

(not to mention the other countless scenarios where opinions could differ as to what constitutes a system becoming “operable”)? Second, the moment at which a warranty is issued is in large measure within the control of the employer responsible for paying the prevailing wage rate. Consequently, if the Department were to adopt the rule suggested by the commenter, the employer could, through its own actions, control when the rate transitions from the installation rate to the service rate. The certificate of occupancy is issued by a construction code official, who is applying established regulatory criteria for the issuance of the certificate. Third, and most importantly, there is no basis within the appropriate collective bargaining agreement for delineation between installation and service/repair in the manner suggested by the commenter. For all of the foregoing reasons, the Department declines to make the change suggested by the commenter.

COMMENT: Each commenter here also had submitted a written response to the earlier December 3, 2012 notice of proposal (see 44 N.J.R. 2989(a)), which notice of proposal later expired pursuant to N.J.A.C. 1:30-6.2(c), after not having been adopted and filed with the Office of Administrative Law on or before December 3, 2013. Although neither commenter submitted a separate written comment following publication of the June 16, 2014 notice of proposal (see 46 N.J.R. 1409(a)), it is fair and appropriate to incorporate their earlier comments into this rulemaking through their inclusion and the inclusion of a Department response within this rulemaking. Thus, the following is a summary of the commenters’ written remarks in response to publication of the December 3, 2012 notice of proposal.

The commenters suggest that the words “temporary or permanent” should be added immediately before the words “certificate of occupancy” in N.J.A.C. 12:60-3A.1(b), so that the full section reads: “For purposes of this section, the term ‘occupied facility’ shall mean a facility for which a temporary or permanent certificate of occupancy has been issued.” It is acknowledged that the Summary in the notice of proposal already indicates that the term “certificate of occupancy” is intended to encompass all certificates of occupancy, including both temporary and permanent certificates of occupancy. However, one commenter feels “that if this is carried through to the actual rule, it would avoid issues of whether the rule meant to include a temporary certificate of occupancy.” (2, 3)

RESPONSE: The Department does not believe that the change suggested by the commenters is necessary. The rule states that the term “occupied facility” shall mean a facility for which “a certificate of occupancy has been issued.” It is axiomatic that this includes any and all certificates of occupancy. Furthermore, as acknowledged by the commenters, the Summary statement in the notice of proposal, which is part of the official record of this rulemaking, states that “certificate of occupancy” includes both permanent and temporary certificates of occupancy.

Federal Standards Statement

The adopted new rule is governed by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and is not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Full text of the adopted new rule follows:

SUBCHAPTER 3A. PREVAILING WAGE DETERMINATIONS FOR AIR CONDITIONING AND REFRIGERATION – SERVICE AND REPAIR; SCOPE

12:60-3A.1 Prevailing wage determinations for air conditioning and refrigeration—service and repair; scope

(a) The Department’s prevailing wage determinations for air conditioning and refrigeration – service and repair, shall apply to all work which is both:

1. “Public work,” as that term is defined in this chapter; and
2. Service, repair, or maintenance work performed in order to keep an existing air conditioning or refrigeration system within an occupied facility operating in an efficient manner.

(b) For purposes of this subchapter, the term “occupied facility” shall mean a facility for which a certificate of occupancy has been issued.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Readoption with Amendments: N.J.A.C. 13:60

Proposed: September 15, 2014, at 46 N.J.R. 1941(a).

Adopted: December 9, 2014, by Joseph R. Fuentes, Superintendent, Division of State Police.

Filed: February 5, 2015, as R.2015 d.033, **without change**.

Authority: N.J.S.A. 39:5B-32.

Effective Dates: February 5, 2015, Readoption;
March 2, 2015, Amendments.

Expiration Date: February 5, 2022.

Summary of Public Comments and Agency Responses:

The Superintendent received written comments from the following individuals or representatives of organizations:

John W. Indyk, Vice President, Health Care Association of New Jersey (HCANJ)

Michael M. Vieira, President, New Jersey Council on Special Transportation (NJCOST)

Valerie Sellers, CEO, New Jersey Association of Community Providers (NJACP)

Debra L. Wentz, CEO, New Jersey Association of Mental Health and Addiction Agencies, Inc. (NJAMHAA)

William G. Dressel Jr., Executive Director, New Jersey State League of Municipalities (NJLM)

