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RULE ADOPTION

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
OFFICE OF THE DIRECTOR

PUBLIC MOVERS AND WAREHOUSEMEN

WORDS AND PHRASES DEFINED; LICENSE TO ENGAGE IN THE BUSINESS OF PUBLIC MOVING AND/OR STORAGE; CHANGE OF ADDRESS, BUSINESS NAME, OR TELEPHONE NUMBER; DESIGNATION OF AGENT; ADVERTISING; PLACE OF BUSINESS; TRADE NAME; DISCONNECTION OF UNLICENSED MOVER'S TELEPHONE; TARIFFS; BILL OF LADING, BROCHURE, ESTIMATED COST OF SERVICES FORM, ORDER FOR SERVICE FORM, WAREHOUSE RECEIPT; ISSUANCE; LEGAL LIABILITY AND INSURANCE; BINDING ESTIMATES; SUBCONTRACTING; OCCUPATIONAL MISCONDUCT; LABOR AND EQUIPMENT; WAREHOUSING; COLLECTION OF TARIFF CHARGES WHERE THE SHIPMENT HAS BEEN DESTROYED; LIABILITY FOR DAMAGE TO CONSUMER'S GOODS; CLAIMS PROCEDURES; FORMS

Adopted Amendments: N.J.A.C. 13:44D-1.1, 1.2, 2.1, 2.2, 2.3, 2.5, 2.6, 3.1, 4.1, 4.2, 4.3A, 4.4, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 and 5.1

Adopted Repeals: N.J.A.C. 13:44D-4.3, 4.4, 4.7 and Appendices A and B

Adopted New Rules: N.J.A.C. 13:44D-2.7, 2.8, 4.2, 4.3, 4.4, 4.7, 4.15 and Appendices A, B, C, D and G

Adopted Recodification: N.J.A.C. 13:44D-4.5 as 4.8

Proposed: May 5, 2003 at 35 N.J.R. 1764(a) (see also 35 N.J.R. 2836(a) and 4044(a)).

Adopted: April 27, 2004 by Reni Erdos, Director of the Division of Consumer Affairs.

Filed: May 4, 2004 as R.2004 d.203, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6) and with the proposed repeal of N.J.A.C. 13:44D-4.5 and proposed new rule N.J.A.C. 13:44D-3.2 not adopted.

Authority: N.J.S.A. 45:14D-1 et seq., specifically 45:14D-6.

Effective Date: June 7, 2004. Expiration Date: June 28, 2004.

Summary of Hearing Officer's Report and Agency Responses:

A public hearing on proposed repeals, new rules and amendments to N.J.A.C. 13:44D was held on September 5, 2003 at the Division of Consumer Affairs, 124 Halsey Street, Newark, New Jersey. Charles P. Manning, Esq. presided over the hearing. A copy of the transcript of the public hearing is available by contacting the Regulatory Business Section, Division of Consumer Affairs at PO Box 45028, Newark, New Jersey 07101, (973) 504-6370. The hearing officer considered all written and oral testimony on the proposal and made several recommendations. The hearing officer recommended that the Director not adopt the proposed elimination of owner/operators from N.J.A.C. 13:44D-1.1 and 4.5 at this time. The hearing officer believes that legislative change would have to be sought to legitimize the use of such unlicensed individuals. If such legislative change does not occur, the hearing officer believes the Director may need to repropose the elimination of owner/operators in order to comport with the legislative scheme.

The hearing officer also recommended that the Director not adopt proposed N.J.A.C. 13:44D-2.1(i), which requires that, when the name of an unlicensed company is included on a moving vehicle, the vehicle also contain a statement

that indicates that the company is not licensed in New Jersey. The hearing officer recommended that the Director review the forms in Appendices B and C, specifically Schedule A of these forms, and correct them at a later date if necessary. The hearing officer also recommended that the Director not adopt the amendments to recodified N.J.A.C. 13:44D-4.12 that delete the exemption for damage caused by hostile or warlike acts. The hearing officer recommended that the Director amend N.J.A.C. 13:44D-3.2 to clarify that licensees can calculate the cost of a move by using a variety of methods and that the Division contact its licensees to see which of them would like to be added to the interested party list.

The Director has considered the recommendations of the hearing officer and all of the public comments. The Director has decided to follow the hearing officer's recommendations and has made changes to the proposed amendments, repeals and new rules as outlined below.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules have no applicable Federal laws or standards.

Full text of the adopted amendments and new rules follows :

<< NJ ADC 13:44D-1.1 >>

13:44D-1.1 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.

"Advertising" means any attempt directly or indirectly by publication, dissemination, solicitation, endorsement circulation in other way to induce person entity purchase enter into an agreement services goods from a licensee.>

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"Bill of lading" means a contract of carriage and a receipt given to a consumer by the public mover for all of the cargo picked up from the consumer by the public mover and moved to another point.

"Binding estimate" means a contract which contains a calculation of the cost of a move made after the mover has made a physical survey which clearly describes the goods to be moved and the accessorial services to be performed and which binds the mover to the charges shown on the binding estimate form.

"Brochure" means a printed, informational booklet to be provided to each prospective consumer by the public mover and/or warehouseman.

"Consumer" means the person, partnership, corporation, company, trust, business entity or association contracting with a public mover and/or warehouseman for moving and/or storage services.

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"Gross weight" means the weight of a moving vehicle once it has been loaded with a consumer's goods.

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"Net weight" means the weight of a consumer's goods. The net weight is arrived at by subtracting the tare weight from the gross weight.

"Order for Service" means the contract which the consumer receives from a public mover and/or warehouseman at

least 24 hours prior to the move.

<<+ "Owner/operator" means a person who owns his or her own vehicle and leases his or her services to a second person or company for compensation to performing moving services for and using the forms and bill of lading of the second person or company.+>>

"Power unit" means that component of a moving vehicle that has the mechanical workings of a truck and the cabin where the driver operates the vehicle or the entire truck if it is comprised of only one piece, such as a van. "Power unit" does not mean a detachable trailer.

