

SUBCHAPTER 4. GENERAL PROVISIONS

13:44D-4.1 Bill of lading, brochure, estimated cost of services form, order for service form, warehouse receipt; issuance

(a) Prior to entering into an agreement to render services, every public mover and/or warehouseman shall issue the following to each shipper:

1. The brochure entitled "Important Notice to Consumers Utilizing Public Movers," which shall contain detailed explanations of the following:

- i. Estimates;
- ii. The public mover's and/or warehouseman's responsibility for loss and/or damage;
- iii. Accessorial services including, but not limited, to packing, payment, delivery, exclusive use of vehicles, expedited services, small shipments and other services rendered by the public mover and/or warehouseman; and
- iv. The shipper's rights to and procedures for filing a claim for any articles lost or damaged while in transit or storage;

2. An estimated cost of services form which shall not serve as the actual contract between the shipper and the public mover and/or warehouseman but shall be given as an educated prediction of the cost for the services to be rendered. The estimate for all services provided by the public mover and/or warehouseman shall be in writing and shall be fully completed in all respects, and shall be rendered only after a physical inspection by the public mover and/or warehouseman. A sample estimated cost of services form is provided at Appendix A, incorporated herein by reference. The public mover and/or warehouseman may adopt any form substantially similar to the suggested form outlined herein and in the sample; said form shall contain all of the information outlined herein. 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 charges for the shipment; and

3. An order for services form which shall include, but not be limited to, all pertinent information such as the date of shipment, storage arrangements, points of origin and destination, the date of delivery, a notice indicating that the shipper acknowledges receipt of the public mover's and/or warehouseman's brochure and the order for insurance. The form shall be fully completed in all respects, and signed and dated by the shipper at least one day prior to the commencement of any moving services. No charges shall be affixed to this form. A sample order for service form is provided at Appendix B, incorporated herein by reference. The public mover and/or warehouseman may adopt any form substantially similar to the suggested form outlined herein and in the sample; said

form shall contain all of the information outlined in this paragraph.

(b) Every public mover shall also issue to each shipper, in addition to the brochure, estimated cost of services form and order for services form, a bill of lading which shall indicate the date of shipment, the names and addresses of the public mover and shipper, the license number of the public mover, an address or telephone number where the public mover and shipper can be contacted during shipment, the points of origin and destination and the released or declared value of the shipment. The bill of lading issued to the shipper shall be fully completed in all respects. A sample bill of lading is provided at Appendix C, incorporated herein by reference. The public mover may adopt any form substantially similar to the suggested form outlined herein and in the sample; said form shall contain all of the information outlined. The bill of lading shall be included in the tariff of the public mover.

(c) Every warehouseman shall also issue to each shipper, in addition to the brochure, estimated cost of services form and order for services form, a warehouse receipt which shall indicate the date of issue, the names and addresses of the warehouseman and shipper, the license number of the warehouseman, an address or telephone number where the warehouseman and shipper 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 warehouse receipt issued to the shipper shall be fully completed in all respects. A sample warehouse receipt is provided at Appendix D, incorporated herein by reference. The warehouseman may adopt any form substantially similar to the suggested form outlined in this subsection and in the sample; said form shall contain all of the information outlined herein. The warehouse receipt shall be included in the tariff of the warehouseman.

Amended by R.1995 d.9, effective January 3, 1995.
See: 25 N.J.R. 5449(a), 27 N.J.R. 125(a).

13:44D-4.2 Legal liability and insurance

(a) The public mover and/or warehouseman may by contract with the shipper limit liability for loss or damage to goods in storage or in transit to a minimum of \$.60 per pound per article, provided, however, that such limitation shall be null and void and the public mover and/or warehouseman subject to full liability if any of the following conditions apply:

1. The public mover and/or warehouseman failed to present an Order for Service to the shipper at least one day prior to the actual move and obtain his or her signature, with the date of signature, thus acknowledging receipt, as required by N.J.A.C. 13:44D-4.1(a)3;

2. At the time that an Order for Service was presented, the public mover and/or warehouseman failed to provide the shipper with the brochure entitled "Important Notice to Consumers Utilizing Public Movers," which informs

the shipper that such limitation applies and that the shipper has the option of making other arrangements for insurance coverage for any damage in excess of the minimum liability offered by the mover and/or warehouseman; or

3. A court or administrative finding has been made that the loss of or damage to the shipper's goods was the result of gross negligence and/or gross incompetence on the part of the mover and/or warehouseman and his or her agents and/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 transporting and/or storing property for compensation 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 equipment, cargo, storage facilities and property being held in storage for the amount set forth below, conditioned or providing for payment of all judgments recovered against such public mover and/or warehouseman.

(c) The minimum amounts of insurance for public movers are as follows:

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

2. Bodily injury liability, property damage liability:

i. Limit for bodily injuries to or death of one person: \$25,000;

ii. Limit for bodily injuries to or death of all persons injured or killed in any one accident: \$100,000, subject to a maximum of \$25,000 for bodily injuries or death of one person;

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

3. Cargo liability:

i. For loss or damage to property being transported (cargo liability insurance) on any one vehicle: \$5,000 per accident;

ii. For loss or damage to or aggregate of losses or damages of or to property occurring at any one time and place: \$10,000.

