

QA# 37371

DEPT. OF TRANSPORTATION  
DOCKET SECTION

Comments of the Attorney General of Connecticut  
on Proposed Federal Regulations  
Concerning Transportation of Household Goods and Consumer Protection  
49 C.F.R. Parts 375 and 377  
Federal Highway Administration (FHWA), Department of Transportation (DOT)  
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Introduction

Attorney General Richard Blumenthal of Connecticut files these Comments in response to the Notice of Proposed Rulemaking of May 15, 1998 in the above-captioned matter. The interstate shipping of household goods continues to be a breeding ground for misrepresentation and deceptive trade practices. FHWA should be commended for its efforts to ensure that our citizens are not subject to continuing unlawful or unfair business practices in the interstate moving industry, but it needs to take stronger measures to protect consumers.

Connecticut has received its fair share of consumer complaints regarding the interstate shipping of household goods. Under existing regulations, consumers have few protections, and states are powerless to protect consumers from many abuses of interstate movers.

The current system gives too much bargaining power to the carriers and too little or no protection to consumers. These proposed regulations, along with the additional changes I suggest, should help to level the playing field for consumers.

Of course, new regulations will only be as effective as those who enforce them. A significant measure of government oversight of motor carrier operations is crucial. Additionally, I recognize the statutory and administrative constraints placed upon the FHWA, limiting its ability to regulate this industry. Accordingly, I strongly urge the FHWA to report to Congress, as it was required to do over a year ago, on the need to enhance enforcement and to modify certain statutory provisions which unfairly place the consumer at a distinct disadvantage when contracting to move household goods. See 49 U.S.C. § 14706.

I, therefore, urge the FHWA to amend its regulatory provisions to provide better and fairer protections for consumers.

## Comments

### §375.103

The definition of “transportation of household goods” should include handling of a shipper’s goods by the carrier or his agent, while loading at the point of pickup, unloading at the point of delivery and all handling in between, whether in storage or in transit.

### §375.201

The title of this section should be modified for consistency with the substance of the provision. The title refers to “loss and damage” whereas subsection (a), the substance of the regulation, imposes liability for “loss or damage.”

Subsection (b) references the limits of a carrier’s liability for damage to property to the amounts stated in the released rates established by the Interstate Commerce Commission in Decision No. MC-999, 9 I.C.C. 2d 523 (1993). Without addressing whether the Congressionally authorized practice of limiting carrier liability for loss or damage to household goods is warranted in this day of readily accessible insurance coverage, FHWA should strive to clarify for the consumer the differences between contractually agreed upon increases in the carrier’s liability and the availability of insurance coverage. To ensure protection of consumers, FHWA should require the carrier to disclose the limits of its liability in a clear, concise manner and preclude a carrier from characterizing contractually agreed upon increases in liability as “insurance.”

Subsection (c) states that a carrier may have additional liability if it sells excess liability insurance. Excess liability insurance usually refers to insurance coverage in excess of a primary layer of insurance. It is unclear whether FHWA is using the term “excess liability insurance” as it is normally used in the insurance industry or as a term of art meaning insurance in excess of the carrier’s liability as limited by its released rates. If FHWA is using the term to define insurance in excess of the carrier’s liability as limited by its released rates, FHWA should simply refer to it as “liability insurance” rather than “excess liability insurance.”

### §375.205

A carrier should be required to disclose any agency relationship to a shipper.

### §375.209

Although it may be implied in the proposed regulation requiring the establishment of a complaint procedure, FHWA should impose an affirmative requirement upon a carrier to respond promptly and appropriately to complaints by a shipper.

### §375.211

FHWA should mandate certain provisions of the arbitration program adopted by a carrier. One of those provisions should require the carrier to provide a fair and prompt process which is paid for by the carrier. By requiring the carrier to bear the cost of the arbitration, the carrier has an incentive to resolve claims and arbitration proceedings in a timely manner.

### §375.213

The FHWA should require the carrier to provide a prospective shipper with a copy of a blank uniform bill of lading form that the carrier will require the consumer to sign prior to loading the shipment . This will give the consumer an opportunity to review the form and ask meaningful questions about the terms listed on the form.

The carrier should be required to provide the prospective shipper with a copy of its tariff to properly inform the consumer of possible charges that may be levied by the carrier.

### §375.217

FHWA should establish nondiscriminatory rules governing collect-on-delivery service and the collection of collect-on-delivery funds rather than allowing carriers to develop their own procedures in the tariff.

