriber or healthcare facility to utilize NJPBs prior to printing or delivering any order for NJPBs.

- 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 seven versions of NJPBs, each in the following forms:
- 1) A single non-erasable and non-reproducible 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 15-digit identifier for each order of NJPBs from a licensed prescriber or licensed healthcare facility. Re-orders of NJPBs shall contain a unique identifier sequentially greater than the unique identifier assigned to any previous order. The 15-digit unique identifier shall consist of:
- 1) A two-digit alphabetic prefix assigned by the Division, which represents the identity of the vendor;
  - 2) A seven-digit order number, of which three digits represent the vendor's prescriber identifier, and four digits that represent the month and year of the printing order; and
  - 3) A six-digit sequential serial number, beginning with the number 1 and ending with 999,999. A zero shall be used as a placeholder for any unused digits to the left in the sequential serial number.
- 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) 15-digit unique identifier;
    - vii) National Provider Identifier (NPI) number, if the licensed prescriber or healthcare facility has obtained an NPI number;
    - viii) Quantity ordered;
    - ix) Date ordered; and
    - x) Date shipped and delivery service utilized; and
  - 2) Be made available upon request by the Division on an ASCII 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 on a triennial basis.

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**SUBCHAPTER 28.  
MOTOR VEHICLE LEASING**

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**13:45A-28.1 THROUGH 13:45A-28.7 (RESERVED)****13:45A-28.8 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 CHOSE TO WAIVE THAT RIGHT AND SIGN THE LEASE BELOW.

\_\_\_\_\_  
 LESSEES (CONSUMER'S) INITIALS      LESSOR'S (DEALER'S) INITIALS

\_\_\_\_\_  
 CO-LESSEES INITIALS

VEHICLE:    Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_

\_\_\_\_\_  
 VIN Number \_\_\_\_\_

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

ADMINISTRATIVE RULES

LAW AND PUBLIC SAFETY

\$\_\_\_\_\_MSRP (New Vehicle Only)

\$\_\_\_\_\_Acquisition Fee

\$\_\_\_\_\_Total Cost of Options and  
Extras Not Included in MSRP

\$\_\_\_\_\_Security Deposit

\$\_\_\_\_\_Title and Registration Fees  
for:

\$\_\_\_\_\_Optional Warranty or  
Insurance Charge

\_\_\_\_\_First Year of Lease, or

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

\_\_\_\_\_Full Term of Lease

\$\_\_\_\_\_Gross Capitalized Cost of  
Vehicles

\_\_\_\_\_  
(Lessee's and Lessor's Initials)

\$\_\_\_\_\_Capitalized Cost Reduction,  
includes:

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

\$\_\_\_\_\_Initial Cash Payment

\$\_\_\_\_\_Trade-in Credit

\$\_\_\_\_\_Rebates

\$\_\_\_\_\_Total Capitalized  
Cost/Adjusted Capitalized Cost

\_\_\_\_\_  
(Lessee's and Lessor's Initials)

\$\_\_\_\_\_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)

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.

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## SUBCHAPTER 29. PROPERTY CONDITION DISCLOSURE

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### 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

Ye N Unknow  
s o n

- [ ]
- 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:

---



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–

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:

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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:  
 \_\_\_\_\_  
 \_\_\_\_\_

TERMITES/WOOD DESTROYING INSECTS, DRY ROT, PESTS

Yes No Unknown

- [ ] [ ] 16) Are you aware of any termites/wood destroying insects, dry rot, or pests affecting the property?
- [ ] [ ] 17) Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot, or pests?
- [ ] [ ] 18) If "yes," has work been performed to repair the damage?
- [ ] [ ] 19) Is your property under contract by a licensed pest control company? If "yes," state the name and address of the licensed pest control company:  
 \_\_\_\_\_  
 \_\_\_\_\_
- [ ] [ ] 20) Are you aware of any termite/pest control inspections or treatments performed on the property in the past?
- 21) Explain any "yes" answers that you give in this section:  
 \_\_\_\_\_  
 \_\_\_\_\_

STRUCTURAL ITEMS

Yes No Unknown

[ ] [ ]

22) Are you aware of any movement, shifting, or other problems with walls, floors, or foundations, including any restrictions on how any space, other than the attic or roof, may be used as a result of the manner in which it was constructed?

[ ] [ ]

23) Are you aware if the property or any of the structures on it have ever been damaged by fire, smoke, wind or flood?

[ ] [ ]

24) Are you aware of any fire retardant plywood used in the construction?

[ ] [ ]

25) Are you aware of any current or past problems with driveways, walkways, patios, sinkholes, or retaining walls on the property?

[ ] [ ]

26) Are you aware of any present or past efforts made to repair any problems with the items in this section?

27) Explain any "yes" answers that you give in this section. Please describe the location and nature of the problem.

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ADDITIONS/REMODELS

Yes No Unknown

[ ] [ ]

28) Are you aware of any additions, structural changes or other alterations to the structures on the property made by any present or past owners?

[ ] [ ]

29) Were the proper building permits and approvals obtained? Explain any "yes" answers you give in this section:

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PLUMBING, WATER AND SEWAGE

Yes No Unknown

- 30) What is the source of your drinking water?  
 Public  
 Community System  
 Well on Property  
 Other (explain)  
 \_\_\_\_\_  
 \_\_\_\_\_
- 31) If your drinking water source is not public, have you performed any tests on the water? If so, when?  
 \_\_\_\_\_  
 Attach a copy of or describe the results.
- 32) Does the wastewater from any clothes washer, dishwasher, or other appliance discharge to any location other than the sewer, septic, or other system that services the rest of the property?
- 33) When was well installed? \_\_\_\_\_  
 Location of well? \_\_\_\_\_
- 34) Do you have a softener, filter, or other water purification system?  
 Leased  
 Owned
- 35) What is the type of sewage system?  
 Public Sewer  
 Private Sewer  
 Septic System  
 Cesspool  
 Other  
 (explain): \_\_\_\_\_
- 36) If you answered "septic system," have you ever had the system inspected to confirm that it is a true septic system and not a cesspool?
- 37) If Septic System, when was it installed?  
 \_\_\_\_\_  
 Location? \_\_\_\_\_

- ]

38) When was the Septic System or Cesspool last cleaned and/or serviced?
- ]     ]

39) Are you aware of any abandoned Septic Systems or Cesspools on your property?
- ]     ]

39a) If "yes," is the closure in accordance with the municipality's ordinance? (explain):

---
- ]     ]

40) Are you aware of any leaks, backups, or other problems relating to any of the plumbing systems and fixtures (including pipes, sinks, tubs and showers), or of any other water or sewage related problems? If "yes," explain:

---
- ]     ]

41) Are you aware of any shut off, disconnected, or abandoned wells, underground water or sewage tanks, or dry wells on the property?
- ]     ]     ]

42) Is either the private water or sewage system shared? If "yes," explain:

---
- 43) Water Heater:

  - ] Electric
  - ] Fuel Oil
  - ] Gas
- ]    Age of Water Heater \_\_\_\_\_
- ]     ]

43a) Are you aware of any problems with the water heater?
- 44) Explain any "yes" answers that you give in this section:

---

HEATING AND AIR CONDITIONING

Yes    No    Unknown

- 45) Type of Air Conditioning:
  - ] Central one zone
  - ] Central multiple zone
  - ] Wall/Window Unit
  - ] None

46) List any areas of the house that are not air conditioned:

47) What is the age of Air Conditioning System? \_\_\_\_\_

48) Type of heat:

- Electric
- Fuel Oil
- Natural Gas
- Propane
- Unheated
- Other

49) What is the type of heating system? (for example, forced air, hot water or base board, radiator, steam heat)

\_\_\_\_\_

50) If it is a centralized heating system, is it one zone or multiple zones? \_\_\_\_\_

51) Age of furnace \_\_\_\_\_

Date of last service: \_\_\_\_\_

52) List any areas of the house that are not heated:

\_\_\_\_\_

53) Are you aware of any tanks on the property, either above or underground, used to store fuel or other substances?

54) If tank is not in use, do you have a closure certificate?

55) Are you aware of any problems with any items in this section? If "yes," explain:

\_\_\_\_\_  
\_\_\_\_\_

WOODBURNING STOVE OR FIREPLACE

Yes No Unknown

56) Do you have  
 wood burning stove?  
 fireplace?  
 insert?  
 other

- 56a) Is it presently usable?
  - 57) If you have a fireplace, when was the flue last cleaned?
  - 57a) Was the flue cleaned by a professional or non-professional?
  - 58) Have you obtained any required permits for any such item?
  - 59) Are you aware of any problems with any of these items?  
If "yes," please explain:
- 

ELECTRICAL SYSTEM

Yes No Unknown

- 60) What type of wiring is in this structure?  
 Copper  
 Aluminum  
 Other  
 Unknown
- 61) What amp service does the property have?  
 60             100  
 150            200  
 Other          Unknown
- 62) Does it have 240 volt service?  
Which are present  
 Circuit Breakers,  
 Fuses or  Both?
- 63) Are you aware of any additions to the original service? If "yes," were the additions done by a licensed electrician?  
Name and address:  


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- 64) If "yes," were proper building permits and approvals obtained?
- 65) Are you aware of any wall switches, light fixtures or electrical outlets in need of repair?

66) Explain any "yes" answers you give in this section:

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LAND (SOILS, DRAINAGE AND BOUNDARIES)

Yes No Unknown

67) Are you aware of any fill or expansive soil on the property?

68) Are you aware of any past or present mining operations in the area in which the property is located?

69) Is the property located in a flood hazard zone?

70) Are you aware of any drainage or flood problems affecting the property?

71) Are there any areas on the property which are designated as protected wetlands?

72) Are you aware of any encroachments, utility easements, boundary line disputes, or drainage or other easements affecting the property?

73) Are there any water retention basins on the property or the adjacent properties?

74) Are you aware if any part of the property is being claimed by the State of New Jersey as land presently or formerly covered by tidal water (Riparian claim or lease grant)? Explain:

---

75) Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, bulkheads, etc.) or maintenance agreements regarding the property?

76) Explain any "yes" answers to the preceding questions in this section:

---

77) Do you have a survey of the property?

ENVIRONMENTAL HAZARDS

Yes No Unknown

78) Have you received any written notification from any public agency or private concern informing you that the property is adversely affected, or may be adversely affected, by a condition that exists on a property in the vicinity of this property? If "yes," attach a copy of any such notice currently in your possession.

78a) Are you aware of any condition that exists on any property in the vicinity which adversely affects, or has been identified as possibly adversely affecting, the quality or safety of the air, soil, water, and/or physical structures present on this property?  
If "yes," explain:

---

79) Are you aware of any underground storage tanks (UST) or toxic substances now or previously present on this property or adjacent property (structure or soil), such as polychlorinated biphenyl (PCB), solvents, hydraulic fluid, petro-chemicals, hazardous wastes, pesticides, chromium, thorium, lead or other hazardous substances in the soil? If "yes," explain:

---

80) Are you aware if any underground storage tank has been tested? (Attach a copy of each test report or closure certificate if available).

81) Are you aware if the property has been tested for the presence of any other toxic substances, such as lead-based paint, urea-formaldehyde foam insulation, asbestos-containing materials, or others? (Attach copy of each test report if available).

82) If "yes" to any of the above, explain:

---

82a) If "yes" to any of the above, were any actions taken to correct the problem? Explain:

---

83) Is the property in a designated Airport Safety Zone?

DEED RESTRICTIONS, SPECIAL DESIGNATIONS, HOMEOWNERS  
ASSOCIATION/CONDOMINIUMS AND CO-OPS

Yes No Unknown

- 84) Are you aware if the property is subject to any deed restrictions or other limitations on how it may be used due to its being situated within a designated historic district, or a protected area like the New Jersey Pinelands, or its being subject to similar legal authorities other than typical local zoning ordinances?
- 85) Is the property part of a condominium or other common interest ownership plan?
- 85a) If so, is the property subject to any covenants, conditions, or restrictions as a result of its being part of a condominium or other form of common interest ownership?
- 86) As the owner of the property, are you required to belong to a condominium association or homeowners association, or other similar organization or property owners?
- 86a) If so, what is the Association's name and telephone number? \_\_\_\_\_
- 86b) If so, are there any dues or assessments involved? If "yes," how much? \_\_\_\_\_
- 87) Are you aware of any defect, damage, or problem with any common elements or common areas that materially affects the property?
- 88) Are you aware of any condition or claim which may result in an increase in assessments or fees?
- 89) Since you purchased the property, have there been any changes to the rules or by-laws of the Association that impact the property?
- 90) Explain any "yes" answers you give in this section:

\_\_\_\_\_

\_\_\_\_\_

MISCELLANEOUS

Yes No Unknown

91) Are you aware of any existing or threatened legal action affecting the property or any condominium or homeowners association to which you, as an owner, belong?

92) Are you aware of any violations of Federal, State or local laws or regulations relating to this property?

93) Are you aware of any zoning violations, encroachments on adjacent properties, non-conforming uses, or set-back violations relating to this property? If so, please state whether the condition is pre-existing non-conformance to present day zoning or a violation to zoning and/or land use laws.

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94) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid? Are you aware of any violations of zoning, housing, building, safety or fire ordinances that remain uncorrected?

95) Are there mortgages, encumbrances or liens on this property?

95a) Are you aware of any reason, including a defect in title, that would prevent you from conveying clear title?

96) Are you aware of any material defects to the property, dwelling, or fixtures which are not disclosed elsewhere on this form? (A defect is "material," if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction.) If "yes," explain:

---

97) Other than water and sewer charges, utility and cable tv fees, your local property taxes, any special assessments and any association dues or membership fees, are there any other fees that you pay on an ongoing basis with respect to this property, such as garbage collection fees?

98) Explain any other "yes" answers you give in this section:

\_\_\_\_\_

\_\_\_\_\_

**RADON GAS**

**Instructions to Owners**

By law (N.J.S.A. 26:2D-73), a property owner who has had his or her property tested or treated for radon gas may require that information about such testing and treatment be kept confidential until the time that the owner and a buyer enter into a contract of sale, at which time a copy of the test results and evidence of any subsequent mitigation or treatment shall be provided to the buyer. The law also provides that owners may waive, in writing, this right of confidentiality. As the owner(s) of this property, do you wish to waive this right?

Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
		(Initials)	(Initials)

If you responded "yes," answer the following questions. If you responded "no," proceed to the next section.

Yes    No    Unknown

- |                          |                          |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 99) Are you aware if the property has been tested for radon gas? (Attach a copy of each test report if available.)   |
| <input type="checkbox"/> | <input type="checkbox"/> | 100) Are you aware if the property has been treated in an effort to mitigate the presence of radon gas? (If "yes," attach a copy of any evidence of such mitigation or treatment.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 101) Is radon remediation equipment now present in the property?   |
| <input type="checkbox"/> | <input type="checkbox"/> | 101a) If "yes," is such equipment in good working order?   |

MAJOR APPLANCES AND OTHER ITEMS

The terms of any final contract executed by the seller shall be controlling as to what appliances or other items, if any, shall be included in the sale of the property.

Which of the following items are present in the property? (For items that are not present, indicate "not applicable.")

Yes	No	Unknown	Not Applicable	
[ ]	[ ]		[ ]	102) Electric Garage Door Opener
[ ]	[ ]		[ ]	102a) If "yes, are they reversible? Number of Transmitters _____
[ ]	[ ]	[ ]	[ ]	103) Smoke Detectors [ ] Battery [ ] Electric [ ] Both [ ] How many _____ [ ] Carbon Monoxide Detectors How many _____ Location _____
[ ]	[ ]		[ ]	104) With regard to the above items, are you aware that any item is not in working order?  104a) If "yes," identify each item that is not in working order or defective and explain the nature of the problem: _____
[ ]	[ ]		[ ]	105) In-ground pool Above-ground pool Pool Heater Spa/Hot Tub
[ ]	[ ]	[ ]	[ ]	105a) Were proper permits and approvals obtained?
[ ]	[ ]		[ ]	105b) Are you aware of any leaks or other defects with the filter or the walls or other structural or mechanical components of the pool or spa/hot tub?

[ ] [ ]

[ ]

105c) If an in-ground pool, are you aware of any water seeping behind the walls of the pool?

106) Indicate which of the following may be included in the sale? (Indicate Y for yes N for no.)

[ ] Refrigerator

[ ] Range

[ ] Microwave Oven

[ ] Dishwasher

[ ] Trash Compactor

[ ] Garbage Disposal

[ ] In-Ground Sprinkler System

[ ] Central Vacuum System

[ ] Security System

[ ] Washer

[ ] Dryer

[ ] Intercom

[ ] Other

107) Of those that may be included, is each in working order? If "no," identify each item not in working order, explain the nature of the problem:

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### ACKNOWLEDGMENT OF SELLER

The undersigned Seller affirms that the information set forth in this Disclosure Statement is accurate and complete to the best of Seller's knowledge, but is not a warranty as to the condition of the Property. Seller hereby authorizes the real estate brokerage firm representing or assisting the seller to provide this Disclosure Statement to all prospective buyers of the Property, and to other real estate agents. Seller alone is the source of all information contained in this statement. \*If the Seller relied upon any credible representations of another, the Seller should state the name(s) of the person(s) who made the representation(s) and describe the information that was relied upon.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SELLER: \_\_\_\_\_

DATE: \_\_\_\_\_

SELLER: \_\_\_\_\_

DATE: \_\_\_\_\_

EXECUTOR, ADMINISTRATOR, TRUSTEE

(If applicable)

The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this Disclosure Statement.

\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

RECEIPT AND ACKNOWLEDGMENT BY PROSPECTIVE BUYER

The undersigned Prospective Buyer acknowledges receipt of this Disclosure Statement prior to signing a Contract of Sale pertaining to this Property. Prospective Buyer acknowledges that this Disclosure Statement is not a warranty by Seller and that it is Prospective Buyer's responsibility to satisfy himself or herself as to the condition of the Property. Prospective Buyer acknowledges that the Property may be inspected by qualified professionals, at Prospective Buyer's expense, to determine the actual condition of the Property. Prospective Buyer further acknowledges that this form is intended to provide information relating to

the condition of the land, structures, major systems and amenities, if any, included in the sale. This form does not address local conditions which may affect a purchaser's use and enjoyment of the property such as noise, odors, traffic volume, etc. Prospective Buyer acknowledges that they may independently investigate such local conditions before entering into a binding contract to purchase the property. Prospective Buyer acknowledges that he or she understands that the visual inspection performed by the Seller's real estate broker/ broker-salesperson/salesperson does not constitute a professional home inspection as performed by a licensed home inspector.

PROSPECTIVE BUYER: \_\_\_\_\_

DATE: \_\_\_\_\_

PROSPECTIVE BUYER: \_\_\_\_\_

DATE: \_\_\_\_\_

#### ACKNOWLEDGMENT OF REAL ESTATE BROKER/ BROKER- SALESPERSON/SALESPERSON

The undersigned Seller's real estate broker/broker-salesperson/salesperson acknowledges receipt of the Property Disclosure Statement form and that the information contained in the form was provided by the Seller.

The Seller's real estate broker/broker-salesperson/sales-person also confirms that he or she visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller, prior to providing a copy of the property disclosure statement to the buyer.

The Prospective Buyer's real estate broker/broker-salesperson/salesperson also acknowledges receipt of the Property Disclosure Statement form for the purpose of providing it to the Prospective Buyer.

SELLER'S REAL ESTATE BROKER/BROKER-SALES-  
PERSON/SALESPERSON:

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DATE: \_\_\_\_\_

PROSPECTIVE BUYER'S REAL ESTATE BROKER/BROKER-  
SALESPERSON/SALESPERSON:

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DATE: \_\_\_\_\_

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### **SUBCHAPTER 30. VEHICLE PROTECTION PRODUCT WARRANTIES**

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#### **13:45A-30.1 PURPOSE AND SCOPE**

- a) The rules in this subchapter implement the provisions of P.L. 2007, c. 166, concerning vehicle protection product warranties, and shall apply to all warrantors issuing warranties covering vehicle protection products sold or offered for sale in the State.
  
- b) The rules in this subchapter shall apply only to vehicle protection products purchased by a consumer on or after June 15, 2009. Vehicle protection products purchased by a consumer before this date and subsequently transferred to another consumer on or after this date shall not be subject to the provisions of this subchapter.

#### **13:45A-30.2 DEFINITIONS**

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

“Administrator” means a third party, other than the warrantor, who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

“Director” means the Director of the Division 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.

“Incidental costs” means losses and expenses that are specified in the vehicle protection product warranty and are incurred by the warranty holder relating to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees and mechanical inspection fees.

“Vehicle protection product” means a vehicle protection device, system or service that:

1. Is installed on or applied to a vehicle;
2. Is designed to prevent loss or damage to a vehicle from a specific cause or to facilitate the recovery of the vehicle after it has been stolen; and
3. Includes a written warranty by a warrantor that if the vehicle protection product fails to prevent loss or damage to the vehicle from a specific cause or to facilitate the recovery of the vehicle after it has been stolen, the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

The term includes, but is not limited to, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches and electronic, radio and satellite tracking devices. The term does not include a vehicle protection device, system or service that is installed on or applied to a vehicle by the vehicle manufacturer at the vehicle assembly facility.

“Vehicle protection product warrantor” or “warrantor” means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty. Warrantor does not include a licensed insurer.

“Vehicle protection product warranty” or “warranty” means an agreement that is limited to indemnifying the warranty holder for incidental costs, which may be reimbursed under the provisions of the agreement in either a fixed amount specified in the agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder. A “vehicle protection product warranty” is not a contract for insurance.

“Warranty holder” means a person who has purchased a vehicle protection product and has entered into a contractual agreement with a vehicle protection product warrantor that obligates the warrantor to perform under the terms of the vehicle protection product warranty.

“Warranty reimbursement insurance policy” means a policy of insurance issued to a vehicle protection product warrantor to provide reimbursement to the warrantor for payments made under the terms of the insured warrantor’s vehicle protection product warranty, and to pay on behalf of the warrantor, in the event of the warrantor’s nonperformance, all covered obligations incurred by the warrantor under the terms of the warrantor’s vehicle protection product warranty.

### **13:45A-30.3 REGISTRATION AND RENEWAL REQUIREMENTS**

- a) No person shall operate as, or represent or advertise to the public, that the person is a warrantor of vehicle protection products sold or offered for sale in this State unless the person is registered with the Division of Consumer Affairs pursuant to the rules in this subchapter.
- b) An applicant for registration as a warrantor of vehicle protection products shall submit the following to the Division:
  - 1) A completed application for registration, which shall contain:
    - i) The warrantor’s name and any assumed name under which the warrantor does business in the State;
    - ii) The warrantor’s principal office street address and telephone number;
    - iii) The name, address and telephone number of all administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this State;
    - iv) The name, address and telephone number of the insurance company providing the warranty reimbursement insurance policy coverage;
    - v) A certification by the applicant for registration that the applicant is covered by a warranty reimbursement insurance policy by a licensed insurer in accordance with N.J.S.A. 17:17-1 that has filed a complete rating system of rates, rules and forms in accordance with N.J.S.A. 17:29A-7 with the Department of Banking and Insurance at least 30 days prior to the date of application and that the insurer has not been notified by the Department of Banking and Insurance that the filing was disapproved, and that the warranty reimbursement insurance policy meets the requirements of N.J.A.C. 13:45A-30.5; and
    - vi) The name and address of a designated agent in the State for service of process;

- 2) A copy of the applicant's warranty reimbursement insurance policy, which shall comply with the requirements of N.J.A.C. 13:45A-30.5;
  - 3) A copy of the form of warranties issued by the warrantor for sale in this State, which shall comply with the requirements of N.J. A.C. 13:45A-30.4; and
  - 4) A registration fee, as set forth at N.J.A.C. 13:45A-30.9.
- c) A registration issued under this section shall be renewed annually. Applicants for registration renewal shall submit a renewal application containing the information specified in (b) above and the renewal fee set forth at N.J.A.C. 13:45A-30.9.
  - d) Falsification of any information on the registration or renewal application may result in the denial of registration or the suspension or revocation of registration and the assessment of penalties pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.
  - e) A registrant shall notify the Division within 30 days of any changes in the information originally submitted as part of the application for registration. An applicant shall file with the Division revised copies of the registrant's form of warranties or warranty reimbursement insurance policy within 30 days of any changes to the documents.
  - f) The information submitted as part of the registration and renewal applications shall be made available to the public.

### **13:45A-30.4 VEHICLE PROTECTION PRODUCT WARRANTY REQUIREMENTS**

- a) A vehicle protection product warranty sold or offered for sale in this State shall:
  - 1) Identify the warrantor, the seller, the warranty holder and the terms of the sale;
  - 2) Conspicuously and in plain language, as defined in N.J.S.A. 56:12-1 et seq., state in writing:
    - i) The obligations of the warrantor to the warranty holder, including the incidental costs, which may be reimbursed under the provisions of the agreement in either a fixed amount specified in the agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder, any limitations under the warranty, and state that those obligations are guaranteed under a warranty reimbursement insurance policy;
    - ii) The process that shall be followed by the warranty holder in order to make a claim under the warranty, including what evidence will be required to establish proof of loss

- under the warranty and the name, address and telephone number of the warranty administrator, if applicable;
- iii) That if the payment due under the terms of the warranty is not provided by the warrantor within 60 days after proof of loss has been filed pursuant to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement;
  - iv) The name and address of the company issuing the warranty reimbursement insurance policy and, if different, the complete address at which a claim may be filed;
  - v) The process that shall be followed by the warranty holder in order to make a claim under the reimbursement insurance policy;
  - vi) That questions about the warranty may be directed to the Division, and shall include the Division address, phone number and website as 124 Halsey Street, Newark, New Jersey 07101, (973) 504-6200, [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov); and
  - vii) That questions about the warranty reimbursement insurance policy may be directed to the Department of Banking and Insurance, and shall include the Department's address, phone number and website as 20 West State Street, PO Box 325, Trenton, NJ 08625, (800) 446-7467, [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html).
- b) A warranty that meets the requirements set forth in this subchapter shall not constitute insurance. Such warranty shall contain a written disclosure that reads substantially as follows: "THIS AGREEMENT IS A PRODUCT WARRANTY, NOT INSURANCE, AND IS UNDER THE PURVIEW OF THE DIVISION OF CONSUMER AFFAIRS." The disclosure statement shall be in 10-point bold face type.
- c) The warrantor or seller of vehicle protection products shall ensure that a written copy of the warranty is made available to consumers prior to purchase, at the point of sale.

### **13:45A-30.5 WARRANTY REIMBURSEMENT INSURANCE POLICY REQUIREMENTS FOR REGISTRATION OF WARRANTORS**

- a) A vehicle protection product warranty reimbursement insurance policy filed by a warrantor pursuant to N.J.A.C. 13:45A-30.3(b)2 shall meet the following requirements:
- 1) The vehicle protection product warranty reimbursement insurance policy shall be submitted to the Department of Banking and Insurance at least 30 days prior to becoming effective in accordance with N.J.S.A. 17:29AA-6;
  - 2) The vehicle protection product warranty reimbursement insurance policy shall be on an occurrence basis;

- 3) The vehicle protection product warranty reimbursement insurance policy form shall specify that coverage is being provided for the Vehicle Protection Warranty Insurance Reimbursement Program;
  - 4) The vehicle protection product warranty reimbursement insurance policy shall provide reimbursement for or pay on behalf of the warrantor all incidental costs as specified in N.J.S.A. 17:18-19 or provide the service that the warrantor is legally obligated to perform in accordance with the warrantor's contractual obligations under the warranty, as specified in N.J.S.A. 17:18-22;
  - 5) The vehicle protection product warranty reimbursement insurance policy form shall specify that reimbursement or service required by the warranty shall be paid by the insurer directly to the warranty holder if payment is not made by the warrantor within 60 days after proof of loss has been filed;
  - 6) A copy of the vehicle protection product warranty shall be provided with the filing submission to the Department of Banking and Insurance;
  - 7) Cancellation and non-renewal provisions of the policy shall comply with N.J.A.C. 11:1-20; and
  - 8) Any revisions to the vehicle protection product warranty reimbursement insurance policy shall be filed with the Department of Banking and Insurance in accordance with N.J.S.A. 17:29AA-5 and 6.
- b) Upon receipt of a notice of cancellation or non-renewal of the vehicle protection product warranty reimbursement insurance policy, the warrantor shall immediately send the Director a copy of such notice.