"Public mover" means any person who engages in or holds him or herself out to the general public as engaging in the transportation of household goods, as defined by N.J.S.A. 45:14D-2(e); office goods, as defined by N.J.S.A. 45:14D-2(k); or special commodities, as defined by N.J.S.A. 45:14D-2(q) by motor vehicle for compensation in intrastate commerce between points in this State, including the moving of household goods, office goods or special commodities from one location to another at a single address, and any person who engages in the performance of accessorial services as defined by N.J.S.A. 45:14D-2(a).

"Shipment" means property tendered by a consumer, and accepted by the carrier, at one place of origin and at one time, for one consignee at one destination, and covered by one bill of lading.

"Short-notice moving or warehousing" means performing a move, or warehousing property, on the same day that a consumer requests services from a public mover and/or warehouseman.

"Subcontracting" means the transfer by a public mover, with the prior approval of the consumer, of any bill of lading to another licensed public mover to perform services initially contracted by the original public mover.

"Tare weight" means the weight of an empty moving vehicle prior to the loading of a consumer's goods.

"Tariff" means a schedule of rates and charges for the storage or transportation of property in intrastate commerce on file with the Board, which shall be used, except in the use of binding estimates by movers, in computing all charges on the storage or transportation of property as of the date of the time in storage or transportation.

"Warehouse receipt" means a receipt given to a consumer by a warehouseman for all of the consumer's goods stored in the warehouseman's facility.

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SUBCHAPTER 2. GENERAL LICENSE REQUIREMENTS

<< NJ ADC 13:44D-2.1 >>

13:44D-2.1 License to engage in the business of public moving and/or storage

(a) No license to engage in the business of public moving and/or storage shall be issued or remain in effect unless the applicant owns or leases pursuant to a long-term lease at least one moving vehicle.

(b) An applicant for licensure as a public mover and/or warehouseman shall submit to the Director:

1. A fully completed application for licensure accompanied by the required fee;
2. Certificates of insurance evidencing coverage of workers' compensation (when such coverage is required under N.J.S.A. 34:15-77 and 78), the operation of motor vehicle equipment, cargo, storage facilities and property being held in storage conditioned or providing for the payment of all judgments recovered against a public mover and/or warehouseman in the manner and amounts specified in N.J.A.C. 13:44D-4.5;
3. A designation of agent pursuant to N.J.A.C. 13:44D-2.3;

4. A fully executed, filed tariff as specified in N.J.A.C. 13:44D-3.1; and
5. A photocopy of all vehicle registration(s) issued to the applicant by the New Jersey Division of Motor Vehicles or, in the case of vehicles subject to a long-term lease, a photocopy of the signed lease agreement.

(c) The initial license shall be issued to a qualified applicant if it is found that the applicant is fit, willing and able to perform the service of a public mover and/or warehouseman, to conform to the provisions of the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., and pays the required fee as specified in N.J.A.C. 13:44D-2.4.

(d) All licenses shall be valid for one year. Prior to the license expiration date the Director shall send out renewal forms to all licensees. Licensees shall submit a completed renewal form and the renewal fee as specified in N.J.A.C. 13:44D-2.4 to the Director prior to the expiration date of the license.

Recodify existing (d)-(f) as (e)-(g) (No change in text.)

(h) All commercial vehicles used in the practice of public moving shall be marked in conspicuous lettering, at least three inches in height, on the passenger and driver side of the truck cab, and the passenger and driver side of the truck's trailer, with the following information:

1. The name of the licensee;
2. The words "License number" or "Lic. #" followed by the letters and numbers as they appear on the license certificate; and
3. The name of the registered owner or lessee of the vehicle, if it is different than the name required under (h)1 above.

<<-(i) If the name of more than one moving or warehousing company appears on a truck, information as required by (h) above shall be listed on the truck for each company. If the additional company(ies) listed on a truck are not licensed to perform intrastate moving or warehousing in New Jersey, the truck shall contain a statement in conspicuous lettering, at least three inches in height, that the companies are not licensed in New Jersey.->>

<<-(j)->><<+(i)+>> A licensee may perform only those services for which licensure has been granted:

1. A licensee granted a license to engage only in the business of public moving shall not engage in the business of warehousing;
2. A licensee granted a license to engage only in the business of warehousing shall not engage in the business of public moving; and
3. A licensee granted a license to engage in the businesses of public moving and warehousing is entitled to render both services.

<<-(k)->><<+(j)+>> Performing services for which licensure has not been granted is a violation of N.J.S.A. 45:14D-9(a) and is subject to the penalty provisions of N.J.S.A. 45:14D-7, 45:14D-16 and/or 45:14D-20.

<< NJ ADC 13:44D-2.2 >>

13:44D-2.2 Change of address, business name, or telephone number

(a)-(b) (No change.)

(c) In addition to the requirements of (a) and (b) above, all licensees who change their business name and/or permanent place of business shall, within 60 days of the change, update all vehicle signage as required by N.J.A.C. 13:44D-2.1(h) and notify the Director in writing that the signage has been changed.

(d) A licensee shall notify the Director within 30 days, in writing, if there is a change in ownership in his or her moving company.

<< NJ ADC 13:44D-2.3 >>

13:44D-2.3 Designation of agent

(a) No public mover and/or warehouseman shall operate under a license unless and until there has been filed with the Director, on the "Designation of Agent" form, a designation of agent, street address and municipality upon whom service of process, notices and/or orders may be made pursuant to N.J.S.A. 45:14D-1 et seq.

(b) The designated agent shall be an individual, who is neither the owner, director or principal of the company and who is a resident of the State of New Jersey. Such designee may be changed by filing the specified form pursuant to (a) above and (c) below.

(c) (No change.)

(d) Service of process to the designated agent shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

<< NJ ADC 13:44D-2.5 >>

13:44D-2.5 Advertising

(a) All advertising by licensees shall include the licensee's:

1.-2. (No change.)

