

New Jersey Register
VOLUME 36, NUMBER 17
TUESDAY, SEPTEMBER 7, 2004
RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
HALAL FOOD

Adopted New Rules: N.J.A.C. 13:45A-22.1, 22.2, 22.4 through 22.8, and 22.10

Proposed: August 18, 2003 at 35 N.J.R. 3754(a).

Adopted: August 2, 2004 by Reni Erdos, Director, Division of Consumer Affairs.

Filed: August 6, 2004 as R.2004 d.337, without change as to the rules adopted, but with proposed N.J.A.C. 13:45A-22.3 and 22.9 not adopted.

Authority: N.J.S.A. 56:8-1 et seq.

Effective Date: September 7, 2004.

Expiration Date: October 20, 2005.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the Halal Food proposal was held on September 18, 2003, at the Seton Hall Law School, 1 Newark Center, Newark, New Jersey. Eugene L. Brenycz, Esq., presided over the hearing. A copy of the transcript and the hearing officer report is available by contacting the Division of Consumer Affairs at P.O. Box 45027, Newark, NJ 07101. Based on the written and oral testimony, the hearing officer recommended that the Division not adopt N.J.A.C. 13:45A-22.3 and that the Division meet with members of the affected community to develop appropriate disclosure forms and statements.

The Director has considered the recommendations of the hearing officer and all of the public comments and has adopted proposed rules N.J.A.C. 13:45A-22.1, 22.2, 22.4 through 22.8, and 22.10, has not adopted N.J.A.C. 13:45A-22.9 and is reproposing N.J.A.C. 13:45A-22.3 with amendments in a separate proposal published elsewhere in this issue of the Register.

Summary of Changes on Adoption:

Upon adoption, the Division has elected not to adopt N.J.A.C. 13:45A-22.3 which concerns the halal disclosure statement. The Division has decided to substantively amend the rule in light of the halal disclosure statements which are being published separately in this issue of the Register. That proposal includes a revised version of N.J.A.C. 13:45A-22.3 which addresses the halal disclosure statements.

In addition, the Division is not adopting N.J.A.C. 13:45A-22.9, which deals with the marking of meat and poultry, as the Division appears to be preempted from regulating the marking of meat and poultry at Federally inspected plants. 21 U.S.C. § § 601 et seq. (Federal Meat Inspection Act); 21 U.S.C. § § 451 et seq. (Poultry and Poultry Products Inspection Act).

Federal Standards Statement

A Federal standards analysis is not required because the rules are not adopted under the authority of or in order to implement, comply with or participate in any program under Federal law. The rules are adopted under the authority of New Jersey law, N.J.S.A. 56:8-98 et seq., which does not incorporate or refer to Federal law, standards or

requirements. As the Division is not adopting N.J.A.C. 13:45A-22.9, the rules as adopted do not exceed any applicable Federal standards.

Full text of the adoption follows :

SUBCHAPTER 22. HALAL FOOD

<< NJ ADC 13:45A-22.1 >>

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.

<< NJ ADC 13:45A-22.2 >>

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.

"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.

"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.

<< NJ ADC 13:45A-22.3 >>

13:45A-22.3 <<-Disclosure statement; posting of disclosure- >> <<+ (Reserved)+ >>

<<-(a) A dealer selling food at retail represented as halal shall post, in a location on the premises readily visible to the consumer, a completed halal disclosure statement provided by the Division. A dealer selling food represented as halal at wholesale shall make the disclosure available upon request.- >>

<<-(b) A dealer shall request a halal disclosure form from the Division.- >>

<<-(c) The dealer shall complete and return to the Division within 14 calendar days of receipt the halal disclosure form provided by the Division. A dealer who completes the halal disclosure shall conform its sales practices to those set forth on the disclosure statement by the dealer.- >>

<<-(d) In the event of any change in the practices posted on the halal disclosure, a dealer shall immediately amend the halal disclosure 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.- >>

<<-(e) A person may sell both food represented as halal and food not represented as halal as long as the food is properly identified.- >>

<<-(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 disclosure statement required by this section, nursing homes, summer camps, caterers or other places which provide food pursuant to a contract shall furnish to the consumer or his or her legal representative a copy of the halal disclosure prior to the signing of the contract.- >>

<< NJ ADC 13:45A-22.4 >>

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.

<< NJ ADC 13:45A-22.5 >>

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.

<< NJ ADC 13:45A-22.6 >>

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.

<< NJ ADC 13:45A-22.7 >>

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.

<< NJ ADC 13:45A-22.8 >>

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.

<< NJ ADC 13:45A-22.9 >>

13:45A-22.9 <<-Marking of meat and poultry- >> <<+(Reserved)+ >>

<<-(a) All dealers who slaughter animals as halal, except as provided in (b) below, shall identify the animal by stamping or affixing not less than one tag to the animal to identify the animal as halal.- >>

<<-(b) All dealers who slaughter cows, steers, calves and bulls as halal shall either stamp or affix tags to each quarter section of the animal identifying the animal as halal.- >>

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 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.