COMMENT: The comments received by all parties delineate concerns regarding the proposed amendments to the definition of commercial motor vehicles, specifically subsections (a) and (c). Subsection (a) changes the gross vehicle weight rating (GVWR) from 26,001 pounds or more to 10,001 pounds or more for vehicles designed or used to transport passengers or property. Subsection (c) changes the number of passengers the vehicles are designed or used to transport from 16 or more to eight or more including the driver for “compensation.” The commenters represent agencies that hire drivers to operate vehicles to transport senior citizens, persons with disabilities, and the economically challenged. These vehicles are typically greater than 10,001 pounds and carry over eight passengers. All parties expressed concern that these changes will require drivers of these vehicles to possess a Commercial Driver’s License (CDL). Specifically, these agencies have been exempt from requiring drivers to possess a CDL because the drivers are not compensated by the passengers, but rather are employed by the transportation service, which typically do not charge its riders. In addition, the vehicles do not meet the criteria of a commercial motor vehicle as defined in current regulations and New Jersey motor vehicle statutes. Because these agencies are primarily “not for profit” and/or government subsidized services, the focus of their concern is on the perceived economic impact the CDL requirement would create for the agencies and their drivers. The commenters requested reconsideration of the use of the term “compensation” as it relates to the driver of a vehicle designed to transport the proposed eight or more passengers. Because these vehicles are not available to the general public for hire, it is recommended that the term “direct compensation” or an acceptable equivalent be added to the definition to exempt the affected entities. In lieu of this change, the commenters requested the addition of a waiver or clause in the proposed amendments to exempt drivers of these types of agencies to be exempt from the CDL requirement.

RESPONSE: While the Division recognizes the concerns and questions proposed by the commenters, it disagrees that the requested changes are necessary. The Division offers the following explanation of the proposed amendments to alleviate the concerns of the commenters.

Part 390.5 of the Federal Motor Carrier Safety Regulations specifically defines the safety requirements of the commercial motor vehicle for intrastate commerce for vehicle inspection purposes only. (emphasis added) The rules specifically apply to the equipment and proper maintenance and operation on the vehicle itself, not the driver of the vehicle. These concerns stem from New Jersey statute N.J.S.A. 39:3-10.11, which provides definitions relative to commercial driver licenses in the State. The statute defines "commercial motor vehicle" as a motor vehicle or combination of motor vehicles used to or designed to transport passengers or property with a gross vehicle weight or combination gross vehicle weight of 26,001 pounds or more, designed to transport 16 or more passengers, or designed to transport eight or more but less than 16 persons and is used to transport such persons for hire to and from places of employment (see N.J.S.A. 39:3-10.11). The proposed amendments do not alter the definition of a commercial motor vehicle, they simply bring the Division into compliance with the Federal safety standards of commercial motor vehicles operated within the borders of this State. Furthermore, the amendments provide for more stringent standards for vehicle safety and provide the Division with the authority to conduct roadside inspections of commercial motor vehicles within the Federal standards of intrastate commerce. These inspections do not pertain to the driver credentialing.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments contain standards that are the same as those imposed by Federal law, except where State law has modified the Federal rules for intrastate applicability. Pursuant to the Surface Transportation Assistance Act of 1982 (49 U.S.C. §§ 31101-31104) and the Federal Motor Carrier Safety Act (49 U.S.C. §§ 31131 et seq.), the rules proposed for readoption with amendments incorporate by reference the Federal Motor Carrier Safety Regulations (49 CFR Parts 40, 325, 350, 355, 380, 382, 383, 384, 385, 387, 388, and 390 through 398) and the Federal Hazardous Materials Regulations (49 CFR Parts 171, 172, 173, 174, 177, 178, 179, and 180), except to the extent that State law modifies those regulations. Federal law requires motor carriers and operators in interstate commerce to comply with Federal Hazardous Material Regulations and Federal Motor Carrier Safety Regulations. Federal law encourages states to require the intrastate industry substantially to comply with these regulations by conditioning states' receipt of Federal aid for participation in the Federal safety-enforcement programs upon the states' intrastate industry substantial compliance to Federal regulations.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:60.

Full text of the adopted amendments follows:

APPENDIX TO THE REGULATIONS REGARDING MOTOR CARRIER SAFETY REGULATIONS

Subject to the provisions of N.J.A.C. 13:60-2.1(c), this Appendix to the Regulations Regarding Motor Carrier Safety Regulations lists the adopted and incorporated, by reference, portions of the Federal Motor Carrier Safety Regulations, by Part, Subpart, Section, or Appendix. Parts, Subparts, Sections, or Appendices are listed by letter or number and by title to identify content for the reader. Modifications, revisions, amendments, and/or delays in implementation are stated within the appropriate Part(s), Subpart(s), Section(s), or Appendices. Omitted sections are identified with the notation "(This Section intentionally omitted.)".

