

45 N.J.R. 35(a)

VOLUME 45, ISSUE 1

ISSUE DATE: **JANUARY 7, 2013**

RULE ADOPTIONS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
OFFICE OF THE DIRECTOR
PUBLIC MOVERS AND WAREHOUSEMEN**

Adopted Amendments: N.J.A.C. 13:44D-1.1 and 4.1

Adopted New Rule: N.J.A.C. 13:44D-3A

Words and Phrases Defined; Office Goods; Forms

Proposed: August 6, 2012 at 44 N.J.R. 2035(a).

Adopted: November 15, 2012, by Eric T. Kanefsky, Acting Director, **Division of Consumer Affairs**.

Filed: November 26, 2012 as R.2013 d.002, **without change**.

Authority: N.J.S.A. 45:14D-6.

Effective Date: January 7, 2013.

Expiration Date: June 3, 2017.

Summary of Public Comments and Agency Responses:

The official comment period ended October 5, 2012. The Director received comments from the following nine individuals:

1. Robert Russo, Executive Director, New Jersey Warehousemen & Movers Association
2. James E. Simonik, President, Simonik Moving & Storage, Inc.
3. Trudi Derbyshire, A.A. American Moving & Storage, Inc.
4. Russel Taddei, Jr., General Manager, T&N Van Service
5. Robert Kandetzke, President, Simonik Transportation & Warehousing Group, LLC
6. Stephan Lowy, Chief Executive Officer, Lowy's Moving Service
7. Robert Lurie, Abe Lurie Parkway Vans, Inc.

8. Gene Altenburg, President, Prudent Air Freight Corporation

9. William A. Asmuth, President, Gibraltar Van Lines, Inc.

1. COMMENT: The majority of the commenters support provisions that would exempt licensees from filing tariffs for office moving. They also support provisions that exempt licensees from form requirements and from the requirement that they provide the Important Notice to Consumers brochure to the recipients of office moving services.

RESPONSE: The Director thanks the commenters for their support.

2. COMMENT: A commenter contends that the moving industry and the public were not provided the opportunity to make informed comments on the adopted amendments and new rule because the Division did not send letters to industry members informing them of the notice of proposal. The commenter contends that the Division's determination to stop sending letters regarding regulations and to use its website as the sole means of informing interested parties of notices of proposal means that the notice of proposal that included the amendments and new rules was invalid. The commenter is concerned because the regulations posted on the Division's website are not up-to-date, which the commenter contends makes it difficult to assess the impact of the adopted amendments and new rule. The commenter asks if there is a version of N.J.A.C. 13:44D that contains the correct codifications.

RESPONSE: The commenter is incorrect in his contention that the Division website is the sole means of informing interested parties of notices of proposal. The Division sends a copy of every notice of proposal via email to individuals who have expressed an interest in being informed of changes to N.J.A.C. 13:44D pursuant to Office of Administrative Law notification requirements found at N.J.A.C. 1:30-5.2. The rules posted on the Division's website have been recently updated. An electronic version of the current New Jersey Administrative Code, provided by the publisher, LexisNexis, is available at www.lexisnexis.com/hottopics/njcode.

3. COMMENT: A commenter contends that the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified in scattered sections of 11, 45, and 49 USCS) limits the Division's authority over moving services for office goods to issues regarding licensing and insurance. The commenter contends that the adopted amendments and new rule do not address valuation coverage and cargo insurance. The commenter asks why the Division proposed the amendments and new rule at this time. The commenter contends that the Division has no authority to promulgate regulations regarding moving services for office goods as there is no statutory authority for the Division to regulate such moving.

RESPONSE: The Director agrees with the commenter's contention as to the Interstate Commerce Termination Act and the limitations it places on the regulation of moving services for office goods. The adopted amendments and new rule clarify that the Division's ability to regulate moving services for office goods is limited to insurance requirements. The Director disagrees that the adopted amendments and new rule do not address valuation coverage and cargo insurance. Under N.J.A.C. 13:44D-3A.1, a licensed public mover and/or warehouseman who limits his or her business to moving or storing office goods is not exempt from the [page=36] requirements of N.J.A.C. 13:44D-4.6(a), (b), and (c) or 4.7. These provisions deal with valuation coverage and insurance requirements. The Director proposed the amendments and new rule based on a request from the New Jersey Warehousemen and Movers Association. The Director adopted the amendments and new rule pursuant to N.J.S.A. 45:14D-6.