### **13:45A-30.6 REGISTRATION EXEMPTIONS**

An administrator or person who sells or solicits a sale of a vehicle protection product, but who is not a warrantor, shall not be required to register as a warrantor under this subchapter in order to act as an administrator of vehicle protection product warranties or to sell vehicle protection products. Consistent with N.J.A.C. 13:45A-30.4(c), however, the seller of vehicle protection products shall ensure that a written copy of the warranty is made available to consumers prior to purchase, at the point of sale.

### **13:45A-30.7 UNLAWFUL PRACTICES**

- a) It shall be an unlawful practice for a person to sell, or offer for sale, a vehicle protection product in this State with a warranty issued by a warrantor that is not registered with the Division pursuant to this subchapter.

- b) It shall be an unlawful practice for a person who is not registered pursuant to this subchapter to offer or issue a vehicle protection product warranty in this State.
- c) It shall be an unlawful practice for a warrantor or seller of vehicle protection products to require a retail purchaser of a motor vehicle to purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale as a condition of sale or financing.

**13:45A-30.8 VIOLATIONS**

Any violations of the rules in this subchapter shall be deemed a violation of the Consumer Fraud Act and may subject a person to the assessment of penalties pursuant to N.J.S.A. 56:8-1 et seq.

**13:45A-30.9 FEES**

- a) The Division shall charge the following non-refundable vehicle protection product warrantor registration fees:
  - 1) Initial registration fee.....\$1,000;
  - 2) Renewal registration fee .....\$1,000.

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**SUBCHAPTER 31.  
PRIVATE PROPERTY AND NON-CONSENSUAL TOWING COMPANIES**

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**13:45A-31.1 PURPOSE AND SCOPE**

The purpose of this subchapter is to implement the provisions of P.L. 2007, c. 193 as amended by P.L. 2009, c. 39 (N.J.S.A. 56:13-7 et seq.), which regulate private property and other non-consensual towing.

**13:45A-31.2 WORDS AND PHRASES DEFINED**

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

“Basic tow” means private property towing and other non-consensual towing as defined in this section and other ancillary services that are components of a routine tow that include the following: arriving at the site from which a motor vehicle will be towed; 15 minutes waiting time; hooking a motor vehicle to, or loading a motor vehicle onto, a tow truck; transporting a motor vehicle to a storage facility; unhooking or unloading a motor vehicle from the tow truck; and situating the motor vehicle in the space in which it will be stored. "Basic tow" also includes issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; issuing an itemized bill; three trips to the motor vehicle

in storage, which, if applicable, include making a vehicle available to an insurance appraiser or adjuster; issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; and retrieving a motor vehicle from storage during the hours in which the storage facility is open.

"Booting" means the act of placing, on a parked motor vehicle, a mechanical device that is designed to prohibit its usual manner of movement.

"Consensual towing" means towing a motor vehicle when the owner or operator of the motor vehicle has consented to have the towing company tow the motor vehicle.

"Consumer" means a natural person.

"Decoupling" means releasing a motor vehicle to its owner or operator when the motor vehicle has been, or is about to be, hooked to or lifted by a tow truck, but prior to the motor vehicle actually having been moved or removed from the property.

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

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

"Flat bed tow truck" means a tow truck designed to transport a motor vehicle by means of raising the motor vehicle from road level up onto a hydraulic bed for transporting purposes.

"Immobilization" includes booting, installing a windshield obstruction device, or other means of impeding the usual manner of movement of a vehicle.

"Motor vehicle" includes all vehicles propelled other than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs, and motorized skateboards. "Motor vehicle" also includes commercial motor vehicles as defined at N.J.S.A. 39:1-1.

"Non-consensual towing" means the towing of a motor vehicle without the consent of the owner or operator of the vehicle, regardless of the reason for the tow. "Non-consensual towing" includes towing a motor vehicle when law enforcement orders the vehicle to be towed whether or not the owner or operator consents. The term also includes immobilization of a motor vehicle.

"Person" means an individual, sole proprietorship, partnership, corporation, limited liability company or any other business entity.

“Private property towing” means non-consensual towing from private property or from a storage facility by a motor vehicle of a motor vehicle that is parked illegally, parked during a time at which such parking is not permitted, or otherwise parked without authorization or the immobilization of, or preparation for moving or removing of, such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of N.J.S.A. 39:4-56.5, provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with N.J.S.A. 39:4-56.6.

“Private property towing company” means a person offering or performing private property towing services.

“Secure storage facility” means a storage facility that is either completely indoors or is surrounded by a fence, wall or other man-made barrier that is at least six feet high and is lighted from dusk to dawn.

“Site clean-up” means the use of absorbents to soak up any liquids from a motor vehicle at the site from which a motor vehicle will be towed.

“Storage facility” means a space at which motor vehicles that have been towed are stored.

“Tarping” means covering a motor vehicle to prevent weather damage.

“Tow truck” means a motor vehicle equipped with a boom or booms, winches, slings, tilt beds or similar equipment designed for the towing or recovery of motor vehicles.

“Towing” means the moving or removing from public or private property or from a storage facility by a motor vehicle of a motor vehicle that is damaged as a result of an accident or otherwise disabled, recovered after being stolen or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted, or otherwise parked without authorization or the immobilization of, or preparation for moving or removing of, such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations, which provide towing services to club or association members shall not be considered a service charge for purposes of this definition.

“Towing company” means a person offering or performing towing services.

“Transmission disconnect” means manipulating a motor vehicle’s transmission, so that the motor vehicle may be towed.

“Vehicle” means any device in, upon or by which a person or property is or may be transported upon a highway.

“Waiting time” means any time a towing company spends at the site from which a motor vehicle will be towed, during which the towing company is prevented from performing any work by another individual, beyond the time included as part of a basic tow.

“Winching” means the process of moving a motor vehicle by the use of chains, nylon slings or additional lengths of winch cable from a position that is not accessible for direct hook up for towing a motor vehicle. “Winching” includes recovering a motor vehicle that is not on the road and righting a motor vehicle that is on its side or upside down, but does not include pulling a motor vehicle onto a flatbed tow truck.

“Window wrap” means any material used to cover motor vehicle windows that have been damaged.

“Windshield obstruction device” means a device that attaches to the outside of a motor vehicle windshield, is designed to block the driver’s vision and impair the ability to operate the vehicle, and requires special removal to avoid damage to the windshield.

### **13:45A-31.3 LIABILITY INSURANCE**

- a) The minimum amounts of insurance a towing company shall secure and maintain are:
  - 1) Motor vehicle liability for a tow truck capable of towing a motor vehicle that is up to 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$750,000, single limit; and
  - 2) Motor vehicle liability for a tow truck capable of towing a motor vehicle that is more than 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$1,000,000, single limit.
- b) A towing company shall also secure and maintain, for every tow truck, insurance that covers garage keeper legal liability in the amount of \$100,000, and “on-hook” coverage, either as an endorsement on the insurance required by (a) above or in the amount of \$ 100,000.
- c) The insurance required by (a) and (b) above shall be obtained from an insurance company authorized to do business in New Jersey.

### **13:45A-31.4 SCHEDULE OF OTHER NON-CONSENSUAL TOWING AND STORAGE SERVICES**

- a) A towing company that engages in private property towing or other non-consensual towing may charge fees for the following services:
  - 1) Basic tow, which shall be a flat fee; and

- 2) In the case of a motor vehicle involved in an accident the following additional services, if actually performed:
  - i) Waiting time in excess of 15 minutes, which shall be calculated based upon each 15 minutes spent at the site from which a motor vehicle will be towed, with fewer than 15 minutes rounded up to 15;
  - ii) Brush cleaning, including collection of debris that can be picked up by hand, which shall be a flat fee;
  - iii) Site clean-up, which shall be calculated based upon the number of bags of absorbent used;
  - iv) Winching, which shall be based upon each one-half hour spent performing winching;
  - v) The use of window wrap, which shall be a flat fee;
  - vi) Tarping, which shall be a flat fee;
  - vii) Transmission disconnect, a flat fee, which shall be charged only if a motor vehicle is locked and the towing company is unable to obtain the keys for the motor vehicle;
  - viii) Use of a flat bed tow truck, a flat fee, which shall be charged if a motor vehicle can be transported only by a flat bed tow truck;
  - ix) Use of special equipment other than the first tow truck to recover a motor vehicle that cannot be recovered by winching or pieces of a motor vehicle that cannot be moved by hand, which may be both a labor and an equipment charge billed in half-hour increments;
  - x) Decoupling;
  - xi) Storage at a towing company's storage facility;
  - xii) More than three trips to the motor vehicle in storage, which may be invoiced as an administrative fee, which shall be a flat fee; and
  - xiii) Releasing a motor vehicle from a towing company's storage facility after normal business hours or on weekends, which shall be a flat fee.
- 3) Removing an immobilization device, such as a booting device or a windshield obstruction device, when no fee is charged, pursuant to (a)1 or 2 above.

- b) A towing company that engages in private property towing or other non-consensual towing shall not charge for the use of a flat bed tow truck if a motor vehicle can safely be towed in an upright position by another type of tow truck, even if the private property towing company chooses to use a flat bed tow truck for the tow.
- c) A towing company that engages in private property towing or other non-consensual towing may charge for the tolls it incurs driving to the site from which a motor vehicle will be towed and while towing the motor vehicle from that site to the towing company's storage facility.
- d) A towing company that engages in private property towing or other non-consensual towing shall calculate storage fees based upon full 24-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 P.M. on one day and the owner of the motor vehicle picks up the motor vehicle before 7:00 P.M. the next day, the towing company shall charge the owner of the motor vehicle only for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing company may charge for two days of storage.
- e) Except as set forth at (f) and (g) below, a towing company shall not charge any fee for private property towing or other nonconsensual towing and related storage services not included in (a) above.
- f) If a motor vehicle is subject to a non-consensual tow authorized by a law enforcement officer, a towing company may charge a reasonable fee for storage of the vehicle.
- g) A towing company may charge a reasonable fee for non-consensual towing or related storage services if the non-consensual towing of a motor vehicle is authorized by a law enforcement officer and the fee has been established by a:
  - 1) Ordinance or resolution enacted by a municipality or other political subdivision in this State; or
  - 2) Contract between a municipality or other political subdivision in this State and the towing company.
- h) If a towing company charges an owner or operator of a motor vehicle a fee for a private property or other non-consensual towing service that is disputed by the person, the parties shall use good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute and the Director determines the fee to be unreasonable pursuant to N.J.A.C. 13:45A-31.5, the Director may order the towing company to reimburse the person for an amount equal to the difference between the charged fee and a reasonable fee, plus interest, as calculated pursuant to (i) below.
- i) The interest rate imposed pursuant to (h) above shall be based on the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year

terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment of the Department of the Treasury.

- j) A towing company performing a private property tow or other non-consensual tow shall take the motor vehicle being towed to the towing company's storage facility having the capacity to receive it that is nearest to the site from which the motor vehicle is towed.
- k) A bill for a private property tow or other non-consensual tow shall include the time at which a towed motor vehicle was delivered to a towing company's storage facility.
- l) A bill for a private property tow or other nonconsensual tow shall include a list of all services provided to a person for which the towing company is charging pursuant to (a) above.
- m) A bill for a flat fee rendered for a private property or other nonconsensual tow shall enumerate the towing services actually performed as part of the basic tow.

### **13:45A-31.5 UNREASONABLE FEES**

- a) A fee for private property towing or other non-consensual towing services, and storage services, shall be presumed unreasonable if it is:
  - 1) More than 25 percent higher than the fee charged by the towing company or storage facility for the same services when provided with the consent of the owner or operator of the motor vehicle; or
  - 2) More than 50 percent higher than the fee charged for such other non-consensual towing or related storage service by other towing companies or storage facilities operating in the municipality from which the vehicle was towed.
- b) Notwithstanding (a) above, a fee will be presumed unreasonable if it exceeds the maximum amount that may be charged for the service according to a schedule of fees set forth in a municipal ordinance adopted pursuant to section 1 of P.L. 1979, c. 101 (N.J.S.A. 40:48-2.49) from the municipality in which the vehicle to be towed is situated.
- c) Notwithstanding (a) and (b) above, there is a rebuttable presumption of reasonableness for a fee charged in connection with non-consensual towing of a motor vehicle if it is authorized by a law enforcement officer and the fee has been established by a:
  - 1) Ordinance or resolution enacted by a municipality or other political subdivision in this State; or
  - 2) Contract between a municipality or other political subdivision in this State and the towing company.