3. Permanent place of business in New Jersey and New Jersey telephone number.

(b) Advertising shall not be misleading as to the services that the licensee is authorized to render. If a licensee is authorized to perform only public moving or warehousing, the advertising shall not include language that states or implies that the licensee is authorized to render both public moving and warehousing services.

1. A licensee authorized only to provide public moving services shall not use advertising that includes the terms "warehouse," "warehousing," "storage," "storing," "depository," "repository" or other language which indicates that warehousing services may be rendered by that licensee.

2. A licensee authorized only to provide warehousing services shall not use advertising that includes the terms "mover," "moving," "cargo," "carrier," "shipper," "shipping," "lading," "relocation" or other language that indicates that the services of a public mover may be rendered by that licensee.

(c) A licensee who uses advertising that is misleading as to the services that the licensee is authorized to render shall be deemed to have engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense pursuant to N.J.S.A. 45:14D-7(b) and shall be subject to discipline by the Director pursuant to N.J.S.A. 45:14D-7, 45:14D-16 and 45:14D-20.

<< NJ ADC 13:44D-2.6 >>

13:44D-2.6 Place of business

(a)-(b) (No change.)

(c) A post office box or a maildrop location shall not constitute a permanent place of business for the purposes of this chapter.

(d) (No change.)

<< NJ ADC 13:44D-2.7 >>

13:44D-2.7 Names used to offer moving and/or warehousing

(a) Any name used by a licensee to offer moving and/or warehousing services in New Jersey shall not be misleading as to the services that the licensee is authorized to render.

1. A licensee authorized only to provide public moving services shall not use a name that includes the terms "warehouse," "warehousing," "storage," "storing," "depository," "repository," or other language that indicates that warehousing services may be rendered by that licensee.

2. A licensee authorized only to provide warehousing services shall not use a name that includes the terms "mover," "moving," "cargo," "carrier," "shipper," "shipping," "lading" or other language that indicates that the services of a public mover may be rendered by that licensee.

(b) A licensee who violates (a) above shall be deemed to have engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense pursuant to N.J.S.A. 45:14D-7(b) and shall be subject to discipline by the Director pursuant to N.J.S.A. 45:14D-7, 45:14D-16 and 45:14D-20.

<< NJ ADC 13:44D-2.8 >>

13:44D-2.8 Disconnection of unlicensed mover's telephone

(a) The Director shall, pursuant to the provisions of N.J.S.A. 45:14D-26, notify the Board of Public Utilities of the business location and telephone number of any public mover that does not have a valid license issued, or renewed, by the Director.

(b) When notified by the Director of the business location and telephone number of any public mover that does not have a valid license issued, or renewed, by the Director, the Board of Public Utilities shall, pursuant to the provisions of N.J.S.A. 45:14D-27, order the servicing telecommunications company of the public mover to disconnect that mover's commercially listed telephone number.

(c) When ordered by the Board of Public Utilities pursuant to (a) and (b) above, the telecommunications company shall, pursuant to the provisions of N.J.S.A. 45:14D-28, disconnect the mover's commercially listed telephone number.

<< NJ ADC 13:44D-3.1 >>

13:44D-3.1 Tariffs

(a)-(d) (No change.)

(e) No licensee shall charge, demand, collect or receive a greater compensation for his or her service than specified in the tariff, except in the use of binding estimates, pursuant to N.J.S.A. 45:14D-29 and N.J.A.C. 13:44D-4.2.

(f) (No change.)

<< NJ ADC 13:44D-3.2 >>

13:44D-3.2 <<-Calculating moving costs->> <<+(Reserved)+>>

<<-(a) A public mover shall determine moving costs either by the hour or by the weight of the consumer's goods.->>

<<-(b) If a public mover's rates are determined by the hour, the public mover shall document, in the bill of lading, the

hours spent performing the move.->>

<<-(c) If a public mover's rates are determined on the basis of weight, the public mover shall determine the net weight by subtracting the tare weight from the gross weight. If a shipment weighs less than 1,000 pounds, the public mover may weigh it prior to loading by using a portable scale or by estimating the weight based on cubic feet. All documents indicating the weight of a truck, either gross weight or tare weight, shall have a seal on them indicating that the scale used was approved by the New Jersey Office of Weights and Measures.->>

<< NJ ADC 13:44D-4.1 >>

13:44D-4.1 Moving contract: non-binding estimate

(a) Prior to entering into a contract to render services based on a non-binding estimate, every public mover shall issue the following to each consumer at least 24 hours prior to the date of the move:

1. A brochure entitled "Important Notice to Consumers Utilizing Public Movers" which is found at Appendix A and is incorporated herein by reference. The brochure shall be distributed by all public movers to consumers. The public mover may not alter the <<+text of the+>> brochure in any way <<- except that he or she->><<+. A public mover+>> may place the name of his or her company on the brochure<<+. If a public mover places the name of his or her company on the brochure, the information required by N.J.A.C. 13:44D-2.5(a) must also appear on the brochure+>>;

2. A fully completed written estimate, signed by the mover and consumer and rendered after a physical inspection of the premises and the goods to be moved by the public mover. A public mover and/or warehouseman may employ an estimator to perform the physical inspection; however, no public mover and/or warehouseman shall employ an estimator who also represents any other public mover and/or warehouseman. A sample estimated cost of services form is provided in Appendix B. The public mover and/or warehouseman may adopt any form containing the same information outlined in this paragraph and in Appendix B; provided that the font size of the type in the mover's form is the same as in Appendix B, and any words in bold in Appendix B are in bold on the mover's form. This form shall also include a statement, in bold face type, indicating that the tariff in effect at the time of the shipment shall govern the final non-binding estimate charges for the shipment.