4. COMMENT: Several commenters contend that the amendments and new rule will have an impact on jobs in New Jersey because licensees who limit their services to moving or storage of office goods will not be required to maintain a place of business in New Jersey. One of these commenters contends that moving services for office goods is a specialized skill that employers have to train workers to perform. According to the commenter, licensees from out of New Jersey will use their own out-of-State employees to provide office moving and storage services, reducing the number of jobs for those who are in New Jersey. The commenter contends that this will have a negative economic impact on New Jersey moving companies and that it will also affect housing affordability. The commenter contends that the Director should require licensees who limit their business to office moving and storing services to maintain a place of business in New Jersey.

5. COMMENT: A commenter contends that licensees who provide moving services for office goods should not be exempt from the requirements regarding subcontracting of moving services found at N.J.A.C. 13:44D-4.9. The commenter contends that office goods are not general freight and this exemption will allow licensees providing moving services for office goods to subcontract to unlicensed entities that do not have the proper training or equipment. The commenter contends that such unlicensed entities are not required to comply with the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., and that there is no guarantee for consumers that the such entities have not engaged in fraud, dishonesty, gross negligence, gross incompetence, or other crimes of moral turpitude.

6. COMMENT: A commenter contends that licensees who limit their business to moving and warehousing of office goods should not be exempt from N.J.A.C. 13:44D-2.1(h), which deals with labeling requirements for trucks.

7. COMMENT: A commenter contends that licensees who limit their business to moving and warehousing of office goods should not be exempt from the advertising requirements of N.J.A.C. 13:44D-2.5.

8. COMMENT: Many of the commenters contend that licensees who limit their business to moving or storing of office goods should be required to comply with N.J.A.C. 13:44D-2.6, which requires a licensee to maintain a place of business in New Jersey. This would prevent consumers from unknowingly contracting with businesses from other states or countries. One of the commenters recommends that, if the Director does not require licensees to maintain a place of business in New Jersey, they should be required to include an actual address in any advertising.

9. COMMENT: Several commenters contend that licensees who limit their business to moving or storing of office goods should be required to own or lease trucks that are registered in New Jersey.

RESPONSE TO COMMENTS 4 THROUGH 9: The Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified in scattered sections of 11, 45, and 49 USCS), preempts a State from regulating prices, routes, or services of motor carriers engaged in the transport of office goods. The requirements referred to by the commenters deal with the regulation of prices, routes, or services and the Division is preempted from requiring licensees to comply with these requirements when licensees are moving and storing office goods.

10. COMMENT: A few commenters contend that the adopted amendments and new rule will allow out-of-State companies to bid on office moving contracts and subcontract this work to unlicensed moving companies.

RESPONSE: A licensee who limits his or her business to moving and storing of office goods is exempt from requirements of N.J.A.C. 13:44D-2.6, that he or she maintain a place of business in New Jersey and from the subcontracting requirements of N.J.A.C. 13:44D-4.9. Nothing in the adopted amendments or new rule permit unlicensed moving companies to provide moving and storing services.

11. COMMENT: One commenter contends that N.J.A.C. 13:44D-3A.1 will allow unlicensed movers to offer commercial moving services.

RESPONSE: N.J.A.C. 13:44D-3A.1 does not exempt movers who limit their businesses to moving and storing of office goods from licensing requirements. An unlicensed mover who offers commercial moving services will be in violation of N.J.S.A. 45:14D-1 et seq.

12. COMMENT: A commenter recommends that the Director create a new license category for public movers and warehousemen who limit their businesses to moving and storage of office goods. The commenter recommends that licensees who have this new license be prohibited from providing moving and storage of non-office goods.

RESPONSE: N.J.S.A. 45:14D-1 et seq. does not authorize the Director to issue a license limited to moving and storage of office goods.

Federal Standards Statement

The adopted amendments and new rule recognize that Pub. L. No. 104-88, 109 Stat. 803 (codified in scattered sections of 11, 45, and 49 USCS), preempts the Division from regulating prices, routes, or services when public movers and/or warehousemen are moving or storing office goods. While the amendments and new rule are adopted in recognition of the Federal rule, they do not exceed the Federal standards or requirements. Therefore, no Federal standard analysis is necessary.

Full text of the adoption follows:

SUBCHAPTER 1. DEFINITIONS

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.

. . .

"Office goods" means personal effects, fixtures, furniture, equipment, stock, and supplies or other property usually used in or as part of the stock of any office, or commercial, institutional, professional, or other type of establishment, when it is transported or put into storage by virtue of its removal, in whole or in part, from one location to another.

. . .