**13:45A-31.6 TOWING MOTOR VEHICLES FROM PRIVATE PROPERTY**

- a) A private property towing company shall not remove a motor vehicle from private property without the consent of the owner or operator of the motor vehicle, unless:
- 1) The private property towing company has entered into a written contract with the owner of the private property to provide private property towing services;
  - 2) The owner of the private property has posted a sign, in a conspicuous place at each vehicular entrance, at least 36 inches high and 36 inches wide stating:
    - i) The purposes for which parking is authorized and the times during which such parking is permitted;
    - ii) That unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;
    - iii) The name, address and telephone number of the private property towing company that will perform the private property towing;
    - iv) The charges for the private property towing and storage of towed motor vehicles;
    - v) The street address of the storage facility where towed motor vehicles can be redeemed after payment of the posted charges and the times during which a motor vehicle may be redeemed; and
    - vi) That a person may contact the Division of Consumer Affairs by calling 1-800-242-5846;
  - 3) The property owner has authorized the private property towing company to remove the motor vehicle; and
  - 4) The private property towing company tows the motor vehicle to a secure storage facility having the capacity to receive it that is nearest to the site from which the motor vehicle is towed.
- b) The provisions of (a) above shall not apply if a motor vehicle is parked:
- 1) On a lot or parcel on which is situated a single-family unit;

- 2) On a lot or parcel on which is situated an owner occupied multi-unit structure of not more than six units; or
  - 3) In front of any driveway or garage entrance where the motor vehicle is blocking access to that driveway or entrance.
- c) The provisions of (a)2 above shall not apply if the private property from which the motor vehicle is to be towed is a residential community in which parking spaces are assigned to community residents and:
- 1) The assigned spaces are clearly marked as such;
  - 2) There is documented approval from the private property owner authorizing the removal of the motor vehicle; and
  - 3) A sign is posted in a conspicuous place at all vehicular entrances that:
    - i) States that unauthorized parking in an assigned space is prohibited;
    - ii) States that unauthorized vehicles will be towed at the owner's expense; and
    - iii) Includes information, or a telephone number, enabling the motor vehicle owner or operator to obtain information as to the location of the towed motor vehicle.
- d) The exemption in (c) above shall not apply to a private parking lot or parcel owned or assigned to a commercial or other nonresidential entity located in the residential community.

### **13:45A-31.7 STORAGE FACILITIES**

- a) A towing company that engages in private property towing or other non-consensual towing shall tow motor vehicles only to storage facilities that:
  - 1) Have business offices open to the public between 8:00 A.M. and 6:00 P.M. at least five days a week; and
  - 2) Are secure storage facilities.
- b) A towing company that engages in private property towing or other non-consensual towing shall provide or arrange for after-hours release of stored motor vehicles.

- c) A towing company that does not release a stored motor vehicle to its owner, or other person authorized to take the motor vehicle, during normal business hours when requested, as required by (a)1 above, shall not charge a fee for after-hours release of the stored motor vehicle.

### **13:45A-31.8 PRIVATE PROPERTY TOWING PRACTICES**

- a) A private property towing company shall not provide any benefit to a person for information regarding a motor vehicle that may be towed from private property.
- b) A private property towing company shall not refuse to release to the owner or operator, a motor vehicle that has been hooked or lifted but not removed from private property.
- c) A private property towing company releasing a motor vehicle pursuant to (b) above may charge the owner or operator of the motor vehicle a decoupling fee; it shall not charge the owner or operator any other fees.

### **13:45A-31.9 RECORDKEEPING**

- a) A towing company that performs private property or other non-consensual towing shall retain, for three years, the following records:
  - 1) Invoices for both consensual towing and non-con-sensual towing services;
  - 2) Job orders;
  - 3) Documentation of waiting time;
  - 4) Logs, which shall include the time when a towed motor vehicle was delivered to the towing company's storage facility from a private property or other non-consensual tow and the date and purpose of each trip to the motor vehicle in storage;
  - 5) Documents relating to private property and other non-consensual towing services performed and rates charged for services; and
  - 6) Any contracts under which the private property towing company is authorized to perform private property towing services.
- b) A towing company that engages in private property towing or other non-consensual towing shall make records retained pursuant to (a) above available for review by the Division upon request.

**13:45A-31.10 VIOLATIONS**

A violation of any of the rules in this subchapter shall be considered an unlawful practice under P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.).

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**SUBCHAPTER 32.  
PRESCRIPTION DRUG RETAIL PRICE LIST**

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**13:45A-32.1 PRESCRIPTION DRUG RETAIL PRICE LIST; MAINTENANCE; POSTING OF NOTICE**

- a) A pharmacy shall maintain a prescription drug retail price list containing the names of the 150 most frequently prescribed drugs in their most commonly prescribed dosage, made available to the pharmacy by the Director of the Division of Consumer Affairs pursuant to N.J.S.A. 45:14-82. The prescription drug retail price list shall contain the retail price charged by the pharmacy for each listed drug's most commonly prescribed dosage, in quantities of 30, 60 or 90 units, if applicable, and shall include the drug's price per unit. The date when the list was last updated by the pharmacy shall be noted on the list.
- b) A pharmacy shall conspicuously post an advisory statement prepared by the Division of Consumer Affairs and available for download on the Division's website at [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov), at or adjacent to the prescription dispensing area, in the patient waiting area or in any area where prescription drugs are delivered, which is accessible by the general public, notifying consumers about the following:
  - 1) The availability of the pharmacy's prescription drug retail list, the consumer's right to ask for the current retail price that the pharmacy is charging for any drug on the price list and the availability of additional prescription drug price information from the Division of Consumer Affairs;
  - 2) The right to obtain price comparison information for generic prescription drugs; and
  - 3) The need to tell the pharmacist and the consumer's healthcare practitioner about all medications the consumer may be taking and to ask the pharmacist and the healthcare practitioner how to avoid harmful interactions between any drugs they may be taking.
- c) A pharmacy shall make a written prescription drug retail price list available to consumers for review upon request. The list shall be printed in at least 12-point type.
- d) A pharmacy may change the retail price for any of the drugs included on its prescription drug retail price list at any time, provided the prescription drug retail price list is updated as soon as possible, but at least weekly, to reflect the new retail price charged by the pharmacy.

- e) The Director of the Division of Consumer Affairs shall refer any pharmacy that fails to comply with this section to the Board of Pharmacy for appropriate disciplinary action.

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### **SUBCHAPTER 33. COMPASSIONATE USE MEDICAL MARIJUANA**

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#### **13:45A-33.1 PURPOSE AND SCOPE**

- a) The rules in this subchapter implement the provisions of N.J.S.A. 45:1-45.1 (Section 11 of P.L. 2009, c. 307), which require the Division of Consumer Affairs to collect information concerning the dispensing of medical marijuana pursuant to the New Jersey Compassionate Use Medical Marijuana Act.
- b) The rules in this subchapter shall apply to physicians and alternative treatment centers authorized to participate in the distribution of medical marijuana pursuant to rules adopted by the State Board of Medical Examiners and by the Department of Health and Senior Services.

#### **13:45A-33.2 PHYSICIAN REPORTING REQUIREMENTS**

- a) A physician who provides certifications and written instructions for patient use of medical marijuana shall electronically transmit the following information to the Division of Consumer Affairs within one week of issuing written instructions to a patient and/or caregiver:
  - 1) Physician name, address and telephone number;
  - 2) Physician license number and CDS registration number;
  - 3) Patient name, address, telephone number and date of birth;
  - 4) If applicable, caregiver name, address, telephone number and date of birth;
  - 5) Patient or, if applicable, caregiver registry identification number;
  - 6) Alternative treatment center designated in the written instructions;
  - 7) Date written instructions issued;
  - 8) Patient diagnosis; and
  - 9) Quantity of marijuana authorized under the written instructions.

**13:45A-33.3 ALTERNATIVE TREATMENT CENTER REPORTING REQUIREMENTS**

- a) An alternative treatment center permitted by the Department of Health and Senior Services shall electronically transmit the following information to the Division of Consumer Affairs within one week of dispensing medical marijuana to a qualifying patient or caregiver:
  - 1) Alternative treatment center permit number;
  - 2) Patient name, address, telephone number and date of birth;
  - 3) If applicable, caregiver name, address, telephone number and date of birth;
  - 4) Physician name, address and telephone number;
  - 5) Physician license number and CDS registration number;
  - 6) Patient or, if applicable, caregiver registry identification number;
  - 7) Quantity of marijuana dispensed;
  - 8) Date dispensed; and
  - 9) Source of payment.

**13:45A-33.4 ELECTRONIC FORMAT REQUIRED FOR THE TRANSMISSION OF INFORMATION; EXEMPTION**

- a) Physicians and alternative treatment centers shall transmit the information required by N.J.A.C. 13:45A-33.2 and 33.3 electronically in a format specified by Division of Consumer Affairs (Division).
- b) In the event that a physician or alternative treatment center cannot electronically transmit the required information to the Division, the physician or alternative treatment center shall request a waiver of the electronic transmission requirements of this subchapter from the Division. The waiver request shall be in writing and shall document the reasons for the inability to electronically transmit the required information. The waiver request shall also specify the format the physician or alternative treatment center requests permission to use for submission of required information to the Division.

**13:45A-33.5 FREQUENCY REQUIREMENTS FOR TRANSMITTING INFORMATION; CONFIDENTIALITY**

- a) Physicians and alternative treatment centers shall transmit required information to the Division of Consumer Affairs (Division) at least once a week on the day and at the time specified by the Division.
- b) If a physician or alternative treatment center discovers an omission or error in the transmitted information, the physician or alternative treatment center shall immediately notify the Division and shall submit the omitted or corrected information to the Division during the next scheduled reporting period after the discovery.
- c) Physicians and alternative treatment centers shall transmit required information in such a manner as to ensure the confidentiality of patient information in compliance with all Federal and State laws, rules and regulations, including the Federal Health Insurance Portability and Accountability Act of 1996, PL 104-191.

**13:45A-33.6 WAIVER**

The Division of Consumer Affairs (Division) may waive the reporting requirements for physicians and/or alternative treatment centers imposed under this subchapter if the Division is able to obtain the requested information from the Department of Health and Senior Services in an electronic format.

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**SUBCHAPTER 34.  
INTERNATIONAL LABOR MATCHING ORGANIZATIONS AND  
INTERNATIONAL MATCHMAKING ORGANIZATIONS**

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**13:45A-34.1 PURPOSE AND SCOPE**

- a) The rules in this subchapter implement the provisions of P.L. 2009, c.152, N.J.S.A. 56:8-185 et seq., concerning international labor matching organizations and international matchmaking organizations, as defined in N.J.A.C. 13:45A-34.2, and establish procedures for the registration of such organizations.
- b) The rules in this subchapter shall apply to owners, prospective owners and employees of international labor matching organizations and international matchmaking organizations that are required to register with the Division pursuant to N.J.S.A. 56:8-185 et seq., and N.J.A.C. 13:45A-34.2, and to owners, prospective owners and employees of such organizations that choose to voluntarily register with the Division.

**13:45A-34.2 DEFINITIONS**

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

“Client” means a resident of New Jersey for whom an international labor matching organization seeks to locate labor assistance from citizens of a foreign country residing outside of the United States, or for whom an international matchmaking organization renders dating, matrimonial or social referral services involving citizens of a foreign country residing outside of the United States.

“Criminal history record background check” means a determination whether a person has a criminal record by cross-referencing that person's name and fingerprints with those on file with the Federal Bureau of Investigation, Identification Division, and the State Bureau of Identification in the Division of State Police.

“Director” means the Director of the Division 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.

“Doing business in the United States” means that the international labor matching organization or the international matchmaking organization has a physical business office in the United States.

“International labor matching organization” means a corporation, partnership, sole proprietorship, or other entity doing business in the United States, whose primary purpose is to offer to New Jersey residents, opportunities to locate labor assistance from foreign recruits residing outside of the United States for the purpose of bringing the foreign recruit to New Jersey. The phrase “whose primary purpose is to offer to New Jersey residents” means that for the previous fiscal year, more than 50 percent of the organization’s business consisted of clients seeking labor assistance who resided in New Jersey and that more than 50 percent of the organization’s business consisted of placements for labor assistance sought by the New Jersey clients that were for foreign recruits.

“International matchmaking organization” means a corporation, partnership, sole proprietorship, or other entity doing business in the United States whose primary purpose is

offering, including to New Jersey residents, dating, matrimonial, or social referral services involving citizens of foreign countries who are not residing in the United States, such as: (1) an exchange of names, telephone numbers, addresses, or statistics; (2) a selection of photographs; or (3) providing a social environment for introducing clients to recruits in a country other than the United States. The term shall not include an on-line personal services organization. The phrase “whose primary purpose is offering, including to New Jersey residents,” means that for the previous fiscal year, more than 50 percent of the organization’s business consisted of placements for dating, matrimonial, or social referral services involving foreign recruits and that more than 10 percent of such placements are for New Jersey clients.

“On-line personal services organization” means a corporation, partnership, sole proprietorship, or other entity that does business in the United States and for profit provides an on-line forum for persons to post personal profiles as a means of self-referral for dating, matrimonial, or other social purpose.

“Employee” means an employee of an international labor matching organization or international matchmaking organization whose job description or functional duties entail the solicitation of, or access to, personal information of New Jersey clients and recruits.

“Recruit” means a citizen of a foreign country residing outside of the United States who is recruited by an international labor matching organization for the purpose of bringing the laborer to New Jersey, or by an international matchmaking organization for the purpose of providing dating, matrimonial or social referral services.

### **13:45A-34.3 REGISTRATION**

- a) On or before November 4, 2012, an international labor matching organization or an international matchmaking organization, as defined in N.J.A.C. 13:45A-34.2, shall apply for registration with the Division of Consumer Affairs, and to have each owner, prospective owner and employee of the organization certified by the Division as eligible to provide labor matching or matchmaking services to New Jersey residents. The organization shall be permitted to continue offering its services to New Jersey residents for 90 days after the date of application. If the organization has not satisfied the criteria for registration within 90 days after application, the organization may submit a written request for extension to the Division. An extension granted under this section shall not exceed 90 days.
- b) An organization that performs the services of an international labor matching organization or an international matchmaking organization but is not required to register with the Division

on August 6, 2012 because the organization is not an international labor matching organization or an international matchmaking organization as defined in N.J.A.C. 13:45A-34.2, shall apply for registration with the Division within 90 days after the close of the fiscal year in which the organization satisfied the criteria in N.J.A.C. 13:45A-34.2. The organization shall be permitted to continue offering its services to New Jersey residents for 90 days after the date of application. If the organization has not completed the registration process within 90 days after application, the organization may submit a written request for extension to the Division. An extension granted under this section shall not exceed 90 days.