(d) The minimum amounts of insurance for warehousemen are hereby prescribed as follows:

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

(e) All filings shall be executed in triplicate on forms substantially similar to those determined by the National Association of Regulatory and Utilities Commission (NARUC) and promulgated by the Interstate Commerce Commission (ICC). Said filings shall include the following:

1. Bodily injury and property damage liability on Form E;
2. Cargo Insurance on Form H;
3. Notice of cancellation of insurance policies on Form K; and
4. Notice of cancellation of worker's compensation insurance policies on a form provided by the Director.

(f) Every licensed public mover and/or warehouseman transporting and/or storing property for compensation shall make sufficient provision for the complete payment of any obligation which he or she may incur to an injured employee, or his or her dependents pursuant to N.J.S.A. 34:15-1 et seq., by one of the following methods:

1. Licensees may obtain adequate insurance from any stock company or mutual association authorized to transact the business of employer's liability or worker's compensation insurance in this State pursuant to N.J.S.A. 34:15-78, and must file a certificate of that coverage with the Director; or

2. Licensees may self-insure against worker's compensation liability by obtaining a written order granting an exemption from insuring the whole or any part of such liability from the Commissioner of Banking and Insurance pursuant to N.J.S.A. 34:15-77, a copy of which must be filed with the Director.

(g) Every certificate of insurance shall contain a provision for continuing liability and shall provide that cancellation thereof shall not be effective unless and until at least 30 days' notice of intention to cancel in writing has been received by the Director.

(h) All required insurance filings shall be made at the Office of the Director of Consumer Affairs, 124 Halsey Street, Newark, New Jersey 07101. The Director's mailing address is Director of the Division of Consumer Affairs, PO Box 45027, Newark, New Jersey 07101.

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

1. The name of the insurance company issuing the additional coverage;
2. The policy number;
3. The certificate number;
4. The date;
5. The valuation amount;
6. The premium amount; and

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

Administrative change to (g).

See: 25 N.J.R. 1516(b).

Amended by R.1995 d.9, effective January 3, 1995.

See: 25 N.J.R. 5449(a), 27 N.J.R. 125(a).

Amended by R.1997 d.319, effective August 4, 1997.

See: 29 N.J.R. 847(a), 29 N.J.R. 3456(b).

Added (e)4; inserted new (f); and recodified former (f) through (h) as (g) through (i).

Amended by R.1999 d.237, effective August 2, 1999.

See: 31 N.J.R. 1288(a), 31 N.J.R. 2223(b).

In (e) and (f), substituted references to the Director for references to the Board throughout; and rewrote (h).

13:44D-4.3 Estimates; inspection of premises

(a) No public mover and/or warehouseman shall provide a shipper with an estimate for moving and/or storage services without first having conducted a physical inspection of **the premises** and goods to be moved and/or stored.

(b) All estimates for moving services shall be in writing and based upon the public mover's tariff.

(c) No public mover and/or warehouseman shall be permitted to employ an estimator or broker who also represents any other public mover and/or warehouseman.

13:44D-4.3A Binding estimates

(a) If a binding estimate is used for moving, the estimate shall be furnished in writing to the customer or other person responsible for payment of the charges for the mover's services and a copy of the estimate shall be retained by the public mover as an addendum to the bill of lading. A binding estimate shall clearly indicate on its face that the estimate is binding on the public mover and that the charges shown are the charges to be assessed for the services identified in the estimate. A binding estimate shall clearly describe the property to be moved and all services to be provided. If, at the time of the move, additional property is to be moved or additional services are to be provided, or both, that are in excess of that provided in the binding estimate, the mover shall not charge, demand, collect or receive a greater compensation for those services than specified in his filed tariff.

(b) No mover shall withhold all or any part of a shipment if the amount due on the moving contract based on a binding estimate in regard to the move is offered to be paid, or is paid, in full to the mover.

(c) No mover shall withhold all or any part of a shipment pursuant to a moving contract not based on a binding estimate unless the mover discloses in the moving contract that the mover may withhold all or a part of the shipment for payment of the freight bill.

(d) A mover shall disclose in the moving contract that the mover may not withhold all or any part of a shipment if:

1. The moving contract is based on a binding estimate and the amount due on a binding estimate for the move is offered to be paid, or is paid, in full to the mover; and

2. The moving contract is not based on a binding estimate and the mover has not otherwise disclosed in the moving contract that the mover may withhold all or any part of the shipment for payment of the freight bill.

(e) A mover which violates any provision of this section shall be liable 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 a subsequent violation. 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.).

New Rule, R.1999 d.237, effective August 2, 1999.

See: 31 N.J.R. 1288(a), 31 N.J.R. 2223(b).

