

**GOODS
TEMPORARILY IN
SHORT SUPPLY**

GOODS TEMPORARILY IN SHORT SUPPLY

Rules of the City Of New York: Title 6

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| § 5-01. | Definitions. |
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Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included as a handout in this packet. The New York City Law and Rules are current as of 2011.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

RULES OF THE CITY OF NEW YORK

TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 5: UNFAIR TRADE PRACTICES

SUBCHAPTER A: CONSUMER PROTECTION LAW

PART 4: CONTRACTS AND GENERAL BUSINESS PRACTICES

§ 5-01. Definitions.

Consumer. “Consumer” means an individual who buys or leases consumer goods or services, and that individual's co-obligor or surety.

Consumer goods and services. “Consumer goods and services” means goods or services (including credit) that are primarily for personal, household, or family purposes.

Item. “Item” means goods and services.

Legal name. “Legal name” means:

- (1) the true corporate name of a corporation; or
- (2) the name of at least one partner of a partnership; or
- (3) the name of at least one owner of a business that is not a corporation or a partnership.

Seller. “Seller” means any individual or business that offers to sell or lease consumer goods or services. “Seller” includes manufacturers, wholesalers, and others who are responsible for any act or practice regulated by this code.

§ 5-38. Goods Temporarily in Short Supply.

(a) *Scope.* This section governs the sale of items which are temporarily in short supply because of extraordinary circumstances. Extraordinary circumstances can include fuel shortages, weather conditions, power failures, and strikes which result in limited deliveries of items to New York City consumers.

(b) *Declaration of temporary shortage.* The Commissioner of the Department of Consumer Affairs shall make declarations about items temporarily in short supply by:

- (1) filing a declaration as soon as possible with the City Clerk; and
- (2) publishing the declaration as soon as possible in The City Record; and
- (3) sending the declaration to the media specified in § 1043 of the New York City Charter.

A declaration of temporary shortage shall expire in 30 days, unless it is terminated sooner by declaration. The Commissioner may issue a renewed declaration of temporary shortage upon expiration of the original declaration.

(c) *Unconscionable sales practices.* A seller of items the Commissioner has declared in short supply may not:

- (1) increase prices in excess of an amount reflecting normal market fluctuations, except in accordance with the exemption rules in § 5-38(e);
- (2) require consumers to purchase another item in order to get the item in short supply, if no additional purchase was required before the shortage;

- (3) require the purchase of a minimum quantity of the item in short supply;
 - (4) fail to give all consumers an equal opportunity to purchase the item in short supply (to the extent that such opportunity existed before the temporary shortage). A seller may, however, give preference to a category of consumers having a special health- or safety-related need for the item in short supply.
- (d) *Deceptive sales practices prohibited.* A seller of items the Commissioner has declared temporarily in short supply:
- (1) may not represent falsely that an item is not available;
 - (2) must disclose any limitation or condition on sale of an item conspicuously in a sign at the point of sale.
- (e) *Exemption.*
- (1) A seller of items the Commissioner has declared temporarily in short supply may increase prices in excess of an amount reflecting normal market fluctuations if he or she can show that additional costs have been incurred in providing the item, through no fault of the seller or as a result of the seller's attempt to give consumers additional opportunities to purchase the item (for example, by increasing the hours during which an item can be purchased). This exemption only applies to the increased cost incurred by the seller.
 - (2) This exemption does not apply when another law or regulation prohibits a price increase.
 - (3) A seller using this exemption must keep records, for one year, of the increased costs incurred. The records shall be made available upon demand to the Department of Consumer Affairs.
- (f) Failure to comply with this section within two days of an original declaration will not result in any penalty if the seller proves that he or she did not know of the declaration.