CHAPTER III - FEDERAL HIGHWAY ADMINISTRATION DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B - FEDERAL MOTOR CARRIER SAFETY REGULATIONS

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PART 390 - FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A - General Applicability and Definitions

...
Section 390.5 – Definitions.

(Section 390.5 is revised to state the following:)
"Commercial Motor Vehicle—Intrastate Commerce" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property in intrastate commerce:

(a) If the vehicle has a gross vehicle weight rating of 4,536 kg (10,001) or more pounds or displays a gross vehicle weight rating of 4,536 kg (10,001) or more pounds, whichever is greater;

(b) If the vehicle has a gross combination weight rating of 4,536 kg (10,001) or more pounds inclusive of a towed unit, whichever is greater;

(c) If the vehicle is designed or used to transport 8 or more passengers including the driver for compensation;

(d) If the vehicle is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(e) If the vehicle is transporting or used in the transportation of material(s) found by the Secretary of Transportation to be hazardous under 49 U.S.C. § 5103 and transported in a quantity required to be placarded under regulations prescribed by the Secretary under Part 49, Subtitle B, Chapter I, Subchapter C or the vehicle displays a hazardous material(s) placard.

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Subpart B - General Requirements and Information

...
Section 390.21 – Marking of CMVs.

(Section 390.5 is revised to state the following:)
A commercial motor vehicle as defined in N.J.S.A. 39:3-10.11(a) and (b) shall be subject to the provisions of N.J.S.A. 39:4-46.b.

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PART 391 - QUALIFICATIONS OF DRIVERS

...
Subpart E - Physical Qualifications and Examinations.
Section 391.41 – Physical qualifications for drivers.

...
PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

...
Subpart G - Miscellaneous Parts and Accessories

...
Section 393.81 - Horn.

...

PART 395 – HOURS OF SERVICE OF DRIVERS

...
Section 395.3 Maximum driving time.

(Section 395.3 is modified to state the following:)
Subject to the exceptions and exemptions in 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a property carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:

1. Start of the work shift. A driver may not drive without first taking 10 consecutive hours off duty.

2. 16-hour period. A driver may drive only during a period of 16 hours after coming on duty following 10 consecutive hours off duty. The driver may not drive after the end of the 16-consecutive-hour period without first taking 10 consecutive hours off duty.

3. Driving time and rest breaks:

i. Driving time: A driver may drive a total of 12 hours during the 16-hour period specified in paragraph (a)2 of this section.

ii. Rest breaks: Driving is not permitted if more than eight hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes.

(b) No motor vehicle carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after:

1. Having been on duty 70 hours in any period of seven consecutive days, if the employing motor carrier does not operate commercial motor carriers every day of the week or;

2. Having been on duty 80 hours in any period of eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

The modifications of Section 395.3 do not apply to intrastate drivers of commercial motor vehicles designed or used in the transportation of hazardous materials and required to be placarded in accordance with 49 CFR 172.500 et seq., or display a hazardous materials placard. Intrastate drivers hours of service limitations are found at 49 CFR 350.341(e).

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PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS;
DRIVING AND PARKING RULES

Subpart A - General

...

Section 397.3 State and local laws, ordinances, and regulations.

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TRANSPORTATION

(a)

DIVISION OF CAPITAL PROGRAM MANAGEMENT

OFFICE OF OUTDOOR ADVERTISING SERVICES

Roadside Sign Control and Outdoor Advertising

Readoption with Amendments: N.J.A.C. 16:41C

Adopted Recodifications with Amendments: N.J.A.C.

16:41C-4.3, 5.1, 5.7, 7.1, 8.1, and 8.3 as 5.2, 1.2,
6.4, 3.2, 3.1, and 9.3, respectively

Adopted Recodification: N.J.A.C. 16:41C-4.2 as 5.3

Adopted Repeals and New Rules: N.J.A.C. 16:41C- 8.7 and 8.8

Adopted New Rules: N.J.A.C. 16:41C-1.3, 6.5, 6.6, 6.8, 6.9, 8.1, 9.1, 9.2, 9.4, and 11

Adopted Repeals: N.J.A.C. 16:41C-5.6, 6.3, 6.4, and 8.6

Proposed: September 15, 2014, at 46 N.J.R. 1946(a).

Adopted: January 6, 2015, by Jamie Fox, Commissioner, Department of Transportation.

Filed: January 30, 2015, as R.2015 d.032, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:5-5 et seq.