13:44D-4.4 Subcontracting

A public mover shall not subcontract or assign an obligation to provide moving services except where the shipper elects, pursuant to N.J.A.C. 13:44D-4.6(a)2ii, to permit a public mover to subcontract with another licensed carrier because the original public mover is unable to perform the move on the promised date due to forces and circumstances beyond his control. In such situations, the original public mover shall remain ultimately responsible for the services provided by the subcontracting licensee.

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

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

1. The definition of an 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.

13:44D-4.6 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 said public mover engages in conduct including, but not limited to, 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 shipper'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 shipper's premises on the promised date of service and perform all contracted-for services; or

3. Fails to notify the shipper of the impossibility of meeting the promised date of service by written notice or by telephone no later than 12:00 o'clock noon on the promised date, or, if impractical under the circumstances, at the earliest possible time, and fails to offer the shipper the option of:

- i. Accepting service at a specified later time;
- ii. Allowing a subcontractor to perform the moving services;
- iii. Accepting substituted service by another licensed carrier. In the event this option is accepted the shipper shall be charged according to the filed tariff of the public mover performing the substituted service; or
- iv. Cancelling the moving contract and receiving a refund of all monies paid on account for the contract less any reasonable charges for services already rendered based solely on the rates and charges set forth in the public mover's tariff.

(b) For the purposes of this section, "impossibility of meeting the promised date of service" shall refer to forces beyond the control of the public mover including, but not limited to, such things as acts of nature and labor stoppage.

Amended by R.1992 d.199, effective May 4, 1992.
See: 24 N.J.R. 341(a), 24 N.J.R. 1800(a).

Revised (a).
Amended by R.1994 d.395, effective August 1, 1994.
See: 26 N.J.R. 1758(a), 26 N.J.R. 3182(a).

13:44D-4.7 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 shipper and the public mover.

13:44D-4.8 Warehousing

(a) The exact address of the warehouse where the shipper'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 shipper'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 shipper 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 intended transfer secure the shipper's written approval or grant the shipper 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 shipper before entering into a contract for storage.

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

(d) A public mover and/or warehouseman shall provide the shipper 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 tariffs, before allowing the shipper access.

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

(f) A building, any part of which is being used for the storage of goods, shall meet all state and local building and fire codes.

Amended by R.1994 d.395, effective August 1, 1994.
See: 26 N.J.R. 1758(a), 26 N.J.R. 3182(a).

Case Notes

Licensed mover improperly engaged in storage business; civil penalty assessed. In Matter of Suspension or Revocation of License of Cucuzza. 92 N.J.A.R.2d (BDS) 13.

13:44D-4.9 Collection of tariff charges where the shipment has been destroyed

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

13:44D-4.10 Liability for damage to shipper's goods

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

1. The damage was caused by the shipper or was the result of the shipper's negligence;
2. The damage was caused by a defect in the article, including any susceptibility to damage because of exposure to any changes in temperature or humidity which were not caused by the public mover or warehouseman;
3. The damage was caused by a hostile or warlike action occurring in a time of peace or war;

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

5. The damage was caused by an act of God.

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

Amended by R.1999 d.237, effective August 2, 1999.

See: 31 N.J.R. 1288(a), 31 N.J.R. 2223(b).

In (b), substituted a reference to the Director for a reference to the Board.

Case Notes

When residential goods are damaged in shipment, public mover must disprove negligence. *Kovner v. Banfield*, 243 N.J.Super. 542, 580 A.2d 1090 (A.D.1990).

Documents were insufficient to disprove negligence. *Kovner v. Banfield*, 243 N.J.Super. 542, 580 A.2d 1090 (A.D.1990).

13:44D-4.11 Claims procedures

(a) All claims for loss, damage or overcharge shall be made in writing and within 90 days of the shipper's receipt of his or her goods. All claims shall be accompanied by the original paid bill of lading. If the original of this document has been surrendered to the public mover, then copies of the front and back of this document will be acceptable.

(b) Where the claim involves either overcharging or partial loss, damage or destruction of a shipper's goods, the shipper shall pay in full the amount appearing on the original bill and present a paid bill or the original paid bill of lading prior to entering a claim.

(c) Where the claim involves the loss, damage or destruction of the entire shipment, the shipper is liable for only the insurance premiums agreed upon in accordance with N.J.A.C. 13:44D-4.9.

(d) A public mover or warehouseman shall present the shipper with the appropriate claim forms no later than seven days after receiving written or verbal notification that the shipper wishes to make a claim.

(e) The public mover or warehouseman must settle all claims within 90 days of the receipt of the completed claim form. This time period may be extended by the Director upon a showing of good cause by either party. Under no circumstances may the 90 day period be extended by an agreement between the public mover or warehouseman and the shipper or any third party.

Amended by R.1999 d.237, effective August 2, 1999.

See: 31 N.J.R. 1288(a), 31 N.J.R. 2223(b).

In (e), substituted a reference to the Director for a reference to the Board.

SUBCHAPTER 5. FORMS

13:44D-5.1 Forms

The forms set forth in Appendices A through D are samples only, intended to demonstrate the information 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.