- c) The Division shall maintain a list of all international labor matching organizations and international matchmaking organizations registered under the rules of this subchapter and shall make this list available to the public on the Division's website at [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov).
- d) An organization that performs the services of an international labor matching organization or an international matchmaking organization but is not required to register with the Division because the organization is not an international labor matching organization or an international matchmaking organization as defined in N.J.A.C. 13:45A-34.2 may voluntarily register with the Division. An organization voluntarily registering with the Division shall comply with all requirements in this subchapter and shall be included in the list of organizations maintained by the Division and made available to the public pursuant to (c) above.
- e) An international labor matching organization or an international matchmaking organization applying for registration shall submit the following to the Division:
  - 1) A completed application for registration, which shall contain:
    - i) The name, residence and business address of all owners and prospective owners;
    - ii) The name and residence address of all employees; and
    - iii) The name and business address of a designated agent in New Jersey for service of process.

- 2) Written consent for the initiation of a criminal history record background check from each owner, prospective owner and employee named in the application to determine whether any disqualifying criminal convictions, consistent with N.J.A.C. 13:45A-34.4, exist. A separate, signed consent form shall be submitted for each owner, prospective owner or employee. Each owner, prospective owner or employee shall also submit his or her fingerprints. The criminal history background check shall be conducted by the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation.
  - i) The Division shall not certify as eligible to own an international labor matching organization or international matchmaking organization, or as eligible to be employed by such organization, any owner, prospective owner or employee who refuses to consent to, or otherwise refuses to cooperate in, the securing of a criminal history record background check.
- 3) The criminal history record background check fee payable to the State vendor for digital fingerprinting for each owner, prospective owner and employee named in the application; and
- 4) Registration fee of \$100.00 payable to the Division.
- f) The Division shall issue a registration to an international labor matching organization or an international matchmaking organization, and shall issue to each owner, prospective owner and employee of the organization a certification that the individual is eligible to provide labor matching or matchmaking services in New Jersey, following receipt of the results of a criminal history record background check revealing that the individuals have not been convicted of a disqualifying offense, as set forth in N.J.A.C. 13:45A-34.4.
- g) An international labor matching organization or international matchmaking organization shall file a supplemental registration application with the Division immediately upon hiring a new employee or obtaining a new owner. The supplemental application shall include written consent from the new employee or new owner for the initiation of a criminal history record background check and shall be accompanied by the criminal history record background check fee, unless the new employee or new owner has previously been certified by the Division as eligible to be employed by, or eligible to own, an international labor matching organization or international matchmaking organization. Unless the new employee or new owner has been previously certified by the Division, the new employee or new owner shall

not provide labor matching or matching services to New Jersey residents until being certified by the Division to provide such services.

- h) Falsification of any information on the registration application may result in the denial of registration, or the suspension or revocation of registration and the assessment of penalties pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.
- i) An international labor matching organization or an international matchmaking organization shall notify the Division of any changes in the information submitted as part of organization's registration and/or supplemental registration application within 10 business days of such change.
- j) No international labor matching organization or international matchmaking organization required to register shall operate unless registered with the Division.

#### **13:45A-34.4 DISQUALIFYING CRIMES; PETITION FOR REVIEW**

- a) A person whose criminal history record background check reveals a conviction for any of the following crimes and offenses shall be disqualified from owning or being employed by an international labor matching organization or an international matchmaking organization:

- 1) If the conviction was in New Jersey for a crime:

- i) Involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq., N.J.S.A. 2C:12-1 et seq., N.J.S.A. 2C:13-1 et seq., N.J.S.A. 2C:14-1 et seq., or N.J.S.A. 2C:15-1 et seq.;
- ii) Against others, including family and children, as set forth N.J.S.A. 2C:24-1 et seq., or of domestic violence as set forth in N.J.S.A. 2C:25-17 et seq.;
- iii) Involving theft as set forth in N.J.S.A. 2C:20-1 et seq.;
- iv) Involving any controlled dangerous substance or analog as set forth in N.J.S.A. 2C:35-1 et seq., except N.J.S.A. 2C:35-10.a.(4);
- v) Involving terrorism as set forth in N.J.S.A. 2C:38-1 et seq.; or

- vi) Involving prostitution and related offenses as set forth in N.J.S.2C:34-1; or
  - 2) If the conviction was in another state or jurisdiction for conduct constituting any of the crimes described in i. above under equivalent statutes in that state or jurisdiction.
- b) An owner, prospective owner or employee who is notified by the Division that his or her criminal history record background check has revealed a disqualifying criminal conviction may, within 30 days after receipt of that notice, petition the Division for a review of his or her application. The request shall be in writing and shall cite reasons to substantiate the request for review, which may include, challenging the accuracy of the reported criminal record information or the submission of clear and convincing evidence of rehabilitation.
- c) In determining whether an applicant has affirmatively demonstrated rehabilitation, the Director shall consider the following:
  - 1) The nature and seriousness of the offense;
  - 2) The circumstances under which the offense occurred;
  - 3) The date of the offense;
  - 4) The age of the person when the offense was committed;
  - 5) Whether the offense was repeated;
  - 6) Social conditions which may have contributed to the offense; and
  - 7) Any evidence of rehabilitation, including good conduct in the community; counseling, psychological or psychiatric treatment; additional academic or vocational training; or personal recommendations.
- d) Within 30 days of being notified by the Division that an owner or employee's criminal history record background check has revealed a disqualifying criminal conviction, an international labor matching or matchmaking organization shall submit a certification that the owner or employee is no longer associated with the organization. Failure to comply with the

requirements of this section may result in the suspension or revocation of the organization's registration and/or the imposition of penalties pursuant to N.J.S.A. 45:1-21 et seq.

### **13:45A-34.5 INFORMATION PROVIDED TO RECRUITS**

- a) An international labor matching organization or an international matchmaking organization shall advise a recruit in writing, in the recruit's native language, that the recruit has the right to ask for criminal history record information on all clients he or she may be placed in contact with.
  - 1) Upon receipt of a request for information from a recruit, an international labor matching organization or an international matchmaking organization shall refrain from providing any further services to the recruit or to the client to facilitate future interaction between the recruit and the client until the client has submitted to the organization a complete transcript of his or her criminal history record obtained from the State Bureau of Identification in the Division of State Police, and the organization has provided this information to the recruit. The client shall bear the cost for the criminal history record background check, including all costs of administering and processing the check.
- b) An international labor organization or an international matchmaking organization shall provide a recruit in writing with the telephone numbers for the Statewide Domestic Violence Hotline, available at <http://www.state.nj.us/dca/divisions/dow/programs/sdvh.html>, and the National Domestic Violence Hotline, available at <http://www.thehotline.org/>, and shall direct the recruit to the booklet entitled "Domestic Violence: The Law and You" available from the New Jersey Department of Community Affairs, Division on Women, at [http://www.state.nj.us/dca/divisions/dow/publications/pdfs/dvthelawandyou\\_english.pdf](http://www.state.nj.us/dca/divisions/dow/publications/pdfs/dvthelawandyou_english.pdf). An international labor matching organization and an international matchmaking organization shall make the booklet available in the native language of the recruit if requested.

### **13:45A-34.6 RECORDKEEPING**

- a) An international labor matching organization or an international matchmaking organization shall retain a copy of the organization's registration. The organization shall also retain a copy of the certification of each owner, prospective owner and employee for the duration of the owner, prospective owner or employee's affiliation with the organization. The certifications shall be made available upon request to members of the general public.

- b) An international labor matching organization or an international matchmaking organization shall maintain its business records for a minimum of three fiscal years. Such records shall be made available to the Division upon request.

### **13:45A-34.7 VIOLATIONS**

Any violations of the rules in this subchapter shall be deemed a violation of the Consumer Fraud Act and may subject an organization or person to the assessment of penalties pursuant to N.J.S.A. 56:8-1 et seq.

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## **SUBCHAPTER 35. PRESCRIPTION MONITORING PROGRAM**

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### **13:45A-35.1 PURPOSE AND SCOPE**

a) The rules in this subchapter implement the provisions of P.L. 2007, c. 244, as amended by P.L. 2015, c. 74 (N.J.S.A. 45:1-44 through 51), establishing a Prescription Monitoring Program (PMP) in the Division of Consumer Affairs.

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

1) A pharmacy filling prescriptions in New Jersey in an outpatient setting for a Schedule II, III, IV, or V controlled dangerous substance or for human growth hormone.

i) For purposes of this subchapter, “human growth hormone” means somatrem, somatropin, or any analogue of either of them, consistent with 21 U.S.C. § 333(e)4;

2) An out-of-State pharmacy registered with the Board of Pharmacy pursuant to N.J.A.C. 13:39-4.20 that ships, mails, distributes, or delivers a Schedule II, III, IV, or V controlled dangerous substance or human growth hormone into New Jersey in an outpatient setting pursuant to a prescription;

3) A person authorized to receive PMP information from the Division under N.J.S.A. 45:1-46 and N.J.A.C. 13:45A-35.6;

- 4) A pharmacist employed by a current pharmacy permit holder;
  - 5) A practitioner who has a current State Controlled Dangerous Substance (CDS) registration;
  - 6) A licensed health care professional authorized by a practitioner to access the prescription monitoring information, subject to the limitations and requirements of this subchapter;
  - 7) A medical resident authorized by a faculty member of a medical teaching facility to access the prescription monitoring information, subject to the limitations and requirements of this subchapter;
  - 8) A dental resident authorized by a faculty member of a dental teaching facility to access the prescription monitoring information, subject to the limitations and requirements of this subchapter;
  - 9) A certified medical assistant authorized by a practitioner to access the prescription monitoring information, subject to the limitations and requirements of this subchapter; and
  - 10) A registered dental assistant authorized by a licensed dentist to access the prescription monitoring information, subject to the limitations and requirements of this subchapter.
- c) The reporting requirements of this subchapter shall not apply to the direct administration of a controlled dangerous substance or human growth hormone to the body of an ultimate user; or to the administration or dispensing of a controlled dangerous substance that is otherwise exempted as determined by the Secretary of Health and Human Services pursuant to the National All Schedules Prescription Electronic Reporting Act of 2005, Pub.L. 109-60.
- d) The reporting requirements of this subchapter shall not apply to any prescriptions filled by a pharmacy for a Schedule II, III, IV, or V controlled dangerous substance or for human growth hormone dispensed to an inpatient at a hospital, long-term care, or other facility in which the resident is provided with 24-hour nursing care.

**13:45A-35.2 DEFINITIONS**

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

“Abuse” means a maladaptive pattern of drug use that results in harm or places the individual at risk of harm. Abuse of a prescription medication involves its use in a manner that deviates from approved medical, legal, and social standards, generally to achieve a euphoric state (high), to sustain opioid dependence (that is opioid addiction), or that is other than the purpose for which the medication was prescribed.

“Acute pain” means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma, or disease and is generally persistent for up to one month, but no more than three months.

“Acute trauma” means serious illness and traumatic injuries requiring immediate short-term medical care to relieve suffering and minimize morbidity and mortality risk.

“CDS registration” means registration with the Division of Consumer Affairs to manufacture, distribute, dispense, or conduct research with controlled dangerous substances issued pursuant to P.L. 1970, c. 226 § 11 (N.J.S.A. 24:21-11).

“Certified medical assistant” means a person who is a graduate of a post-secondary medical assisting educational program accredited by the American Medical Association’s Committee on Allied Health Education and Accreditation (CAHEA), or its successor, the Accrediting Bureau of Health Education Schools (ABHES), or its successor, or any accrediting agency recognized by the U.S. Department of Education, which educational program includes, at a minimum, 600 clock-hours of instruction, and encompasses training in the administration of intramuscular and subcutaneous injections, as well as instruction and demonstration in: pertinent anatomy and physiology appropriate to injection procedures; choice of equipment; proper technique, including sterile technique; hazards and complications; and emergency procedures; and who maintains current certification or registration, as appropriate, from the Certifying Board of the American Association of Medical Assistants (AAMA), the National Center for Competency Testing (NCCT), the American Medical Technologists (AMT), or any other recognized certifying body approved by the Board of Medical Examiners. A “clock-hour” shall be calculated at the rate of one hour for every 50 minutes of in-class participation.

“Chronic pain” means pain that persists for three or more consecutive months and after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically.

“Controlled dangerous substance” means any substance that is listed in Schedules II, III, and IV of the schedules provided under the “New Jersey Controlled Dangerous Substances Act,” P.L. 1970, c. 226 (N.J.S.A.24:21-1 et seq.). Controlled dangerous substance also means any substance that is listed in Schedule V under the “New Jersey Controlled Dangerous Substances Act” when the Director has determined that reporting Schedule V substances is required by Federal law, regulation, or funding eligibility, consistent with N.J.A.C. 13:45H.

“Current patient” means any person who is the recipient of a professional service rendered by the practitioner for purposes of diagnosis, treatment, or a consultation related to treatment.

“Data Collection Manual” means the New Jersey Prescription Monitoring Program Data Collection Manual, Version 2.1, incorporated herein by reference, as amended and supplemented, and available on the New Jersey Prescription Monitoring Program website at [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov).

“Delegate” means a person authorized to access the PMP information of the practitioner’s current or new patient on behalf of a practitioner who is an authorized user of the PMP.

“Dental resident” means a person who practices dentistry as a resident pursuant to N.J.S.A. 45:6-20 and, pursuant to N.J.A.C. 13:30-1.3, is a graduate of a dental school approved by the Commission on Dental Accreditation and has passed Part I and Part II of the National Board Dental examination and obtained a resident permit from the New Jersey Board of Dentistry.

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

“Diversion” means the redirection of a prescription drug from its lawful purpose for illicit use.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Emergency department of a general hospital” means an emergency department of a hospital (approved general) licensed and regulated by the Department of Health under N.J.A.C. 8:43G.

“Hospice” means a hospice as defined in N.J.A.C. 8:42C-1.2, which is licensed by the New Jersey State Department of Health.

“Licensed health care professional” means a registered nurse, licensed practical nurse, or dental hygienist licensed pursuant to Title 45 of the Revised Statutes. A “licensed health care professional” also means an advanced practice nurse or a physician assistant who access the PMP as a delegate.

“Medical resident” means a graduate physician who is authorized to practice medicine and surgery by means of a valid permit issued by the State Board of Medical Examiners to a person authorized to engage in the practice of medicine and surgery while in the second year or beyond of a graduate medical education program pursuant to N.J.A.C. 13:35-1.5. For purposes of this subchapter, a medical resident shall not include a licensed physician participating in a graduate medical education program.