(b) The public mover and the consumer shall enter into a contract at least 24 hours prior to the move by completing an order for service form. The order for service form shall include the date of shipment, storage arrangements, points of origin and destination, the date of delivery, a notice indicating that the consumer acknowledges receipt of the public mover's and/or warehouseman's brochure and the order for insurance. <<-No charges shall be affixed to this form.->> A sample order for service form is provided in Appendix D,. The public mover may adopt any form containing the same information outlined in this paragraph and in Appendix D; provided that the font size of the type in the mover's form is the same as in Appendix D, and any words in bold in Appendix D are in bold on the mover's form.

(c) Once the order for service form has been signed by the mover and the consumer, the public mover shall issue to each consumer a bill of lading which shall indicate the date of shipment, the names and addresses of the public mover and consumer, the license number of the public mover, an address or telephone number where the public mover and consumer can be contacted during shipment, the points of origin and destination, the time the moving vehicle arrived at the point of origin and when the move was finished, and the released or declared value of the shipment. The bill of lading issued to the consumer shall be fully completed. A sample bill of lading is provided in Appendix E. The public mover may adopt any form containing the same information outlined in this paragraph and in Appendix E; provided the form shall contain all the information outlined in this paragraph and provided that the font size of the type in the mover's form is the same as in Appendix E, and any words in bold in Appendix E are in bold on the mover's form.

(d) Prior to the commencement of a move, a public mover shall provide a certificate of insurance to <<-the->> <<+a+>> consumer who <<- contracted for the move->> <<+has ordered insurance through the public mover+>>.

<< NJ ADC 13:44D-4.2 >>

13:44D-4.2 Moving contract: binding estimate

(a) Prior to the contracting to provide services pursuant to a binding estimate, every public mover shall issue to each consumer, at least 24 hours prior to the date of the move:

1. The brochure required by N.J.A.C. 13:44D-4.1(a)1;

2. A binding estimate as found in Appendix C. The binding estimate shall be furnished in writing to the consumer or other person responsible for payment of the charges for the mover's services after a physical inspection of the premises and the goods to be moved. The binding estimate shall be signed by the public mover and the consumer, and a copy of the binding estimate shall be retained by the public mover as an addendum to the bill of lading. A binding estimate shall clearly describe the property to be moved and all services to be provided. A sample binding estimate form is provided at Appendix C. The public mover may adopt any form containing the same information outlined in Appendix C provided that the font size of the type in the mover's form is the same as in Appendix C, and any words in bold in Appendix C are in bold on the mover's form; and

3. An order for service as found in Appendix G. The order for service form shall include the date of shipment, storage arrangements, points of origin and destination, the date of delivery, a notice indicating that the consumer acknowledges receipt of the public mover's and/or warehouseman's brochure and the order for insurance. No charges shall be affixed to this form. The public mover may adopt any form containing the same information outlined in this paragraph and in Appendix G; provided that the font size of the type in the mover's form is the same as in Appendix G, and any words in bold in Appendix G are in bold on the mover's form.

(b) On the day of the move the public mover shall issue to the consumer a bill of lading which shall indicate the date of shipment, the names and addresses of the public mover and consumer, the license number of the public mover, an address or telephone number where the public mover and consumer can be contacted during shipment, the points of origin and destination, the time the moving vehicle arrived at the point of origin and when the move was finished, and the released or declared value of the shipment. The bill of lading issued to the consumer shall be fully completed. A sample bill of lading is provided in Appendix E. The public mover may adopt any form containing the same information outlined in this paragraph and in Appendix E; provided the form shall contain all the information outlined in this paragraph and provided that the font size of the type in the mover's form is the same as in Appendix E, and any words in bold in Appendix E are in bold on the mover's form.

(c) If, at the time of the move, additional services not listed in the binding estimate are requested by the consumer the mover may perform those additional services and charge for them pursuant to his or her filed tariff. If additional services are added, the binding estimate remains a contract between the mover and the consumer for those services listed in the binding estimate.

(d) Within seven days of performing a move a public mover shall issue a certificate of insurance to <<-the->> <<+a+>> consumer who <<- contracted for the move->> <<+has ordered insurance through the public mover+>>.

<< NJ ADC 13:44D-4.3 >>

13:44D-4.3 Warehousemen entering into a contract to provide services

(a) Prior to entering into a contract to render services every warehouseman shall issue to each consumer:

1. The brochure as found in Appendix A. A warehouseman shall not alter the <<+text of the+>> brochure in any way <<-except that he or she->><<+. A licensee+>> may place the name of his or her company on the brochure<<+. If a licensee places the name of his or her company on the brochure, the information required by N.J.A.C. 13:44D-2.5(a) must also appear on the brochure+>>;

2. A non-binding final estimated cost of services form as found in Appendix B. The warehouseman may adopt any form containing the same information outlined in Appendix B provided that the font size of the type in the mover's form is the same as in Appendix B, and any words in bold in Appendix B are in bold on the mover's form;

3. An order for service form as found in Appendix D. The warehouseman may adopt any form containing the same information outlined in Appendix D provided that the font size of the type in the mover's form is the same as in Appendix D, and any words in bold in Appendix D are in bold on the mover's form; and

4. A warehouse receipt as found in Appendix F which shall indicate the date of issue, the names and addresses of the warehouseman and consumer, the license number of the warehouseman, an address or telephone number where the warehouseman and consumer can be contacted during the storage period, a description of the goods and location of the warehouse where the goods are to be stored. The warehouseman may adopt any form substantially similar to the suggested form outlined in this paragraph and in Appendix F provided the form shall contain all of the information outlined in this paragraph and provided that the font size of the type in the mover's form is the same as in Appendix F, and any words in bold in Appendix F are in bold on the movers form.

<< NJ ADC 13:44D-4.4 >>

13:44D-4.4 Combination of Order for Service and estimate forms

A public mover and/or warehouseman may combine the Order for Service and the estimate forms, binding or non-binding, into one document. If a public mover and/or warehouseman combines the order for service and estimate forms into one form it shall contain the same information as the forms found in Appendices B and D. The consumer shall sign the form twice, once for the order for service and once for the estimate with the purpose for each signature clearly indicated on the form.