FHWA should modify subsection (b) to require the carrier to relinquish possession of a shipment upon payment by the consumer of an amount substantially less than the binding or nonbinding estimate. This provides the consumer with some leverage over the carrier in the event of a dispute. The carrier would have to pursue a claim against the consumer rather than requiring full payment by the consumer and forcing the consumer to pursue the carrier. Such a burden shift provides greater protection for the consumer.

### §375.221

FHWA should not allow the carrier to treat the reversal of a credit card transaction as an involuntary extension of credit. This is not consumer protection. To the extent the carrier suffers financial loss due to the actions of the consumer, the carrier should be required to rely upon the same avenues of dispute resolution that are available to the shipper. In addition, the FHWA should allow a consumer to treat a carrier's failure to pay a claim for untimely shipments or damage or loss as an involuntary extension of the shipper's credit to the carrier, subjecting the carrier to the same financial penalties as the consumer listed in §375.807.

\$375.301

Each carrier should be required to have liability insurance covering casualty losses resulting from the actions of the carrier.

\$375.303

Each carrier should be required to procure insurance on behalf of the shipper. If a carrier sells or offers to sell liability insurance to the shipper, the carrier must comply with any applicable licensing requirements of a state insurance regulatory body. If the carrier does sell or procure insurance on behalf of the consumer, the consumer must be the named insured on the policy and the carrier must provide the consumer with a copy of the policy and a certificate of insurance indicating the period of coverage which evidences the existence of the insurance.

§375.401

In subsection (a) and throughout the proposed regulations, the term “binding estimate” should be changed to “guaranteed delivery price.” The use of the term “estimate” implies an approximation rather than a fixed price.

Subsection (b) should be modified to reflect the fact that the final charges will be based upon the actual weight “or volume.” This is consistent with the language providing for estimates to be given based upon weight or volume.

5375.403

In subsection (a), the FHWA should require all carriers to include a binding estimate in the tariff and to provide a binding estimate if requested by the consumer.

Subsections (a)(5) through (7) set the conditions for potential hostile freight situations. The FHWA should not allow the carrier to unilaterally refuse to honor the binding estimate. The carrier should be required to provide the service as originally agreed upon. The carrier may negotiate with the consumer for any additional services requested at the time of pickup, either as a binding or nonbinding estimate for the additional services.

The FHWA should affirmatively require the carrier to inquire of site conditions at the destination or other matters which may result in the imposition of additional charges at the delivery point. For example, if the carrier fails to ask the consumer whether there are long flights of stairs, a steep grade or a long haul from the curb to the destination or if the carrier asks and does not mark the consumer’s negative response to such inquiry, the carrier should not be permitted to charge for any such additional services at the destination which may have reasonably been anticipated by the carrier and not listed as the basis of an additional charge in its estimate. This is a reasonable disclosure provision since the carrier, due to his experience, knows that such additional services are often required and may result in additional charges. In

addition, the carrier should be required to relinquish possession of the shipment and bill the consumer for such additional services rather than demand immediate payment at the time of delivery.

§375.407

FHWA should substantially reduce the amount of money that the consumer must pay to the carrier in order for the carrier to relinquish possession of the shipment. See comments to 5375.217 above.

I strongly support subsection (c) requiring the carrier to defer demand for payment of the balance of any remaining charges for a 30 (thirty) day period. This period allows the consumer to fully inspect goods and to secure estimates for repair or replacement of lost goods. For this reason, I urge the FHWA to combine this concept with my suggestion that the FHWA require the carrier to relinquish possession of the shipment upon payment of an amount substantially less than 100 (one-hundred) percent of the estimate. Similarly, I urge the FHWA to allow the consumer to offset any damages from the balance of any remaining charges owed to the carrier.

9375.501

The specification of dates and times for the order of service in subsection (a)(5) is meaningless unless the carrier incurs a penalty. for the failure to deliver the shipment in a timely manner. Often the consumer must vacate premises in a timely manner to comply with legal requirements, whether due to the sale of a residence or the expiration of a lease. The failure of the carrier to comply with its contractual representations can result in severe personal and financial hardship on the consumer.

Similarly, when gaining access to new premises, a consumer should be able to rely upon the carrier's representations of when her goods will be delivered. FHWA should allow the consumer to proceed against the carrier if the carrier fails to deliver the shipment in accordance with the time requirements in the contract. The consumer should not have to pay an additional fee to the carrier to ensure pickup and delivery of the goods on specific dates or within a specific period.