“Misuse” means the use of a prescribed medication in a manner that is contrary to directions, regardless of whether a harmful outcome occurs.

“New patient” means a person who for the first time seeks from or is rendered professional services by the practitioner for purposes of diagnosis, treatment, or a consultation related to a treatment.

“Pharmacy permit holder” means an individual or business entity that holds a permit to operate a pharmacy practice site pursuant to P.L. 2003, c. 280 (N.J.S.A. 45:14-40 et seq.).

“Practitioner” means an individual currently licensed, registered, or otherwise authorized by this State or another state to prescribe drugs in the course of professional practice.

“Registered dental assistant” is a person who has fulfilled the requirements for registration established by the Dental Auxiliaries Act, P.L. 1979, c. 46 (N.J.S.A. 45:6-48 et seq.), as set forth in N.J.A.C. 13:30-2.2, and works under the direct supervision of a licensed dentist.

**13:45A-35.3 PHARMACY REPORTING REQUIREMENTS; ELECTRONIC FORMAT**

a) A pharmacy filling a prescription for a Schedule II, III, IV, or V controlled dangerous substance or for human growth hormone, as defined in N.J.A.C. 13:45A-35.1, in an outpatient setting, shall collect and electronically transmit to the Division's PMP vendor on a daily basis information for each prescription, as specified in the New Jersey PMP Data Collection Manual.

1) For purposes of this section, in accordance with N.J.S.A. 45:1-45 and as specified in the Data Collection Manual, the following information shall be collected and transmitted to the Division:

- i) The surname, first name, and date of birth of the patient for whom the medication is intended;
- ii) The street address and telephone number of the patient;
- iii) The date that the medication is dispensed;
- iv) The number or designation identifying the prescription and the National Drug Code of the drug dispensed;
- v) The pharmacy permit number of the dispensing pharmacy;
- vi) The prescribing practitioner's name and Drug Enforcement Administration registration number;
- vii) The name, strength, and quantity of the drug dispensed, the number of refills ordered, and whether the drug was dispensed as a refill or a new prescription;
- viii) The date that the prescription was issued by the practitioner;
- ix) The source of payment for the drug dispensed; and
- x) Such other information, not inconsistent with Federal law, regulation, or funding eligibility requirements, as the Director determines necessary and that is set forth in the Data Collection Manual.

**13:45A-35.4 REQUESTS FOR EXEMPTION OR WAIVER**

a) A pharmacy that does not dispense Schedule II, III, IV, or V controlled dangerous substances or human growth hormone, or that dispenses Schedule II, III, IV, or V controlled dangerous substances or human growth hormone only to inpatients in a hospital, long-term or other facility in which the residents are provided with 24-hour nursing care, shall apply to the Division for an exemption from the PMP on a form supplied by the Division and available at [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov).

b) A pharmacy may apply for a waiver of the PMP electronic reporting requirements contained in this subchapter or in the Data Collection Manual for good cause, such as technological limitations or financial hardship, by filing a written application for waiver with the Division on a form supplied by the Division and available at [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov). The application for waiver shall document the reasons for the pharmacy's inability to comply with the electronic submission requirement and shall specify the format the pharmacy proposes to use to submit required information to the PMP vendor.

c) An application for exemption or waiver request granted pursuant to this section shall be valid until June 30 of the following year unless otherwise limited by the Division. If the conditions that necessitated the exemption or waiver are corrected or no longer exist, the pharmacy shall notify the Division, and the exemption or waiver shall become void. If the reasons necessitating the exemption or waiver persist, the pharmacy shall, by June 30 of each year as part of its pharmacy permit or out-of-State pharmacy registration annual renewal application, apply to the Division for a renewal of the exemption or waiver.

**13:45A-35.5 FREQUENCY REQUIREMENTS FOR TRANSMITTING INFORMATION;  
CONFIDENTIALITY**

a) A pharmacy shall transmit prescription information required by N.J.A.C. 13:45A-35.3 to the PMP vendor on a daily basis pursuant to the schedule established in the Data Collection Manual. Omissions and errors in the transmitted information shall be corrected and submitted as provided in the Data Collection Manual.

b) A pharmacy shall transmit the required prescription information in such a manner as to ensure the confidentiality of patient information in compliance with all Federal and State laws, rules, and regulations, including the Federal Health Insurance Portability and Accountability Act of 1996 and the Federal health privacy rule set forth at 45 CFR Parts 160 and 164.

**13:45A-35.6 ACCESS TO PRESCRIPTION MONITORING INFORMATION;  
RETENTION OF INFORMATION**

a) The Division shall provide online access to prescription monitoring information submitted to the PMP to the following:

1) A pharmacist who is employed by a current pharmacy permit holder and is authorized to dispense controlled dangerous substances or human growth hormone who certifies that the request is for the purpose of providing health care to or verifying information with respect to a new or current patient, or verifying information with respect to a prescriber;

2) A practitioner who has a current CDS registration and is authorized to prescribe, dispense, or administer controlled dangerous substances or human growth hormone who certifies that the request is for the purpose of providing health care to or verifying information with respect to a new or current patient of the practitioner, or verifying information with respect to a prescriber;

3) A delegate authorized by a practitioner to access the PMP information for the purpose of providing health care to a new or current patient of the delegating practitioner who certifies that the request is for the purpose of providing health care to or verifying information with respect to a new or current patient of the delegating practitioner, or verifying information with respect to a prescriber, consistent with the requirements of this subchapter;

4) A current medical resident of a medical teaching facility who is authorized to access PMP information and who certifies that the request is for the purpose of providing health care to or verifying information with respect to a new or current patient at the medical teaching facility for whom the residency program has responsibility of care, or verifying information with respect to a prescriber, consistent with the requirements of this subchapter;

5) A current dental resident of a dental teaching facility who is authorized to access PMP information and who certifies that the request is for the purpose of providing health care to or verifying information with respect to a new or current patient at the medical teaching facility for whom the residency program has responsibility of care, or verifying information with respect to a prescriber, consistent with the requirements of this subchapter;

6) A designated representative of the State Board of Medical Examiners, New Jersey State Board of Dentistry, New Jersey Board of Nursing, New Jersey State Board of Optometrists, New Jersey State Board of Pharmacy, State Board of Veterinary Medical Examiners, or any other board in this State or another state that regulates the practice of persons who are authorized to prescribe or dispense controlled dangerous substances or human growth hormone, as applicable, who certifies that he or she is engaged in a bona fide specific investigation of a designated practitioner whose professional practice was or is regulated by that board;

7) A designated representative of a state Medicaid or other government program who certifies that he or she is engaged in a bona fide investigation of a designated practitioner, pharmacist, or patient;

8) The State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, who certifies that the request is for the purpose of investigating a death pursuant to P.L. 1967, c. 234 (N.J.S.A. 52:17B-78 et seq.); and

9) Authorized personnel, as determined by the Director of the Division, responsible for administration of the provisions of P.L. 1970, c. 226 (N.J.S.A. 24:21-1 et seq.);

b) The Division may provide prescription monitoring information submitted to the PMP to the following, consistent with the purpose certified to by the requester under the requirements of (c) below:

1) A properly convened grand jury pursuant to a subpoena properly issued for the records;

2) Authorized personnel, as determined by the Director of the Division or the PMP vendor responsible for establishing and maintaining the PMP;

3) A State, Federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner, pharmacist, or patient; and

4) A prescription monitoring program in another state with which the Division has established an interoperability agreement, or which participates with the Division in a system that facilitates the secure sharing of information between states.

c) All persons authorized to have online access to PMP information shall, in accordance with N.J.A.C. 13:45A-35.7, register with the Division and shall receive a login ID and password. Such persons shall complete all forms and statements required by the Division.

1) All persons authorized to have online access to PMP information who become aware or suspect that their login ID and password to the PMP were compromised or used without authorization shall, within five business days of discovering the unauthorized access, notify the Division through the PMP and submit supporting documentation evidencing the unauthorized use.

d) All persons authorized to have online access to PMP information shall, in accordance with (a) above, prior to each look-up certify to the purpose for which the requested information will be used. The certification shall be completed online in the PMP system.

e) All persons granted access to PMP information, either through online access or by request, shall comply with all Federal and State laws, rules, and regulations concerning the confidentiality of patient information, including the Federal Health Insurance Portability and Accountability Act of 1996, specifically the Federal health privacy rule set forth at 45 CFR Parts 160 and 164.

1) A delegate shall share PMP information with only his or her delegating practitioner.

2) A person granted access to PMP information pursuant to N.J.A.C. 13:45A-35.6(a)6, 7, 8, or 9 may, in the performance of his or her professional duties, share information with personnel from his or her agency in accordance with agency policy and procedures.

3) In accordance with N.J.A.C. 13:45A-35.8(f), all persons granted online access to the PMP shall not share their PMP login ID and password with any other person or entity.

f) The Division may provide non-identifying PMP information to public or private entities for statistical, research, or educational purposes, provided that the confidentiality of patient information is not compromised.

g) Notwithstanding the provisions of this subchapter, the Division may obtain unsolicited automated reports from the PMP or disseminate such reports to pharmacists, practitioners, and other licensed health care professionals.

h) The Division shall maintain PMP information in such a manner as to ensure the privacy and confidentiality of patient information in compliance with all Federal and State laws, rules, and regulations, including the Federal Health Insurance Portability and Accountability Act of 1996, and the Federal health privacy rule set forth at 45 CFR Parts 160 and 164. The Division shall retain PMP information for a minimum of seven years.

1) For purposes of retention in this subsection, "PMP information" shall not include data obtained from other states via an interoperability agreement.

i) Pursuant to N.J.S.A. 45:1-46, the prescription monitoring information submitted to the Division shall be confidential and not be subject to public disclosure under the State Open Public Records Act, P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.) or P.L. 2001, c. 404 (N.J.S.A. 47:1A-5 et seq.).

### **13:45A-35.7 REGISTRATION**

a) All persons authorized to have online access to PMP information shall register with the Division. To register, all persons shall:

1) Provide the Division with a unique individual e-mail address.

2) Complete an online tutorial upon initial access to the PMP and as deemed necessary by the Director.

3) Submit all documentation required by the Division to verify the person's identity and credentials. The required documentation shall be listed on the New Jersey Prescription Monitoring Program website at [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov).

b) The Division shall register a practitioner to have online access to PMP information upon issuance or renewal of the practitioner's CDS registration.

1) Practitioners may also register to access prescription monitoring information outside of their applicable CDS issuance or renewal time period.

**13:45A-35.8 DELEGATES**

a) A practitioner or a faculty member authorized by a medical or dental teaching facility may designate a delegate or delegates for the purpose of accessing PMP information for a new or current patient, or a prescriber, consistent with the requirements of this subchapter.

1) As set forth in this subsection, for each designated delegate, a practitioner or a faculty member authorized by a medical or dental teaching facility is responsible for the use or misuse of the PMP and the prescription monitoring information, ensuring compliance with the recordkeeping requirements, conducting a bi-annual audit, and verifying the education, training, and licensure or certification requirements for each delegate.

2) A delegate may be an authorized delegate for more than one practitioner.

b) The director of the medical or dental residency program shall designate the faculty members who are authorized to designate medical or dental residents, as applicable, as delegates. The director of the medical or dental residency program shall comply with the recordkeeping provisions of N.J.A.C. 13:45A-35.10.

c) Delegates may be designated as follows:

1) A practitioner may designate as a delegate a licensed health care professional or a certified medical assistant who is employed at the practice setting at which the practitioner practices.

i) An individual who is no longer employed at the practice setting at which the practitioner practices is no longer authorized to be a delegate or to access the PMP on behalf of that practitioner.

2) A licensed dentist may designate as a delegate a registered dental assistant who is employed at the practice setting at which the licensed dentist practices dentistry.

i) An individual who is no longer employed at the practice setting at which the licensed dentist practices dentistry is no longer authorized to be a delegate or to access the PMP on behalf of that dentist.

3) A faculty member authorized by a medical teaching facility, in accordance with (b) above, may designate as a delegate a medical resident.

i) An individual who is terminated or withdraws from, or completes the graduate medical education program is no longer authorized to be a delegate or to access the PMP.

ii) A medical resident whose program includes training outside the medical teaching facility shall not be designated as a delegate in that setting unless the delegating practitioner has been designated as an authorized faculty member pursuant to (b) above and the residency program retains responsibility of care for the patient for whom healthcare is provided or information is requested.

4) A faculty member authorized by a dental teaching facility may designate as a delegate a dental resident.

i) An individual who is terminated or withdraws from, or completes the graduate dental education program is no longer authorized to be a delegate or to access the PMP.

d) Prior to designating a delegate, a practitioner or an authorized faculty member of a medical or dental teaching facility shall confirm the education, training, and licensure or certification requirements of each delegate.

1) Prior to designating a delegate, a practitioner or an authorized faculty member of a medical or dental teaching facility shall ensure that the delegate understands the limitations on disclosure of the prescription monitoring information, and the Federal and State laws, rules, and regulations concerning the confidentiality of patient information, including the Federal Health Insurance Portability and Accountability Act of 1996, specifically the Federal health privacy rule set forth at 45 CFR Parts 160 and 164.

2) Prior to designating a certified medical assistant as a delegate, a practitioner shall confirm that that the certified medical assistant has completed a minimum of 600 clock-hours of instruction, and which encompasses training in the administration of intramuscular and subcutaneous injections, as well as instruction and demonstration in: pertinent anatomy and physiology appropriate to injection procedures; choice of

equipment; proper technique, including sterile technique; hazards and complications; and emergency procedures.

e) A practitioner or an authorized faculty member of a medical or dental teaching facility who designates a delegate is responsible for the use or misuse by his or her delegate of the PMP and the prescription monitoring information. A practitioner or an authorized faculty member of a medical or dental teaching facility who designates a delegate shall:

1) Terminate the delegate's access to the PMP when a delegate, for any reason, is no longer authorized to be a delegate.