<< NJ ADC 13:44D-4.5 >>

13:44D-4.5 Legal liability and insurance

(a) The public mover and/or warehouseman may, by contract with the consumer, limit liability for loss or damage to goods in storage or in transit. The minimum amount which a public mover and/or warehouseman may limit liability is \$.60 per pound per article. The order for service shall specifically state the public mover's and/or warehouseman's liability. Any limitation shall be null and void and the public mover and/or warehouseman shall be subject to full liability if any of the following occurs:

1. The public mover and/or warehouseman fails to present an Order for Service form which contains the information required by N.J.A.C. 13:44D-4.1(b), 4.2(a) or 4.3(a) at least 24 hours prior to providing moving and/or storing services;
2. The public mover and/or warehouseman fails to provide the consumer with the brochure entitled "Important Notice to Consumers Utilizing Public Movers," in accordance with N.J.A.C. 13:44D-4.1(a), 4.2(a) or 4.3(a); or
3. A court or administrative finding has been made that the loss of or damage to the consumer's goods was the result of gross negligence and/or gross incompetence on the part of the mover and/or warehouseman and/or his or her agents or employees, whether as to the actual handling of goods or in the failure to provide appropriate security to prevent loss by theft.

(b) Every licensed public mover and/or warehouseman shall secure, maintain and file with the Director a certificate of insurance from an insurance company authorized and licensed to do business in this State covering the motor vehicle, cargo, storage facilities and property being held in storage for the amounts set forth in (c) below, conditioned or providing for payment of all judgments recovered against such public mover and/or warehouseman.

(c) The minimum amounts of insurance a public mover shall secure and maintain are:

1. Legal liability coverage at the rate of \$.60 per pound per article;
2. Bodily injury liability, property damage liability:

i.-ii. (No change.)

iii. Limit for loss or damage in any one accident to property of others (excluding cargo): \$10,000; and

3. (No change.)

(d) The minimum amounts of insurance for warehousemen are:

1. Legal liability coverage at the rate of \$.60 per pound per article.

(e) The mover and/or warehouseman shall file with the Director in triplicate, on forms substantially similar to those determined by the National Association of Regulatory and Utilities Commissioners (NARUC) and promulgated by the <<- Interstate Commerce Commission (ICC)->> <<+Federal Motor Carrier Safety Administration (FMCSA)+>>, containing the following:

1.-3. (No change.)

4. Notice of cancellation of workers' compensation insurance policies on a form provided by the Compensation Rating and Inspection Bureau of the Department of Banking and Insurance.

(f)-(g) (No change.)

(h) All required insurance filings shall be made at the Office of Regulated Business, Division of Consumer Affairs, 124 Halsey Street, PO Box 45027, Newark, New Jersey 07101.

(i) Where a consumer requests the public mover and/or warehouseman to obtain additional insurance and the consumer pays the additional premium, the public mover and/or warehouseman shall furnish the consumer with a certificate of insurance. Such certificate shall include the following:

1.-6. (No change.)

7. The amount, if any, of any deductible for which the consumer would be liable.

(j) The public mover and/or warehouseman shall inform the Director, within 30 days, if an insurance policy lapses, is revoked or is not renewed for any reason.

(Agency Note: Upon adoption, current N.J.A.C. 13:44D-4.5 is not repealed, but is recodified as N.J.A.C. 13:44D-4.8.)

<< NJ ADC 13:44D-4.6 >>

13:44D-4.6 Withholding a shipment

(a) A public mover shall not withhold all or any part of a shipment if:

1. The moving contract is based on a binding estimate and the consumer or other person responsible for payment of charges pays the amount of the binding estimate in full, or the consumer or other person responsible for payment of charges offers to pay the amount of the binding estimate and the mover refuses to accept the amount offered; or

2. The moving contract is not based on a binding estimate and the mover does not disclose in the Order for Service that the mover may withhold all or part of the shipment for non-payment of the freight bill.

(b) A mover violating any provision of this section shall be liable, pursuant to N.J.S.A. 45:14D-29(d), to a civil penalty of not less than \$1,000 nor more than \$5,000 for a first violation and not less than \$5,000 nor more than \$10,000 for each subsequent violations. The penalty prescribed in this section shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.) N.J.S.A. 45:14D-22.

<< NJ ADC 13:44D-4.7 >>

13:44D-4.7 Subcontracting

- (a) A public mover shall only subcontract to another public mover.
- (b) A public mover shall only subcontract if the mover is unable to perform the move on the promised date due to forces and circumstances beyond his or her control and the consumer agrees, in writing, to the subcontracting.
- (c) If a mover wishes to obtain a consumer's permission to subcontract the mover shall provide the consumer, in writing, with the nature of the relationship between the original public mover and the subcontracted public mover.
- (d) The original public mover shall remain responsible for the services provided by the subcontracted public mover.

<< NJ ADC 13:44D-4.5 >>

<< NJ ADC 13:44D-4.8 >>

13:44D-~~4.5~~+4.8 Use or employment of owner/operator

(a) If a public mover tends to use or employ the services of an owner/operator, the consumer shall be so advised. In such instances, the public mover shall, in advance and in writing, provide the consumer with the following information:

1. The definition of owner/operator; and
2. The nature of the relationship between the public mover and the owner/operator.

(b) Any public mover who uses or employs the services of an owner/operator shall remain responsible for the services provided by the owner/operator.