FHWA should grant the consumer a 3 (three) day grace period in which the consumer may rescind the order of service without any penalty, provided the ordered services are scheduled more than three days after the order is written.

At the time the order for service is written, the carrier should provide the consumer with the items listed in proposed §375.503(b)(2), (4), (9), (10) and (11).

Subsection (a)(5) should allow the consumer to deduct any penalties or per diem amount due to the consumer from any amounts that the consumer owes to the carrier. Alternatively, the carrier should be required to make payment to the consumer at the time of delivery in the manner

specified by the consumer. This would level the playing field and allow both parties to collect amounts due them at the same time.

Subsection (a)(6) should require the carrier to affirmatively note the consumer's denial of any special or accessorial services which might be reasonably expected. Please refer to comments on 9375.403.

\$375.607

After the carrier places a shipment in storage for the carrier's own account, the carrier should be required to deliver the shipment in accordance with the delivery dates or periods specified in the contract.

Subsection (c) should preclude a carrier from limiting its liability for storage-in-transit to the delivery period. It is inequitable to allow a carrier to avoid any liability for delays in shipment while providing no similar mechanism to excuse a consumer's delay, even if the delay is caused by circumstances beyond the consumer's control.

In addition, the subsection should be modified to only permit the carrier to limit its liability to the last day of the period specified in the bill of lading.

\$375.609

The 9 (nine) month limitation on a consumer's right to file a claim against the carrier for damage or loss to goods, as currently provided in subsection (b)(2) runs counter to a consumer's right to bring an action within the state statutory period. FHWA should modify this section to acknowledge the consumer's right to rely upon the state established statutory period for bringing an action against the carrier. Any other provision is not consumer protection.

Subsection (g) should be modified to impose liability on the carrier until 10 (ten) days after the carrier actually gave notice to the consumer that period of storage-in-transit will expire and the shipment will be governed by rules and charges of warehousemen. The 10 (ten) day period is consistent with the provisions in subsection (c).

\$375.70 1

FHWA should not allow a carrier to include a statement that the property was received in good condition except as otherwise noted. The consumer does not have time to inspect all goods as the carrier unloads them. This is especially true for any items which are boxed and unavailable for inspection at the time of delivery. The regulation, as proposed, creates a barrier to the consumer's ability to successfully assert damage claims against the carrier.

\$375.703

For the reasons stated in our proposal for \$375.407, we urge the FHWA to require the carrier to relinquish possession of the shipment in an amount substantially less than 100 (one-hundred) percent of the estimate.

\$375.705

The carrier should not be permitted to demand payment until the shipment is delivered in its entirety. In most cases, the shipment is not split for the benefit of the consumer but rather to accommodate the carrier's business purposes. The consumer contracts for the delivery of all of her goods, not part of them. Therefore, the consumer should only be required to tender payment upon the carrier delivering the shipment in its entirety.

9375.707

It is unimaginable that a carrier can lose or destroy part of a shipment and yet demand full payment before being obligated to relinquish possession of the remainder of the shipment. This provision is abhorrent and strongly anti-consumer. The proposed regulation is silent on when the carrier must refund the amount of the lost or destroyed shipment to the consumer. Rather, in furtherance of consumer protection, if any portion of the shipment is lost or destroyed, the carrier should be forced to relinquish possession of a shipment and only bill the consumer for amounts due and owing 30 (thirty) days after delivering the shipment to the consumer.

\$375.709

For the reasons stated in §375.707 above, FHWA should not allow the carrier to collect any funds for the total loss or destruction of a shipment. The carrier should be required to pay the consumer the declared value of the shipment on or before the last day of the contractually agreed upon delivery, less the specific valuation charge.

\$375.801

Subsection (b) should be modified in accordance with comments provided on \$375.407 and 9375.703.

\$375.805 and \$375.807

The carrier should not be allowed to present the freight or expense bill before the expiration of a 30 (thirty) day period after delivery.

\$375.807

The consumer should not be automatically subjected to a one percent service charge by the operation of a regulation. Rather FHWA should consider imposing a one percent ceiling on any service charge imposed by the carrier.

CONCLUSION

The foregoing comments to the proposed federal regulation are to ensure that all sections are carefully reviewed in order to provide a complete analysis of a consumer's predicate in contracting with an interstate carrier. Thank you for giving the states an opportunity to comments on the proposed regulations. Please contact me if there are any questions regarding the proposed comments.



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