2) Terminate the delegate's access and notify the PMP when a practitioner or an authorized faculty member of a medical or dental teaching facility learns of any potential unauthorized use by a delegate of the PMP or prescription monitoring information.

i) The practitioner or authorized faculty member of a medical or dental teaching facility shall, within five business days of discovering the unauthorized access, notify the Division through the PMP and submit supporting documentation evidencing the unauthorized use.

3) Conduct, at least once every six months, audits of the delegate's use of the PMP to monitor for potential misuse of the PMP or prescription monitoring information.

4) Ensure that the delegate follows the recordkeeping procedures established by the practitioner as set forth in N.J.A.C. 13:45A-35.10(a).

f) All persons authorized to have online access to PMP information shall not share access to the PMP with any other person or entity.

1) All persons granted access to the PMP shall access the PMP using their own unique user login ID and password. The login ID and password shall not be shared with any other person or entity.

2) All delegates shall identify the practitioner on whose behalf they are accessing the prescription monitoring information.

3) All persons authorized to have online access to PMP information may share such information as set forth in N.J.A.C. 13:45A-35.6.

### **13:45A-35.9 MANDATORY LOOK-UP**

a) Except as provided in (c) below, a practitioner or the practitioner's delegate shall access prescription monitoring information for a new or current patient consistent with the following:

1) The first time the practitioner prescribes a Schedule II controlled dangerous substance to a new or current patient for acute or chronic pain;

i) When the practitioner or the practitioner's delegate accesses the prescription monitoring information for a new patient in advance of the scheduled appointment, the practitioner or delegate shall document the new patient's request for professional services; and

2) On a quarterly basis during the period of time a current patient continues to receive a prescription for a Schedule II controlled dangerous substance for acute or chronic pain.

i) For purposes of this paragraph, "quarterly" means every three months from the date the initial prescription is issued.

b) Except as provided in (c) below, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any purpose other than the treatment of an existing medical condition, such as for purposes of misuse, abuse, or diversion, a pharmacist shall not dispense a Schedule II controlled dangerous substance to any person without first accessing the prescription monitoring information to determine if the person has received other prescriptions that indicate misuse, abuse, or diversion.

c) The provisions of (a) and (b) above, as applicable, shall not apply to:

1) A veterinarian;

2) A practitioner or the practitioner's agent administering methadone as interim treatment for a patient on a waiting list for admission to an authorized substance abuse treatment program;

- 3) A practitioner administering a controlled dangerous substance directly to a patient;
- 4) A practitioner prescribing a controlled dangerous substance to be dispensed by an institutional pharmacy, as defined in N.J.A.C. 13:39-9.2;
- 5) A practitioner prescribing a controlled dangerous substance in the emergency department of a general hospital, provided that the quantity prescribed does not exceed a five-day supply of the substance;
- 6) A practitioner prescribing a controlled dangerous substance to a patient under the care of a hospice;
- 7) A situation in which it is not reasonably possible for the practitioner or pharmacist to access the PMP in a timely manner, no other individual authorized to access the PMP is reasonably available, and the quantity of CDS prescribed or dispensed does not exceed a five-day supply of the substance;
- 8) A situation under which consultation of the PMP would result in a patient's inability to obtain a prescription in a timely manner, thereby, in the clinical judgment of the practitioner or pharmacist, adversely impacting the medical condition of the patient, and the quantity of CDS prescribed or dispensed does not exceed a five-day supply of the substance;
- 9) A situation in which the PMP is not operational as determined by the Division or where it cannot be accessed by the practitioner or pharmacist due to a temporary technological or electrical failure and the quantity of CDS prescribed or dispensed does not exceed a five-day supply of the substance;
- 10) A pharmacist who is employed by a pharmacy that, in accordance with N.J.A.C. 13:45A-35.4, has been granted a waiver due to technological limitations that are not reasonably within the control of the pharmacist, or other exceptional circumstances demonstrated by the pharmacist; or
- 11) A practitioner who is prescribing less than a 30-day supply of a controlled dangerous substance to a patient immediately, but no more than 24 hours, after the patient has undergone an operation, procedure, or treatment for acute trauma, for which a controlled

dangerous substance is recognized in the customary treatment of pain following such operation, procedure, or acute trauma.

i) For purposes of this paragraph, "procedure" means an invasive procedure that requires anesthesia.

d) Prescribing or dispensing of Schedule II CDS after accessing the prescription monitoring information in accordance with (a) or (b) above shall be undertaken if consistent with the practitioner's or pharmacist's professional practice as set forth in the rules of the individual's respective professional licensing board.

### **13:45A-35.10 RECORDKEEPING**

a) Each practitioner and each authorized faculty member of a medical or dental teaching facility who designates a delegate shall establish, retain, and follow written procedures to document, as part of the patient record, the PMP look-up as required in N.J.A.C. 13:45A-35.9 and any PMP information accessed for the patient.

1) Each delegate shall follow the documentation procedures established by his or her delegating practitioner.

2) Examples of documentation include a summary notation of the information reviewed by the practitioner or the printed PMP report in the patient record.

3) Once PMP information is documented in the patient record, disclosure of such information is governed by applicable State laws, other than N.J.S.A. 45:1-45, and Federal laws, including the Federal Health Insurance Portability and Accountability Act of 1996 and the Federal health privacy rule set forth at 45 CFR Parts 160 and 164.

b) A practitioner or an authorized faculty member of a medical or dental teaching facility who designates a delegate shall establish, retain, and follow written procedures to document:

1) Verification of each delegate's education, training, and licensure or certification requirements, as required in N.J.A.C. 13:45A-35.8(d); and

2) The bi-annual audit, as required in N.J.A.C. 13:45A-35.8(e)3.

c) The program director of the medical or dental residency program shall retain records of the faculty members authorized to designate a medical or dental resident, as applicable, as a delegate.

d) All records required to be maintained in this subchapter shall be made available to the Division upon request.

### **13:45A-35.11 PROFESSIONAL MISCONDUCT**

a) Noncompliance with the rules in this subchapter may be deemed professional misconduct and may subject the pharmacy permit holder, an out-of-State pharmacy that is subject to this subchapter, pharmacist, practitioner, licensed health care professional, or registered dental assistant to disciplinary action pursuant to the provisions of N.J.S.A. 45:1-21 and to the penalties set forth in N.J.S.A. 45:1-49.

b) Noncompliance with the rules in this subchapter by a delegate may be deemed professional misconduct by the practitioner and may subject the practitioner to disciplinary action pursuant to the provisions of N.J.S.A. 45:1-21 and to the penalties set forth in N.J.S.A. 45:1-49.

c) Noncompliance with the rules in this subchapter may provide a basis for the withdrawal of the authorization of a registered resident to engage in the practice of medicine or the practice of dentistry, as applicable. Upon receipt of the notice of proposed withdrawal, the registered resident may request a hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.

d) Noncompliance with the rules in this subchapter may provide a basis for the withdrawal of the authorization to a certified medical assistant to access the PMP. Upon receipt of the notice of proposed withdrawal, the certified medical assistant shall have an opportunity to provide a written explanation for the noncompliance.

e) The Division shall refer noncompliance with the rules in this subchapter to the appropriate licensing board.

f) The Division shall refer to law enforcement, which may result in a criminal conviction and a civil penalty in accordance with N.J.S.A. 45:1-49 the following persons:

1) A person who is authorized to obtain prescription monitoring information from the PMP who knowingly discloses such information in violation of the provisions of N.J.S.A. 45:1-45 through 50.

i) The production of a patient record in response to a lawful request by the patient, an authorized representative of the patient, or pursuant to a subpoena or other court order shall not be deemed a knowing disclosure within the meaning of the statute;

2) A person who is authorized to obtain prescription monitoring information who uses this information in the course of committing, attempting to commit, or conspiring to commit any criminal offense; and

3) A person who is not authorized to obtain prescription monitoring information from the PMP who knowingly obtains or attempts to obtain such information in violation of the provisions of N.J.S.A. 45:1-45 through 50.

g) Notwithstanding the provisions of this subchapter and the person's CDS registration status or employment status, the Division shall retain the right to take action for noncompliance with the rules in this subchapter or violations of the provisions of N.J.S.A. 45:1-45 through 50.

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## **SUBCHAPTER 36. FANTASY SPORTS OPERATORS**

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### **13:45A-36.1 PURPOSE AND SCOPE**

The purpose of this subchapter is to implement the provisions of P.L. 2017, c. 231 (N.J.S.A. 5:20-1 et seq.), which regulate fantasy sports operators.

### **13:45A-36.2 WORDS AND PHRASES DEFINED**

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

"Applicant" means an individual or entity that applies for a permit to conduct fantasy sports activities.

"Casino" means a single room in which casino gaming is located pursuant to the provisions of the New Jersey Casino Control Act (P.L. 1977, c. 110).

"Division" means the Division of Consumer Affairs.

"Entry fee" means cash or a cash equivalent that is paid by a participant to a fantasy sports operator to participate in a fantasy sports activity offered by that operator, but shall not include a fee paid to an operator that does not offer a prize.

"Fantasy sports activity" means any fantasy or simulated activity or contest with an entry fee in which a participant owns or manages an imaginary team and competes against other participants or a target score for a predetermined prize with the outcome reflecting the relative skill of the participants and determined by statistics generated based on performance by actual individuals participating in actual competitions or athletic events, provided that the outcome shall not be based solely on the performance of an individual athlete, or on the score, point spread, or any performance of any single real team or combination of real teams. Fantasy sports activity shall not include any activity in which no entry fee is paid to the fantasy sports operator or in which a prize is not collected, managed, or awarded by the operator.

"Fantasy sports gross revenue" means, for each fantasy sports activity, the amount equal to the total of all entry fees that a fantasy sports operator collects from all participants less only the total of all money prizes paid out as prizes to all participants multiplied by the location percentage for this State.

"Fantasy sports operator" or "operator" means a business entity, including a casino licensee or the holder of a permit to conduct a horse race meeting, that has been issued a permit by the Division of Consumer Affairs in the Department of Law and Public Safety to offer persons the opportunity to participate in a fantasy sports activity.

"Location percentage" means, for each authorized fantasy sports activity, the percentage rounded to the nearest one-tenth of one percent (0.1 percent) of the total entry fees collected from players located in this State, divided by the total entry fees collected from all players in the fantasy sports activity.

"Participant" means any person who takes part in a fantasy sports activity offered by a fantasy sports operator in New Jersey.

"Prize" means anything of monetary value provided to a participant due to the outcome of a fantasy sports activity. "Prize" may include money, competition credits, merchandise, or admission to another competition; however, for purposes of calculating fantasy sports gross

revenue, "prize" shall include only money paid to a participant and shall not include competition credits, merchandise, or admission to another competition.

"Prohibited participant" means an individual who has access to non-public confidential information about fantasy sports activities, any athlete whose performance may be used to determine the outcome of a fantasy sports activity in the sport with which the athlete is associated, any team employee, referee, or league official in a fantasy sports activity in the sport with which that person is associated, and any sports agent associated with any sport used for fantasy sports activities.

### **13:45A-36.3 PERMISSION TO PROVIDE FANTASY SPORTS ACTIVITIES FOR ENTITIES OPERATING PRIOR TO AUGUST 24, 2017**

- a) A fantasy sports operator that was offering fantasy sports activities in New Jersey on August 24, 2017, shall be permitted to continue to provide fantasy sports activities until April 7, 2018.
- b) A fantasy sports operator that is permitted to provide fantasy sports activities pursuant to (a) above and that applies for a permit prior to April 7, 2018, shall be able continue to offer fantasy sports activities while its application is pending with the Division.
- c) A fantasy sports operator that does not qualify to offer fantasy sports pursuant to (a) above shall not provide, administer, manage, or otherwise make available fantasy sports activities until it has obtained a fantasy sports operator permit from the Division.

### **13:45A-36.4 APPLICATION FOR PERMIT**

- a) An applicant for a fantasy sports operator permit shall submit to the Division:
  - 1) A completed application, on a form provided by the Division;
  - 2) Proof that the applicant maintains equipment pursuant to the requirements of N.J.A.C. 13:45A-36.5; and
  - 3) The application fee as set forth in N.J.A.C. 13:45A-36.17.
- b) If an application is approved by the Division, the applicant will be sent a permit activation form. Applicants shall submit a completed activation form and the permit fee as set forth in N.J.A.C. 13:45A-36.19 to the Division.

c)

**13:45A-36.5 EQUIPMENT USED TO CONDUCT FANTASY SPORTS ACTIVITIES**

- a) If a fantasy sports operator is a casino, all of the equipment it uses to conduct fantasy sports activities shall be physically located within the boundaries of the municipality specified in section 20 of P.L. 2013, c. 27 (N.J.S.A. 5:12-95.22).
- b) If a fantasy sports operator is not a casino, at least one server used to conduct fantasy sports activities shall be physically located within the boundaries of the municipality specified in section 20 of P.L. 2013, c. 27 (N.J.S.A. 5:12-95.22).
- c) The Division shall have the authority to inspect the facilities of fantasy sports operators, including any servers maintained pursuant to (a) and (b) above.

**13:45A-36.6 CONDUCT OF FANTASY SPORTS ACTIVITIES**

- a) Fantasy sports operators shall conduct fantasy sports activities so that the outcome is determined by statistics generated based on the performance of actual individuals participating in real competitions or athletic events.
- b) The outcome of fantasy sports activities shall not be based solely on the performance of an individual athlete or on the score, point spread, or any performance of a single real team or combination of real teams.
- c) Prizes offered to participants shall be established and disclosed in advance to all participants. The value of a prize shall not be determined by the number of participants or the amount of entry fees paid by participants.
- d) A fantasy sports operator shall not make any false statement or fail to disclose any information requested by the Division.

**13:45A-36.7 PROHIBITED PRACTICES**

- a) (a) A fantasy sports operator shall not:
  - 1) Share statistical information with third parties that could affect a fantasy sports activity until that information is publicly available;
  - 2) Allow a prohibited participant to participate in fantasy sports activities;

- 3) Provide any fantasy sports activities based on high school athletics; or
- 4) Allow a participant under the age of 18 years to participate in fantasy sports activities.