Effective Dates: January 30, 2015, Readoption;
March 2, 2015, Recodifications, Amendments,
Repeals, and New Rules.

Expiration Date: January 30, 2022.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing on the rules proposed for readoption with amendments, repeals, new rules, and recodifications was held on October 22, 2014. The following individuals were present: Chris Painter, Astro Outdoor; Chad Atkins, Jersey Outdoor Media; Richard Van Wagner; Bill Stapleton, Outdoor Media Systems; and Tricia Scott. Several commenters requested an explanation of the adoption process and this was explained at the hearing. Mr. Atkins stated that he thinks that permit applications are too expensive. Mr. Stapleton stated that it would be helpful if more clarity is given regarding as-built inspections of signs. Ms. Scott asked for clarification and justification for the non-allowance of multi-message

signs on transit bus shelters. These questions are answered in the responses below.

Summary of Public Comments and Agency Responses:

Comments were received from Patricia Scott on behalf of AR James Media and Louis L. D'Arminio; Price Meese Shulman & D'Arminio, PC, on behalf of Outfront Media Inc., Interstate Outdoor Advertising, LLC, Clear Channel Outdoor, Lamar Advertising, Steen Outdoor Advertising, and Jersey Outdoor, LLC, as well as other unnamed industry representatives.

Comments from Patricia Scott

COMMENT: Relating to N.J.A.C. 16:41C-5.4, the commenter asks if the Department of Transportation (Department) is going to send disclosure statements to license holders or is it up to the license holder to submit the statement by a specific date. Also, whether a statement is supposed to be provided during permit renewal.

RESPONSE: The Department will continue to send disclosure statements to license holders with the license renewal forms. If a change occurs that requires the filing of an updated disclosure statement, the holder continues to be required to submit a new disclosure form within 60 days of the change.

COMMENT: Relating to N.J.A.C. 16:41C-6.5(a)2, the commenter asks whether a permit becomes null and void or is revoked after the third annual renewal for a non-erected off-premise sign. Does this also affect existing permits that have not been erected to date?

RESPONSE: The Department has reviewed this provision and concluded that clarification is needed at N.J.A.C. 16:41C-6.5(a)2 (which relates to permit renewal) and N.J.A.C. 16:41C-12.2(b)12 and 13 (which relate to permit revocation). Language at N.J.A.C. 16:41C-6.5(a)2 will be changed upon adoption to allow the annual renewal of all permits. The language at N.J.A.C. 16:41C-12.2(b)12 will be changed to eliminate redundant language, which is caused by the revisions to N.J.A.C. 16:41C-12.2(b)13. The revocation language at N.J.A.C. 16:41C-12.2(b)13 will also be changed to state that a permit may be revoked if a sign is not built within four years of the permit's issuance and the permit prevents the approval of a pending application. The time period has been changed to four years to provide the industry with flexibility, while allowing the Department to uphold its obligation to maintain adequate control over outdoor advertising. These permits are always conditional upon the approval of the municipality and allowing four years to obtain local approval is believed, by the Department, to be a realistic period of time. The permit will not be revoked if the Department finds good cause for the delay and the permit holder has applied for municipal approval or the proposed sign is subject to a pending municipal action. These provisions are applicable for both new and existing permits.

COMMENT: Relating to N.J.A.C. 16:41C-8.1(d)3, the commenter asks whether 300-foot spacing still exists for off-premise signs on non-limited access and surface arterials.

RESPONSE: As stated at N.J.A.C. 16:41C-8.1(d)2, there is a spacing requirement of 300 feet between signs on non-limited access highways.

COMMENT: Relating to N.J.A.C. 16:41C-8.1(f)3, the commenter states that the proposed rules provide that off-premise signs will only be permitted in zoned and unzoned commercial or industrial areas and asks if this includes business zones.

RESPONSE: The rules define the term "zoned commercial or industrial areas." The term specifically includes areas that are zoned for business.

COMMENT: Relating to N.J.A.C. 16:41C-8.6(d), which provides that multiple message signs are not allowed on transit bus shelters, the commenter objects to this restriction and requested justification and clarification. She further stated that other cities, such as Tampa, San Antonio, Washington, Chicago, Las Vegas, Milwaukee, and Los Angeles, use digital transit shelters.

RESPONSE: Signs on bus shelters are a secondary, non-highway use of the right-of-way. Multiple message advertising on bus shelters raises significant highway safety issues because bus shelters are "pedestrian-centric" facilities and they are typically built at intersections or other critical locations that are also "pedestrian-centric." It is the Department's policy to seek ways to reduce the incidence of intersection and pedestrian