



2 of 2 DOCUMENTS

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WAGE AND HOUR COMPLIANCE**

45 N.J.R. 624(b)

Proposed Amendment: *N.J.A.C. 12:56-6.1*

Proposed New Rule: *N.J.A.C. 12:56-7.3*

[Click here to view Interested Persons Statement](#)

Exemption from Overtime for Employees of Common Carriers of Passengers by Motor Bus

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-045.

A **public hearing** on the proposed amendment and new rule will be held on the following date at the following location:

Tuesday, April 9, 2013
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large Conference Room
Trenton, New Jersey

[page=625] Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by May 17, 2013 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services

New Jersey Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

The agency proposal follows:

Summary

The Department is proposing new N.J.A.C. 12:56-7.3, which would indicate that, relative to the statutory exemption from overtime for employees of a common carrier of passengers by motor bus, the term, "common carrier of passengers by motor bus," shall mean any employer which operates an "autobus," as that term is defined in *N.J.S.A. 48:4-1*, where the operation of the "autobus" has been authorized by the Chief Administrator of the New Jersey Motor Vehicle Commission through the issuance of a certificate of public convenience and necessity under *N.J.S.A. 48:4-3*. The absence of either statutory or regulatory definitions for the terms "common carrier" and "motor bus" has proven problematic for the Department over the years in its enforcement of the statutory overtime requirements. The Department believes that the proposed definition, grounded in an existing statutory scheme, would be consistent with the remedial purpose of the wage and hour law and the courts' longstanding instruction that all exemptions to *N.J.S.A. 34:11-56a4* should be construed narrowly. See *In the Matter of Raymour and Flanagan*, 405 N.J.Super 367, 376 (App. Div. 2009); *Marx v. Friendly Ice Cream Corp.*, 380 N.J.Super. 302, 310 (App. Div. 2005); *Yellow Cab Co. v. State*, 126 N.J.Super. 81, 86 (App. Div. 1973), *certif. denied*, 64 N.J. 498, (1974); *State v. Comfort Cab, Inc.*, 118 N.J.Super. 162, 175 (1972). Furthermore, the proposed definition of the term "common carrier of passengers by motor bus" would be administratively efficient in that it would place a manageable burden on inspectors; specifically, wage and hour inspectors, who possess no particular expertise in the area of motor vehicle classification. The inspectors would need simply confirm whether the Motor Vehicle Commission has classified the vehicle in question as an "autobus," and then look for the existence of the certificate of public convenience and necessity, in order to determine whether the exemption applies.

The Department is also proposing amendments to *N.J.A.C. 12:56-6.1* to acknowledge that within *N.J.S.A. 34:11-56a4* there are exemptions from the overtime requirements that are separate and distinct from the exemptions described in *N.J.A.C. 12:56-7.1* for individuals employed in a bona fide executive, administrative, or professional capacity (for example, the exemptions for employees engaged to labor on a farm or employed in a hotel or to a limousine driver who is an employee of an employer engaged in the business of operating limousines or to employees engaged in labor relative to the raising or care of livestock).

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed new rule would have a positive social impact in that it would eliminate any possible confusion among employers and employees as to when an employer is entitled to assert the statutory exemption from overtime requirements for those who are employed by a common carrier of passengers by motor bus. The proposed new rule would also benefit the Department in that it would make clear to both employers and employees the scope of the statutory exemption, thereby assisting in a more effective enforcement by the Department of the law. Similarly, the proposed amendments to *N.J.A.C. 12:56-6.1* would eliminate confusion among the regulated community, which would result in a positive social impact.

Economic Impact

The proposed new rule would have a positive economic impact on employers who, but for the proposed new rule, might misunderstand the scope of the exemption from overtime requirements for those who are employed by a common carrier of passengers by motor bus and, thereby, run the risk of incurring unnecessary expenses related to fines and penalties levied by the Department for violations of the law and rules. As indicated in the Social Impact above, the proposed new rule would eliminate any possible confusion among employers and employees with regard to the proper scope of the exemption. This would presumably result in fewer violations and, consequently, the levying of fewer fines and penalties by the Department. Similarly, the elimination of confusion which would be derived from the proposed amendments to *N.J.A.C. 12:56-6.1* would presumably result in fewer violations and, consequently, the levying of fewer fines and penalties by the Department.

