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ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Division of Consumer Affairs Lemon Law Hearings

Proposed Readoption: N.J.A.C. 1:13A

Authorized By: Laura Sanders, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-111.

Submit comments by September 16, 2016, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, the special rules for the conduct of Lemon Law hearings from the Division of Consumer Affairs were scheduled to expire on June 10, 2016. As this notice was filed on that date, the expiration date is extended 180 days to December 7, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Office of Administrative Law has reviewed these rules and found them to be reasonable and efficient procedures for the conduct of contested case hearings. Therefore, the Office of Administrative Law (OAL) proposes to readopt these rules without amendment.

These rules track the provisions of the Lemon Law, N.J.S.A. 56:12-29 et seq., and implement the goal of that act to provide consumers with a prompt and summary hearing. The case must be transmitted to the OAL immediately upon acceptance by the Division without any settlement attempts by the agency. Upon acceptance, a summary hearing date will be scheduled within 20 days, unless the consumer agrees to a later date.

Procedures have been tailored to the statutory requirement for a prompt hearing date. Discovery is limited to the consumer's application, the required attachments, and the manufacturer's response, which should provide adequate information about the allegations of each party. Prehearing conferences will not be scheduled. Other than adjournment motions with the consumer's consent, motions are not permitted prior to hearing. Post-hearing submissions are not permitted except for good cause, and do not extend the deadline for issuing an initial decision.

Pursuant to the statute, a prevailing consumer may be awarded attorney's fees and costs; therefore, the consumer must be prepared to present proofs of these costs at the hearing.

The initial decision must be issued no later than 20 days from the conclusion of the hearing. Exceptions must be filed no later than eight days after the mailing date of the initial

decision and may not exceed three pages. Replies and cross-exceptions are not permitted. The final decision must be issued no later than 15 days from receipt of the initial decision. These time frames may not be extended.

If a case is settled, the settlement must indicate whether attorney's fees and costs will be paid by the manufacturer or whether the consumer has waived such costs.

As the Office of Administrative Law has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

These rules are based upon the process created by the Lemon Law, N.J.S.A. 56:12-29 et seq., and have provided consumers with an avenue for rapid resolution of their complaints by creating a fair and efficient hearing process. Readoption of these rules will ensure continuation of that process.

Economic Impact

The rules provide a straightforward process for the resolution of disputes between consumers and manufacturers and will continue to provide the parties with a low-cost alternative to more lengthy and expensive hearings.

Federal Standards Statement

A Federal standards analysis is not required because the contested case hearing procedures, of which these rules are a part, are promulgated in implementation of the New Jersey

Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The rules proposed for readoption will not cause the generation or loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption will not impact on the agriculture industry.

Regulatory Flexibility Analysis

Although consumers, as parties to Lemon Law hearings, may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., these rules essentially require only that a consumer prove his or her case. If they prevail, consumers may seek recoupment of their hearing preparation costs, and any party may file exceptions to an initial decision. While a party may retain legal representation, such is not required. As the Lemon Law dispute resolution process is designed to benefit consumers and their burden of proof is a fundamental element of fairness in that process, no lesser requirements or exceptions can be provided based upon a consumer's status as a small business.

Housing Affordability Impact Analysis

The rules proposed for readoption will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the

average costs associated with housing because the rules pertain to procedures for contested case hearings related to Lemon Law hearings.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have no impact on the number of housing units or the availability of affordable housing in the State, and will have no effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules set forth procedures for contested case hearings related to Lemon Law hearings.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:13A.