<< NJ ADC 13:44D-4.8 >>

<< NJ ADC 13:44D-4.9 >>

13:44D-~~4.8~~+4.9 Occupational misconduct

(a) A public mover shall be deemed to have engaged in occupational misconduct within the meaning of N.J.S.A. 45:14D-7(f) if the mover engages in the following:

1. Books and/or attempts to perform a move where the mover knew or should have known that a moving vehicle of adequate size and containing adequate equipment to accommodate the consumer's goods and any necessary moving equipment would not be or in fact was not available to the mover on the scheduled date of the move;
2. Fails to arrive at the consumer's premises on the promised date of service and perform all contracted-for services; or
3. Fails to notify the consumer of the impossibility of meeting the promised date of service by written notice or by telephone no later than 12:00 noon on the promised date, or, if impractical under the circumstances, at the earliest possible time, and fails to offer the consumer the option of:
 - i.-ii. (No change.)
 - iii. Accepting substituted service by another licensed carrier. In the event this option is accepted the consumer shall be charged according to the filed tariff of the public mover performing the substituted service; or
 - iv. (No change.)

(b) (No change.)

<< NJ ADC 13:44D-4.9 >>

<< NJ ADC 13:44D-4.10 >>

13:44D-~~4.9~~+4.10 Labor and equipment

A public mover shall supply only such labor and equipment which would reasonably be expected to be necessary to properly perform the moving services indicated on the original estimated cost of services form. Any changes in the number of men and/or amount or type of equipment to be employed or utilized must be approved in writing and in advance by the consumer and the public mover.

<< NJ ADC 13:44D-4.10 >>

<< NJ ADC 13:44D-4.11 >>

13:44D-~~4.10~~+4.11 Warehousing

(a) The exact address of the warehouse where the consumer's goods are to be stored shall be indicated on the estimated cost of services form, bill of lading, if any, and warehouse receipt. In the event the consumer's goods are to be moved, in whole or in part, to another warehouse, the public mover and/or warehouseman shall, 30 days in advance of the transfer, notify the consumer by registered mail and provide him or her with the address of the proposed warehouse and any differences in insurance coverage between the contracted-for warehouse and the new proposed warehouse. The public mover and/or warehouseman shall also, in advance of any transfer, secure the consumer's written approval or grant the consumer the option of removing his or her possessions without penalty.

(b) Any public mover and/or warehouseman utilizing a self-storage facility shall so notify the consumer in writing before entering into a contract for storage.

(c) A public mover and/or warehouseman shall give the consumer no less than 30 days written notice by registered mail before increasing the fees to be charged for storage and shall provide the consumer the option of removing goods from storage without penalty prior to increasing such fees.

(d) A public mover and/or warehouseman shall provide the consumer access to his or her possessions and goods upon 48 hours notice to the public mover and/or warehouseman. The public mover and/or warehouseman may require payment of all outstanding charges and access fees, as provided by his or her tariff, before allowing the consumer access.

(e) A public mover and/or warehouseman shall not store the goods of a consumer engaged in an intra-State move in an out-of-State warehouse.

(f) (No change.)

<< NJ ADC 13:44D-4.11 >>

<< NJ ADC 13:44D-4.12 >>

13:44D-~~4.11~~+4.12 Collection of tariff charges where the shipment has been destroyed

The public mover shall not collect, or require a consumer to pay, any tariff charges on any shipment that is totally lost or destroyed. The consumer shall, however, remain liable for any and all insurance premiums agreed upon by the consumer and the public mover.

<< NJ ADC 13:44D-4.12 >>

13:44D-~~4.12~~+4.13+>> Liability for damage to consumer's goods

(a) The public mover and/or warehouseman shall be liable for physical loss, destruction, or damage to any articles of the consumer during transit and/or storage, except when:

1. The damage was caused by the consumer or was the result of the consumer's negligence;

2. (No change.)

~~3.~~+3. The damage was caused by a hostile or warlike action occurring in a time of peace or war.+>>

~~3.~~+4.+>> After warning the consumer of the possibility or likelihood of damage, because of strikes, lockouts, labor disturbances, riots, or civil commotions, the consumer, in a signed writing, instructs the public mover or warehouseman to proceed with the transportation or storage notwithstanding such risks; or

~~4.~~The damage was caused by severe weather or seismic conditions.->>

~~5.~~+5. The damage was caused by an act of God.+>>

(b) Where the basis for excusing the liability of any public mover and/or warehouseman is based upon any portion of (a) above, the burden shall rest with the public mover and/or warehouseman to prove the truth of allegations to the satisfaction of the Director unless the consumer, in a signed and notarized writing, agrees to the public mover's and/or warehouseman's claims.

(c) The public mover or warehouseman shall not be liable for any loss or damage occurring after the property has been delivered to the consumer or the consumer's authorized agent.

13:44D-~~4.13~~+4.14+>> Claims procedures

(a) If a consumer wishes to file a claim for damage to goods occurring during a move or while in storage, the consumer shall so notify the public mover and/or warehouseman in writing. Within seven days of receiving such notification, the public mover and/or warehouseman shall forward to the consumer the appropriate claim forms.

(b) All claims for loss, damage or overcharge shall be submitted in writing to the public mover and/or warehouseman within 90 days of the consumer's receipt of his or her goods. All claims shall be accompanied by the original paid bill of lading.

(c) Where the claim involves either overcharging or partial loss, damage or destruction of a consumer's goods, the consumer shall pay in full the amount appearing on the original bill and shall submit the paid bill or original paid bill of lading with the written claim, pursuant to (a) above.

(d) Where the claim involves the loss, damage or destruction of the entire shipment, the consumer is liable for only the insurance premiums agreed upon in accordance with N.J.A.C. 13:44D-4.11.

(e) The public mover and/or warehouseman and consumer shall settle all claims within 90 days of the receipt of the completed claim form. This 90 day period may be extended by 30 days if both the public mover and/or warehouseman and the consumer agree in writing to an extension. The public mover shall maintain the signed agreement to extend this period in his or her records for two years.

13:44D-4.14-4.15 Short-notice move or warehousing

(a) Pursuant to N.J.A.C. 13:44D-4.1, 4.2 and 4.3, a public mover and/or warehouseman shall not perform a move, or provide warehouse property, on the same day a consumer contacts the mover and/or warehouseman except as provided in (b) below.