### **13:45A-36.8 FAIRNESS OF FANTASY SPORTS ACTIVITY**

- a) A fantasy sports operator, its employees, officers, and directors shall not disclose proprietary or non-public information that may affect fantasy sports activities to any participant.
- b) A fantasy sports operator shall not knowingly permit an athlete, sports agent, team employee, referee, or league official to provide proprietary or non-public information to any participant.
- c) A fantasy sports operator shall prevent the following from being participants in fantasy sports activities offered by the fantasy sports operator:
  - 1) Owners, directors, or officers of the fantasy sports operator; and
  - 2) Employees of the fantasy sports operator.

### **13:45A-36.9 ADMINISTRATION OF FANTASY SPORTS ACTIVITIES**

- a) Fantasy sports operators shall adopt procedures to ensure that prohibited participants and participants under the age of 18 years do not participate in fantasy sports activities. A fantasy sports operator shall refund any money held in an account created by a participant under the age of 18.
- b) Fantasy sports operators shall offer individuals the ability to restrict themselves from participating in fantasy sports activities and take steps to prevent such individuals from participating in fantasy sports activities.
- c) Fantasy sports operators shall establish a limitation on the number of entries an individual participant may submit for each fantasy sports activity, shall disclose this number of entries, and shall take steps to prevent a participant from exceeding that number.
- d) Fantasy sports operators shall either segregate participants' funds from operational funds or maintain a reserve in cash, cash equivalents, payment processor reserves, receivables, an irrevocable letter of credit, a bond, or combination thereof, in the amount of the deposits in

participant' accounts, which the fantasy sports operator has no interest in, or title to, and which is:

- 1) At least equal to the sum of all funds held in participants' accounts and all prizes owed or which will be owed for fantasy sports activities;
  - 2) Protected from claims of the fantasy sports operator's creditors other than participants for whose benefit the reserve is established; and
  - 3) If the reserve is maintained in the form of cash, cash equivalent, or an irrevocable letter of credit, it must be held or issued by a Federally insured financial institution. Reserves in the form of cash or cash equivalent must be established pursuant to a written agreement between the fantasy sports operator and a financial institution or insurance carrier, but the fantasy sports operator may engage an intermediary company or agent to deal with the financial institution or insurance carrier, in which event the reserve may be established pursuant to written agreements between the fantasy sports operator and the intermediary, and the intermediary and the financial institution or insurance carrier.
- e) For the purposes of compliance with (d) above, fantasy sports operators may establish a special purpose segregated account that is maintained and controlled by a properly constituted corporate entity that is not the fantasy sports operator and whose governing board includes one or more corporate directors who are independent of the fantasy sports operator and of any corporation related to or controlled by the fantasy sports operator.

### **13:45A-36.10 ANNUAL AUDITS**

- a) Fantasy sports operators shall contract with a licensed certified public accountant to perform a financial audit of the operator and submit the accountant's report to the Division annually, no later than the first day of the seventh month following the close of the fantasy sports operator's fiscal year.
- b) Along with the audit required by (a) above, fantasy sports operators shall provide an addendum prepared by a licensed certified public accountant that breaks down for each quarter:
  - 1) Total entry fees for the fantasy sports operator;
  - 2) Total prizes paid out by the fantasy sports operator;
  - 3) Total entry fees paid by participants in New Jersey;
  - 4) Amount in participant accounts for participants in New Jersey; and

- 5) If the fantasy sports operator maintains reserves in cash, cash equivalents, payment processor reserves and receivables, an irrevocable letter of credit, a bond, or a combination thereof, pursuant to N.J.A.C. 13:45A-36.9(e), a report on such reserves in cash, cash equivalents, payment processor reserves and receivables, an irrevocable letter of credit, a bond, or a combination thereof.

### **13:45A-36.11 OPERATIONS FEE**

- a) Except as provided in (d) below, a fantasy sports operator shall pay to the Division, on a quarterly basis, an operations fee in an amount equal to 10.5 percent of fantasy sports gross revenue for each quarter. The operations fee will be deposited into the general fund of the State.
- b) Operation fees will be due on April 20, July 20, October 20, and January 20.
- c) Along with the operation fees, fantasy sports operators shall complete and submit the operation fee form provided by the Division.
- d) A fantasy sports operator who solely operates a season-long single-sport fantasy sports activity, may estimate its quarterly operations fee based upon its fantasy sports gross revenue from the previous year. Such a fantasy sports operator would pay a quarterly operations fee that would be equal to 10.5 percent of fantasy sports gross revenue from the previous year divided by four.
- e) A fantasy sports operator that seeks to pay an operations fee pursuant to (d) above shall notify the Division that it will be following the requirements of (d) above prior to payment of the operations fee.
- f) A fantasy sports operator that pays an operations fee pursuant to (d) above and whose estimated quarterly payments for the first three quarters are greater than or less than the amount the fantasy sports operator would have owed if the operations fee was calculated pursuant to (a) above, shall adjust the payment for the fourth quarter to reflect the over- or underpayment of the operations fee.

### **13:45A-36.12 REQUIRED POLICIES**

- a) Fantasy sports operators shall establish policies that address:
  - 1) Procedures to handle security incidents, including system failures, loss of service, breaches of confidentiality, and malicious intrusion. Such procedures shall address:

- i) Analysis and cause of the security incident;
  - ii) Containment;
  - iii) Planning and implementation of corrective action to prevent recurrence;
  - iv) Communication with New Jersey participants affected by or involved with recovery from the security incident; and
  - v) Reporting of the action to the Division.
- 2) Testing to ensure that the fantasy sports operator's platform meets or exceeds current industry standards;
  - 3) Instituting a process to close out participant accounts that have not been used to engage in fantasy sports activities for three years;
  - 4) Maintaining the security of identity and financial information of participants;
  - 5) Preventing the following from being a participant in fantasy sports activities offered by the fantasy sports operator:
    - i) Owners, directors, or officers of the fantasy sports operator; and
    - ii) Employees of the fantasy sports operator.
  - 6) Permitting parents or guardians to exclude individuals under the age of 18 from accessing any fantasy sports activity;
  - 7) Determining the true identity, date of birth, and address of each individual seeking to open an account;
  - 8) Using measures to detect the physical location of a participant attempting to access his or her account and to monitor for simultaneous logins to a single account from geographically inconsistent locations. Such measures shall:
    - i) Check location each time the player attempts to enter a contest or make a deposit; and
    - ii) Utilize a mechanism to alert the fantasy sports operator if an account is being accessed from geographically inconsistent locations; and

- 9) Preventing advertisements in any publication or medium that is aimed exclusively at juveniles or advertising at any of the following:
  - i) Elementary schools;
  - ii) High schools; or
  - iii) Sports venues used exclusively for elementary school or high school student sports activities.

### **13:45A-36.13 PARTICIPANT COMPLAINT PROCEDURES**

- a) Fantasy sports operators shall develop procedures by which participants may file a complaint about any aspect of a fantasy sports activity. Fantasy sports operators shall notify participants as to complaint procedures.
- b) Fantasy sports operators shall respond to participant complaints in writing within 10 business days of receipt of a complaint.
- c) If the response to a complaint required by (b) above is that more information is needed, the form and nature of the necessary information shall be specifically stated. When additional information is received, further response shall be required within seven business days.
- d) Any complaints received by a fantasy sports operator from a participant and the response to the complaint shall be retained for at least seven years and made available to the Division upon request.

### **13:45A-36.14 RECORDS**

- a) Fantasy sports operators shall maintain records of:
  - 1) Each fantasy sports activity offered, which shall include:
    - i) The date and time the fantasy sports activity started and ended;
    - ii) Prize structure used;
    - iii) Participants that entered the fantasy sports activity;

- iv) Selections each game participant made for his or her team;
  - v) Total number of points earned by each participant's team;
  - vi) Total amount of entry fees paid;
  - vii) Results, including the points earned by the winning participant or participants;
  - viii) Total amount of participants' winnings; and
  - ix) Total amount of cash or cash equivalents awarded to participants.
- 2) A participant transaction log, which includes:
- i) A unique participant identification;
  - ii) All deposits to the participant's account;
  - iii) All withdrawals by the participant; and
  - iv) All cash or cash equivalents added to the participant's account.
- 3) Participant account information, which includes:
- i) A unique participant identification;
  - ii) Participant identity details, which include the participant's legal name, age, and address;
  - iii) Any self-restrictions;
  - iv) Any previous accounts; and
  - v) The date and location from which the participant account was registered.
- 4) All advertisements, including where such advertisements were placed. To the extent that an advertisement cannot be maintained in its original form, such as billboards, the advertising copy shall be retained.
- b) Fantasy sports operators shall maintain all records required by (a) above for a period of at least seven years.

- c) Fantasy sports operators shall provide records to the Division upon request.

### **13:45A-36.15 SINGLE ACCOUNT**

- a) (A fantasy sports operator shall limit each participant to one active account and username.
- b) A fantasy sports operator shall establish procedures to terminate accounts of any participant that establishes or seeks to establish more than one username or more than one account.

### **13:45A-36.16 PROHIBITION ON EXTENSIONS OF CREDIT TO GAME PARTICIPANTS**

A fantasy sports operator shall not extend credit to a participant for purposes of participating in a fantasy sports activity.

### **13:45A-36.17 PLAYER FUNDS**

- a) A fantasy sports operator shall not allow a participant to transfer funds to any other participant.
- b) After a participant's identity has been verified, a participant shall be allowed to withdraw funds maintained in his or her account, whether such account is opened or closed. Such requests must be honored within five business days of the request. For purposes of this section, a request for withdrawal will be considered honored if it is processed by the fantasy sports operator, notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.
- c) A fantasy sports operator shall not allow a participant's account to be overdrawn unless caused by payment processing issues outside of the control of the fantasy sports operator.
- d) A fantasy sports operator may decline to honor a request to withdraw funds if the fantasy sports operator believes in good faith that the participant engaged in either fraudulent conduct or conduct that would put the fantasy sports operator in violation of the law. In such cases, the fantasy sports operator shall:
  - 1) Provide notice to the participant of the nature of the investigation of the account; and

- 2) Conduct an investigation in a reasonable and expedient fashion, providing the participant additional written notice of the status of the investigation every 10th business day starting from the day the original notice was provided to the participant.

**13:45A-36.18 RENEWAL OF PERMIT**

- a) Fantasy sports operator permits shall be renewed annually.
- b) Fantasy sports operators shall submit a renewal form and the permit fee as set forth in N.J.A.C. 13:45A-36.19 to the Division 45 days prior to the expiration date of the permit.

**13:45A-36.19 FEES**

- a) The Division shall charge the following non-refundable fantasy sports operator permitting fees:
  - 1) Application fee .....\$ 500.00
  - 2) Permit fee:
    - i) For fantasy sports operator with fantasy sport gross revenue up to \$ 49,999...\$ 5,000
    - ii) For fantasy sports operator with fantasy sport gross revenue between \$ 50,000 to \$99,000..... \$ 10,000
    - iii) For fantasy sports operator with fantasy sport gross revenue between \$ 100,000 to \$250,000..... \$ 20,000
    - iv) For fantasy sports operator with fantasy sport gross revenue over \$250,000.....\$50,000

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**SUBCHAPTER 37.DEED PROCUREMENT SERVICES**

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**13:45A-37.1 DEFINITIONS**

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

"Deed" means a written instrument entitled to be recorded in the office of a county recording officer that purports to convey or transfer title to a freehold interest in any lands, tenements, or other realty in this State by way of grant or bargain and sale thereof from the named grantor to the named grantee. A leasehold interest for 99 years or more or a proprietary lease of a cooperative unit and any assignment of a proprietary lease of a cooperative unit, shall be treated as a "freehold" for the purpose of N.J.S.A. 56:8-208 and 209 and this chapter. Instruments providing for common driveways; for exchanges of easements or rights-of-way; for revocable licenses to use, adjust, or to clear defects of or clouds on title; to provide for utility service lines, such as drainage, sewerage, water, electric, telephone, or other such service lines; or to quitclaim possible outstanding interests, shall not be "deeds" for the purposes of N.J.S.A. 56:8-208 and 209 or this chapter.

"Deed procurement service" means the provision by a non-governmental entity of one or more copies of deeds for lands, tenements, or other realty in this State to a property owner, for a fee in excess of the amount authorized pursuant to Title 22A of the New Jersey Statutes that the county clerk's office assesses for providing copies of deeds, and not in relation to the transfer or sale of, or the mortgage origination, mortgage servicing, mortgage refinancing, property tax servicing, or other action initiated by or on behalf of the owner with respect to, such lands, tenements, or realty.

"Written form of communication" or "communication" means a written or electronic communication used by a deed procurement service in order to solicit business.

### **13:45A-37.2 REQUIREMENTS FOR WRITTEN FORMS OF COMMUNICATION USED TO SOLICIT BUSINESS**

- a) Any written form of communication used by a deed procurement service in order to solicit business shall include the following:
  - 1) A statement that the communication is an advertisement;
  - 2) A statement that deeds also may be obtained at the office of the county clerk;
  - 3) The address, website, and phone number for the county clerk of the county in which the consumer receiving the solicitation resides; and
  - 4) The fee that is charged by the county clerk for copies of deeds.
- b) The information required to be included in a written form of communication pursuant to (a) above shall be located at the top of the first page of the written form, or at the top of any electronic solicitation or other form of written communication, and shall be in a boldface type larger than all other text contained in the communication and in a color clearly distinguishable from the surrounding background.

- c) The information required to be included in a written form of communication pursuant to (a) above shall not wrongfully imply association with any department or agency of the Federal government or of this State or any of its political subdivisions, or otherwise violates N.J.S.A. 56:8-2.1.
  
- d) The written form of communication and any accompanying documentation, including packaging, shall not specify a date or time period when payment to the deed procurement service is due, and shall not include any deceptive or misleading language including, but not limited to, the terms "due date," "respond by," "urgent," or other language that would lead a recipient of the communication to believe action must be taken within a certain period to obtain a service or benefit.
  
- e) A copy of any written form of communication and all accompanying documentation, including packaging, used by a deed procurement service as a solicitation for business is to be submitted to the relevant county clerk's office at least 15 days before the procurement service sends the communication to any resident of that county.