SUBCHAPTER 3A. OFFICE GOODS

13:44D-3A.1 Office goods

(a) A public mover and/or warehouseman who is providing moving or storage services for office goods shall not be required to comply with the following rules, with respect to those services:

1. N.J.A.C. 13:44D-3.1, pertaining to tariffs;
2. N.J.A.C. 13:44D-4.2, pertaining to moving contract: non-binding estimate;
3. N.J.A.C. 13:44D-4.3, pertaining to moving contract: binding estimate;
4. N.J.A.C. 13:44D-4.4, pertaining to warehousemen entering into a contract to provide services;
5. N.J.A.C. 13:44D-4.5, pertaining to combination of order for service and estimate forms;
6. N.J.A.C. 13:44D-4.6(d), pertaining to liability listed in order for service form;
7. N.J.A.C. 13:44D-4.8, pertaining to withholding a shipment;
8. N.J.A.C. 13:44D-4.9, pertaining to subcontracting;
9. N.J.A.C. 13:44D-4.10(d), pertaining to written notice regarding use of an owner-operator;
10. N.J.A.C. 13:44D-4.10(f), pertaining to responsibility of licensed public mover when using the services of an owner-operator;
11. N.J.A.C. 13:44D-4.11, pertaining to occupational misconduct;
12. N.J.A.C. 13:44D-4.12, pertaining to labor and equipment;
13. N.J.A.C. 13:44D-4.13, pertaining to warehousing; and
14. N.J.A.C. 13:44D-4.17, pertaining to short-notice move or warehousing.

(b) A public mover and/or warehouseman who limits his or her business to moving or storing of office goods shall not be required to comply with the following rules:

1. N.J.A.C. 13:44D-2.1(a), pertaining to truck ownership or leasing requirements;
2. N.J.A.C. 13:44D-2.1(e), license display requirements;
- [page=37] 3. N.J.A.C. 13:44D-2.1(g), pertaining to decal requirements;
4. N.J.A.C. 13:44D-2.1(h), pertaining to truck labeling requirements;
5. N.J.A.C. 13:44D-2.1(i), pertaining to offering of service limitations;
6. N.J.A.C. 13:44D-2.5, pertaining to advertising;

7. N.J.A.C. 13:44D-2.6, pertaining to place of business;
8. N.J.A.C. 13:44D-2.7, pertaining to names used to offer moving and/or warehousing;
9. N.J.A.C. 13:44D-3.1, pertaining to tariffs;
10. N.J.A.C. 13:44D-4.2, pertaining to moving contract: non-binding estimate;
11. N.J.A.C. 13:44D-4.3, pertaining to moving contract: binding estimate;
12. N.J.A.C. 13:44D-4.4, pertaining to warehousemen entering into a contract to provide services;
13. N.J.A.C. 13:44D-4.5, pertaining to combination of order for service and estimate forms;
14. N.J.A.C. 13:44D-4.6(d), pertaining to liability listed in order for service form;
15. N.J.A.C. 13:44D-4.8, pertaining to withholding a shipment;
16. N.J.A.C. 13:44D-4.9, pertaining to subcontracting;
17. N.J.A.C. 13:44D-4.10(d), pertaining to written notice regarding use of an owner-operator;
18. N.J.A.C. 13:44D-4.10(f), pertaining to responsibility of licensed public movers when using the services of an owner-operator;
19. N.J.A.C. 13:44D-4.11, pertaining to occupational misconduct;
20. N.J.A.C. 13:44D-4.12, pertaining to labor and equipment;
21. N.J.A.C. 13:44D-4.13, pertaining to warehousing; and
22. N.J.A.C. 13:44D-4.17, pertaining to short-notice move or warehousing.

(c) When applying for a license, a public mover and/or warehouseman who limits his or her business to moving or storing of office goods shall submit the documentation required by N.J.A.C. 13:44D-2.1(b)1, 2, and 3 and shall comply with the mandates of N.J.A.C. 13:44D-2.1(c) and (d). Such a public mover and/or warehouseman shall not be required to submit the documentation required by N.J.A.C. 13:44D-2.1(b)4.

SUBCHAPTER 4. GENERAL PROVISIONS

13:44D-4.1 Forms

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

(e) When a public mover and/or warehouseman is providing moving services for a shipment that consists solely of office goods, he or she shall not be required to issue the brochure entitled "Important Notice to Consumers" required by N.J.A.C. 13:44D-4.2, 4.3, and 4.4 or to use the estimate required by N.J.A.C. 13:44D-4.2(b) or 4.3(b), or the order for service required by N.J.A.C. 13:44D-4.2(c) or 4.3(b).