(b) A public mover and/or warehouseman may only perform a short-notice move or warehousing if:

1. The consumer has been evicted from his or her residence or office and needs to move or store his or her property within 24 hours of the eviction;
2. The consumer's residence or office has been damaged by fire and he or she needs to move or store his or her property within 24 hours of the fire;
3. The consumer contracted for a move or warehousing on that day and the other mover and/or warehouseman did not arrive to perform the move or warehousing; or
4. The total cost to the consumer of the move or warehousing, including tips or gratuities, will not exceed \$500.00.

(c) A public mover and/or warehouseman who performs a short-notice move or warehousing shall issue all forms required by N.J.A.C. 13:44D-4.1, 4.2 and 4.3, as appropriate. A public mover and/or warehouseman who performs a short-notice move or warehousing need not provide documents 24 hours prior to the move as required by N.J.A.C. 13:44D-4.1, 4.2 and 4.3.

(d) A public mover and/or warehouseman who performs a short-notice move shall obtain documentary proof that the consumer was evicted from the residence or office, had to move on account of a fire, had contracted with another mover for a move on that day or that the cost of the move or warehousing did not exceed \$500.00. The public mover and/or warehouseman shall maintain this documentary evidence as part of his or her records for at least three years.

13:44D-5.1 Forms

(a) The form set forth in Appendix A is incorporated by reference as part of these rules and shall be adhered to, except that the public mover and/or warehouseman may add information such as business name and logo to indicate the company that has provided the brochure to the consumer.

(b) The forms set forth in Appendices B through F are samples only, intended to demonstrate the information and type size that is required to be included on the front page of each document. All forms and contracts, however, used by licensees in transactions for the personal, family or household purposes of a consumer shall comply with the Plain Language Law, N.J.S.A. 56:12-1 et seq.

APPENDIX A

IMPORTANT NOTICE TO CONSUMERS USING PUBLIC MOVERS AND WAREHOUSEMEN

FORWARD

Please read this brochure carefully. The public mover and/or warehouseman you have engaged is required by law to provide this brochure to you.

For your protection, please obtain the complete and correct name, business address, license number and telephone number of the mover and/or warehouseman who is to transport and/or store your shipment. If you are moving from one location to another within the State of New Jersey, the mover you engage must be licensed by the State of New Jersey. To confirm that the mover you engage is licensed, please call 1 (973) 504-6442 or 1 (973) 504-6512.

ESTIMATES

The mover is required to physically survey your goods prior to calculating an estimate. After physically surveying your goods, a mover is required by law to provide to you a written estimate of the costs of a move at least 24 hours prior to conducting a move. The only exception to this is when the mover is performing a "short-notice move." Please ask the mover to include all charges he will make on the estimate. The mover may offer you either a "binding estimate" or a "non-binding estimate." The estimate form you receive should clearly indicate whether the estimate is binding or non-binding.

A non-binding estimate is not a contract and will not bind you to using that mover. The mover will ask you to sign a non-binding estimate. You should sign and date it for your own protection. The costs assigned in a non-binding estimate are based upon the tariff rates that the mover has filed with the Office of Consumer Protection. Remember that the mover cannot determine exactly what your move will cost until the move is complete (if the charge is based on an hourly rate) or until the shipment is weighed (if the charge is based on weight). The estimate may increase, for example, if you decide to move additional items, failed to pack the goods you said you would pack, or if moving your goods into your new home is time-consuming because you failed to tell the mover you were moving to the third floor of a building or that he could not park his truck immediately outside.

A binding estimate is a contract which contains a calculation of the cost of a move and requires the mover to perform the move for the price shown on the binding estimate form. A binding estimate must describe the goods to be moved and the accessorial services to be performed. A mover who uses a binding estimate may charge you more than his tariff rates. The benefit of using a binding estimate for you is that you will know exactly what your move will cost, because the mover cannot charge you any more than his binding estimate unless you ask for additional services on the day of the move.

When a mover is performing a short-notice move, he is still required by law to physically survey your goods and provide a written estimate. The mover is not, however, required to provide this estimate 24 hours prior to the move. A mover performing a short-notice move may provide an estimate on the day of the move. A short-notice move may only be performed if you have been evicted and you need to move your property within 24 hours of the eviction, your residence or office has been damaged by fire and you need to move your property within 24 hours of the fire, you contracted with another mover and he didn't arrive or the total cost to you for the move does not exceed \$500.00. The mover is required to follow all other statutes and regulations regarding moving when providing a short-notice move. A mover performing a short-notice move will offer you either a binding estimate or a non-binding estimate; these estimates are identical to estimates given under normal circumstances, except they do not need to be provided 24 hours prior to the move.

MOVER'S RESPONSIBILITY FOR LOSS AND DAMAGE

Unless you have additional insurance, the mover is, in most cases, only required to reimburse you for any damages to your belongings at the rate of \$.60 per pound. For example, if you have a vase valued at \$1,000 but it only weighs two pounds, the mover is, in most cases, only required to reimburse you the sum of \$1.20. For your own protection, consider discussing with your insurance agent whether you should purchase additional insurance from the mover or confirm that an existing insurance policy would protect your goods in transit or storage. If you decide to purchase insurance through the mover, the mover must issue you a certificate of insurance (sometimes called "an advice of coverage") as proof or purchase which must be fully completed with all the policy's terms.

When purchasing insurance, consider:

1. Whether to insure for actual or replacement value. For example, if you purchased a sofa in 1996 for \$500.00, do you want to insure it at actual value (\$500.00) or replacement value (probably a higher figure).

2. Whether you want to insure for the total valuation of your shipment. For example, if your total shipment value is \$50,000, and you only take out \$25,000 in insurance, you will only receive half the value of any damaged item.

LOST OR DAMAGED ARTICLES

Be sure to check your goods as they are delivered. You should note any lost articles or damages on the bill of lading which you will sign on completion of the delivery. If you discover other loss or damage report this to your mover immediately because the mover is not required by law to handle claims made more than 90 days after the move. If you suspect your goods have been stolen, you should report this to the police immediately.