Federal Standards Statement

Whereas *N.J.S.A. 34:11-56a4* expressly exempts from overtime requirements those individuals who are employed by "a common carrier of passengers by motor bus," the Federal Fair Labor Standards Act 29 U.S.C. §§ 201 et seq., does not contain such an exemption. Rather, Section 13(b)(1) of the Federal Fair Labor Standards Act (29 U.S.C. § 213(b)(1)) provides an overtime exemption for employees who are within the authority of the Secretary of Transportation pursuant to the Federal Motor Carrier Act. Thus, the 13(b)(1) overtime exemption applies to, among others, employees who are employed by a motor carrier or motor private carrier, as those terms are defined in 49 U.S.C. § 13102. Under the Federal Motor Carrier Act, a "motor carrier" is a person providing motor vehicle transportation for compensation, and a "motor private carrier" is a person other than a motor carrier transporting property by motor vehicle if the person is the owner, lessee, or bailee of the property being transported, and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise. Incidentally, *N.J.S.A. 34:11-56a4* also contains an overtime exemption for drivers, helpers, loaders, and mechanics for whom the Secretary of Transportation may prescribe maximum hours for the safe operation of vehicles pursuant to section 31502(b) of the Federal Motor Carrier Act, when those individuals are employed by a "trucking industry employer," as that term is defined within *N.J.S.A. 34:11-56a4*.

Thus, clearly, the New Jersey wage and hour law and the Federal Fair Labor Standards Act differ from one another. However, to characterize the particular difference at issue - that is, the existence in New Jersey law (and absence within the Federal Fair Labor Standards Act) of an express exemption for those individuals employed by common carriers of passengers by motor bus - as "exceeding standards or requirements imposed by Federal law" would be inaccurate. The two standards simply differ. And, more to the point, to the extent that the proposed amendment and new rule contain standards or requirements which differ from those imposed by Federal law, that is due to the difference, described above, between Federal and State law; State law from which the Department has no discretion to deviate. The purpose of the proposed amendment and new rule is simply to provide clarity as to the meaning of the State law (a law which the Department is duty bound to enforce), so as to eliminate confusion among the regulated community and so as to allow for efficient enforcement by the Department. For the foregoing reasons, no Federal standards analysis is required.

Jobs Impact

The proposed amendment and new rule would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendment and new rule would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment and new rule would impose no reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Rather, the proposed amendment and new rule would simply facilitate a better understanding by employers and employees of the wage and hour law. The clarity that would result from the proposed amendment and new rule would inure to the benefit of all concerned, including employers, large and small.

[page=626] Housing Affordability Impact Analysis

The proposed amendment and new rule would have no impact on affordable housing in New Jersey and would not evoke a change in the average costs associated with housing because the proposed amendment and new rule pertain to overtime exemptions and have nothing to do with housing.

Smart Growth Development Impact Analysis

The proposed amendment and new rule would have no impact on smart growth and would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment and new rule pertain to overtime exemptions and have nothing to do with housing.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. OVERTIME

12:56-6.1 Rate of overtime payment

For each hour of working time in excess of 40 hours in any week, except **for those exemptions set forth in N.J.S.A. 34:11-56a4** or as provided in *N.J.A.C. 12:56-7.1*, every employer shall pay to each of his or her employees, wages at a rate of not less than 1 1/2 times such employee's regular hourly wage.

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

12:56-7.3 Exemption from overtime for an employee of a common carrier of passengers by motor bus

(a) Pursuant to *N.J.S.A. 34:11-56a4*, any individual employed by a common carrier of passengers by motor bus shall be exempt from the overtime requirements of *N.J.A.C. 12:56-6.1*.

(b) "Common carrier of passengers by motor bus," as used in this section, shall mean any employer that operates an "autobus," as that term is defined in *N.J.S.A. 48:4-1*, where the operation of the "autobus" has been authorized by the Chief Administrator of the New Jersey Motor Vehicle Commission through the issuance of a certificate of public convenience and necessity under *N.J.S.A. 48:4-3*.