BILL OF LADING

Before your shipment leaves the point of origin, you should obtain from the public mover a bill of lading signed by you and the public mover. Be sure that this shows the public mover's name, address, license number and telephone number at which you can reach the public mover, and an address and telephone number furnished by you to which the public mover can send messages regarding your shipment while it is in his possession, the location from and to which your goods are moving, the date of loading, date of delivery, storage instructions (if any) and the declared or released valuation of the goods. The bill of lading will list all the actual charges you have to pay for services rendered by the mover.

HOURLY MOVES

If the public mover's rates are determined by the hour, the mover will require you to sign for the start and finish time of the actual working hours (subject to the mover's minimum number of hours). You will note and initial on the bill of lading the time your truck arrives at your origin and again note and initial the time the men deliver the last piece into your new residence. To this time you will add the appropriate travel time, if travel time is applicable, and deduct for time spent by the movers for lunch or for time spent for any breakdown of the vehicle, and for any time spent in excess of normal for the truck being "lost" en route to your new residence. Any accessorial charges will be in addition to the hourly charges.

WEIGHT MOVES

If the public mover's transportation charges are determined on the basis of weight of your shipment and miles traveled, the public mover will weigh its empty vehicle prior to the loading of your goods. This weight will be the TARE WEIGHT. After loading your goods, the vehicle will again be weighed and this is the GROSS WEIGHT. The difference between the GROSS WEIGHT and the TARE WEIGHT is the NET WEIGHT. The NET WEIGHT is the weight for which you will pay transportation charges. If your shipment weighs less than 1,000 pounds, the mover may weigh it prior to loading by using a portable scale or use an estimated weight based on cubic feet. Some movers may have minimum weight requirements. The weight tickets obtained by the mover must have a seal on them showing that the truck scale used is approved by the NJ Bureau of Weights and Measures. You are permitted to follow the loaded truck to the weigh station to view your weighing.

PAYMENT AND DELIVERY

The mover usually requires payment in cash, money order or certified check. Check with your mover when he performs the physical survey of your goods as to what form of payment he requires so that you are prepared to pay on the day of the move. Unless you and your mover agreed to a binding estimate, the mover may charge you more than his estimate; you should be prepared to pay more than the estimate.

PREPARING ARTICLES FOR SHIPMENT

Some articles such as stoves, refrigerators, washing machines, computers, copiers, and other electronic devices, may require disconnection and usually special servicing to protect their mechanisms during shipment. Similarly, some items, such as pool tables and grandfather clocks, may need special handling to protect them during shipments. It is

your responsibility to have this done. Some public movers, upon request, will arrange to have this service done at your expense. You should arrange to take down all blinds, draperies, window cornices, mirrors, and other items attached to the walls, and to take up carpets which are tacked down. The charge for such service is not included in the transportation charge and may be performed by the public mover only at an extra per-hour charge. The mover should be advised prior to your moving date that these services are needed. Under no circumstances should you pack jewelry, money, valuable papers or items of sentimental value with your other belongings, or pack any matches, flammables, perishables, or other dangerous articles. The mover will not be responsible for these items should they be transported without his knowledge.

PACKING

You may pack your own belongings into boxes, crates, etc. or you may have the mover pack your goods for you. Please remember that the mover is not responsible for damage to any goods you pack yourself. The mover can also refuse to transport goods you have packed yourself if he feels he cannot transport them safely. When the mover performs the physical survey, make sure you ask whether the charge for packing and unpacking are included in the price. If you decide to pack your goods yourself, remember that the mover will charge you more than the estimate if you fail to pack all your goods in time and the mover has to do this for you.

TARIFFS

Every mover must file a document containing his rates charges and rules called a "tariff" with the State. Tariffs are open to public inspection and you may examine them at the mover's office or the Office of Consumer Protection, by appointment, during normal business hours. The mover may only require you to pay his charges as listed in the tariff with 2 exceptions: (1) he may always charge you less than his tariff; and (2) he may charge more than his tariff if you have agreed in advance to a binding estimate. No mover may impose a charge unless it is listed in his tariff. Such charges may include packing and unpacking, providing boxes and packing materials, specific charges for large or heavy items such as pianos or snowmobiles.

Public Movers and Warehousemen are regulated by the Office of Consumer Protection, 124 Halsey Street, PO Box 5028, Newark, NJ 07101. If you have a question concerning the mover or warehouseman, or wish to lodge a complaint, please call 1 (973) 504-6442 or 1 (973) 504-6512. You may also visit the Office of Consumer Protection's website at www.state.nj.us/lps/ca/ocp.htm.

GLOSSARY OF MOVING TERMINOLOGY

"Bill of lading" means a receipt given to a consumer by the public mover for all of the cargo picked up from the consumer by the public mover and moved to another point.

"Binding estimate" means a contract which contains a calculation of the cost of a move made after the mover has made a physical survey which clearly describes the goods to be moved and the accessorial services to be performed and which binds the mover to the charges shown on the binding estimate form.

"Non-binding estimate" means an approximation made by the public mover and/or warehouseman of the cost of the shipment and/or storage made after a physical survey.

"Order for Service" means the contract which the consumer receives from a public mover and/or warehouseman at least 24 hours prior to the move with a non-binding estimate.

"Short-notice move" means performing a move on the same day that a consumer requests services from a public mover and/or warehouseman.

"Tariff" means a schedule of the rates, charges, classification ratings, terms and conditions of the public mover and/or warehouseman.

"Warehouse receipt" means a receipt given to a consumer by a warehouseman for all of the consumer's goods stored in

the warehouseman's facility.

<< NJ ADC 13:44D App. B >>

APPENDIX B

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

<< NJ ADC 13:44D App. C >>

APPENDIX C

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

<< NJ ADC 13:44D App. D >>

APPENDIX D

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

Recodify existing N.J.A.C. 13:44D Appendices C and D as Appendices E and F (No change in text.)

<< NJ ADC 13:44D App. G >>

APPENDIX G

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE