

2/5328

LAW OFFICES

REA, CROSS & AUCHINCLOSS

SUITE 570

1707 L STREET, N.W.

WASHINGTON, D. C. 20036

(202) 785-3700

FACSIMILE: (202) 659-4934

RECEIVED

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DONALD E. CROSS (1923-1986)

THOMAS M. AUCHINCLOSS, JR.
LEO C. FRANEY
JOHN D. HEFFNER
KEITH G. O'BRIEN
BRYCE REA, JR.
BRIAN L. TROLANO
ROBERT A. WIMBISH

October 13, 1998

Via Messenger

Docket Clerk
U.S. DOT Dockets
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400 Seventh Street, SW
Washington, DC 20590-0001

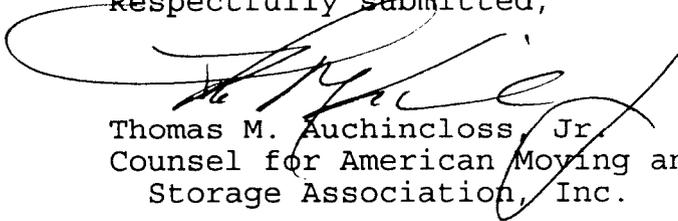
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Re: Docket No. FHWA 97-2979, Termination of
Household Goods; Consumer Protection Regulations

Dear Sir/Madam:

Enclosed are the original and two copies of the
Comments of the American Moving and Storage Association, Inc.
which respond to the Notice of Proposed Rulemaking issued in the
above-styled proceeding.

Respectfully submitted,



Thomas M. Auchincloss, Jr.
Counsel for American Moving and
Storage Association, Inc.

Encs.

DEPARTMENT OF TRANSPORTATION

BEFORE THE

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U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DOCKET No. FHWA 974979

TRANSPORTATION OF HOUSEHOLD GOODS:
CONSUMER PROTECTION REGULATIONS

COMMENTS OF THE
AMERICAN MOVING AND STORAGE ASSOCIATION, INC.

AMERICAN MOVING AND STORAGE
ASSOCIATION, INC.

JOE HARRISON
PRESIDENT

DAVID HAUENSTEIN
DIRECTOR, TECHNICAL SUPPORT

JANE LIND DOWNEY
VICE PRESIDENT & GENERAL COUNSEL
1611 Duke Street
Alexandria, VA 22314
(703) 683-7410

THOMAS M. AUCHINCLOSS, JR.
BRIAN L. TROIANO
Counsel for American Moving and
Storage Association, Inc.
1707 L Street, NW
Washington, DC 20036
(202) 7853700

OF COUNSEL:

REA, CROSS & AUCHINCLOSS
1707 L Street, NW - Suite 570
Washington, DC 20036

DUE AND DATED: OCTOBER 13, 1998



BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Docket No. FHWA 97-2979

Transportation of Household Goods;
Consumer Protection Regulations

**COMMENTS OF THE
AMERICAN MOVING AND STORAGE ASSOCIATION**

The American Moving and Storage Association (AMSA) submits these Comments in response to the Department of Transportation Federal Highway Administration (FHWA) Notice of Proposed Rulemaking (NPRM) regarding changes in the regulations governing the transportation of household goods, published in the Federal Register of May 15, 1998, at pages 27126, et seq.

AMSA is the national trade association of the moving and storage industry. It has approximately 3,500 members worldwide and represents the entire spectrum of the domestic moving and storage industry. The membership includes 25 national van lines, 1,100 independent regulated carriers, 1,600 agents of van lines, 1,000 of whom are also regulated carriers in their own right, and over 500 international movers. AMSA members contract with 30,000 independent owner-operators who own equipment and perform much of the physical transportation of household goods. The industry employs roughly 450,000 workers, operates 66,000 trailers, 32,000 tractors and 18,000 straight trucks and

generates revenues of \$7 billion annually. AMSA members operate in every city, town, borough and hamlet in the United States performing interstate, intrastate and local moving and storage services as required by consumers and industry. AMSA's functions include representation and promotion of the interests of the moving industry before federal and state legislative and regulatory bodies. In addition, AMSA works to support the fair and ethical treatment of customers who use professional moving services by operating, pursuant to Section 14708 of the ICC Termination Act of 1995, P.L. 104-88 (ICCTA or Act), the country's largest Dispute Settlement Program for household goods shippers- Nearly 2,000 interstate movers participate in the AMSA Program which provides neutral, binding arbitration through the American Arbitration Association as a means of resolving disputed loss and damage claims.

AMSA SUPPORTS THE PROPOSED RULEMAKING
AND A BETTER INFORMED SHIPPING PUBLIC

As these Comments explain in some detail, AMSA supports the proposed changes in the consumer regulations at Part 375 of Title 49 of the Code of Federal Regulations. We believe that a better-informed shipping public will result in individual shippers who are able to understand the moving process and their rights and responsibilities when dealing with movers. We commend FHWA for undertaking the changes proposed in Part 375. In particular, the changes proposed in Appendix A, Your Rights and Responsibilities When You Move, should help to communicate more information to often inexperienced consumer shippers. Our

experience in managing the AMSA Dispute Settlement Program has shown that the number of claims and complaints could be reduced and in many cases eliminated through better communication. We believe that the proposed regulations will serve to increase the level of communication between movers and their customers, and, in turn, improve the moving industry's existing high-level of professionalism.

PRELIMINARY MATTERS

I.

The NPRM instituting this proceeding originally set July 14, 1998, as the due date for comments. In response to requests to extend that date, FHWA has twice granted extensions of time with the due date now set at October 13, 1998. Since notices were not promptly issued by FHWA advising of the changed due dates, comments were filed with FHWA by a variety of interests throughout the period July 14 through September 30. AMSA has obtained copies of those comments and, to the extent it is appropriate, the following Comments include responses to a number of recommendations made by State attorneys general, consumer organizations and others as they relate to specific proposals contained in the NPRM.

The record in the proceeding also includes correspondence from a number of consumer shippers who, at the urging of a State attorney general, have related their dissatisfaction with the moving services they received. In addition, the National Association of Consumer Agency

Administrators (NACAA) submitted copies of correspondence it or State authorities have received from consumers who also express their dissatisfaction with some aspect of the service they received,' While each complaint has been reviewed, it is not possible, nor do we believe it would be appropriate to attempt to respond to a majority of the individual shipper complaints.² Many involve claims for loss or damage, some of which are the subject of pending litigation.³ It is a fact that the carriers involved in these controversies have opposing versions of the factual circumstances that led to their denial of liability or unwillingness to accede to the shippers' claims of loss. Moreover, it would be inappropriate to debate the merits of these disputes in this proceeding since the FHWA is without authority

¹ NACAA explains that the 15 complaint files it has submitted are "sample consumer complaints" taken from 600 complaints it received. (NACAA Comments, p. 2).

² Some involve shipments that were transported many years ago and it is unlikely that carrier records are available. See, e.g., the comments of Ms. Luetkemeyer and Ms. Curran (1990); Ms. Dean (1993 local move); Ms. Howard and Mr. Morello (1994).

³ In this connection, we refer to the comments submitted by Robert Rowe, Mary Luetkemeyer (also objects to storage charges), Linda Hughes, Sylvia Nadler, Marilyn Armentrout Powell, Stephen Carlson (Mr. Carlson lodged two complaints, one involving alleged loss and damage and the second involving storage of goods and certain actions of his former wife), Jacques Dejean (also objects to storage of goods), Thomas Bacon, Jack Neace, Daniel Peltier, Krista Wendt, Victoria Sherman, John Small, Violet Novak, Thomas Cimorelli, Barbara Krajewska (also objects to form of carriage for an automobile), and Jeffrey Aina. In this same connection, the NACAA comments included correspondence related to loss or damage claims NACAA received from L.M. Simmons, Arlene Renda, Timothy Dura (Mr. Dura's complaint involves allegations of loss from permanent storage and certain actions of his former wife), Michelle Riggs, Mary Newton, Richard Follett, and Louie McFeron.

to resolve claims for loss or damage just as the former Interstate Commerce Commission (ICC) lacked such authority. While some disagreement may exist on the FHWA's role in assisting consumers with their moving problems, Congress' enactment of the Termination Act did not envision FHWA involvement in the settlement of loss or damage claims. In fact, this is precisely why Congress mandated household goods carrier participation in loss and damage dispute resolution programs to provide a less litigious means of resolving disputes. See Section 14708 of the Act.

Discussion of shipper allegations of less than acceptable transportation service would also be inappropriate.⁴ Admittedly, service failures do occur, particularly during the busy moving season when the industry's resources are stretched to their limit. And, of course, operating problems such as accidents, impractical operations, highway delays or similar occurrences, are often beyond the carriers' control and result in the inability to meet service commitments. Situations of this nature are not conducive to management by regulation and, therefore, are not addressed in these Comments.

For similar reasons, it is inappropriate to comment on disputes over a difference between an initial estimate and final charges where it appears that additional services were required, or where actual shipment weight exceeded estimated shipment

⁴ In this connection, we refer to the comments submitted by Judith Sheppard and the correspondence of Ms. Renda submitted by NACAA (also referred to in footnote 3, *infra*).

weight on a non-binding estimate, or where the parties disagree over related facts,'

The next category of complaints involve the selection by consumers of carriers that, based on the consumers' representations, possess questionable qualifications to perform satisfactory moving services. These complaints are contained exclusively in the Comments filed on behalf of NACAA.⁶

There is, of course, no dispute that unscrupulous operators exist within the moving industry just as there are dishonest business entities in every other service industry that deals with consumers. There is also no argument that these disreputable companies represent but a minuscule segment of the moving industry, and produce a disproportionate share of the horror stories that have recently maligned the industry's reputation. Unfortunately, certain horror stories have been reported by the news media while the hundreds of thousands of incident-free relocations performed by hard working, honest, and reputable companies are accomplished without fanfare.

Obviously, the moving industry would prefer that all horror stories be eliminated. While this goal may be somewhat altruistic, the impact of unscrupulous operators can be minimized. The first step towards their elimination starts with

⁵ The correspondence of James Morello, Ellen Howard and Erwin Geiger submitted by NACAA falls into this category. See also the comments of Dominick Digeronimo and Rene Wright.

⁶ See correspondence of Sharon Gordon, Andrew Gutterman, Carlotta Gladding, Josephine Meany, and Samuel Jones.

the consumer. Prudent shoppers of commodities or services, particularly those of a valuable or personal nature, are always counseled by consumer advocates to gather all available information about the company they are dealing with. No less should be expected when dealing with a company that is being considered to move one's personal effects. License and insurance information is readily available from FHWA, and a call to a local Better Business Bureau or consumer agency might disclose past complaints.

Hiring a mover is not unlike purchasing any other valuable service. References can be requested from the mover and specific questions can be put forth. A prospective carrier's evasiveness at that point should raise red flags. Of course, anyone who considers entrusting his/her household goods to a stranger would be well advised to obtain several estimates to compare not only prices and services, as well as to compare the appearance and representations of different companies' representatives. For those who are unwilling to take such precautionary measures, they run the risk of encountering problems. And, for those who are interested only in the lowest price, they should take heed from the letter to the Editor included in NACAA's Comments concerning a bad moving experience: ". . . the Folletts got what they paid for . . ."⁷

⁷ Letter dated June 15, 1992, from Mr. Richard R. Follett to The St. Petersburg Times.

The FHWA obviously also has a role to play. The solution is not to adopt additional burdensome regulations. The answer is to enforce the existing regulations in a manner that sends a message. It is not coincidental that the five complaints included in the NACAA Comments which involve violations of law also involve unlicensed movers.⁸ These companies not only act with impunity, but they cleverly adopt names close in appearance and sound to reputable moving companies in order to deceive potential customers.

Federal law currently provides the necessary enforcement tools to weed out these predators. The Termination Act requires motor carriers to obtain appropriate authority prior to performing interstate transportation of household goods. 49 U.S.C. § 13902. It vests the Secretary with broad authority to investigate carriers in violation of the Act and compel compliance, as well as impose civil penalties, and bring actions to enforce the statute and its regulations. *Id.*, §§ 14701, 14702, 14901. The U.S. Attorney General is likewise empowered to prosecute persons in violation of the Act, FHWA regulations or orders of the Secretary. *Id.*, § 14703. The Act also provides a private right of action, with attorneys' fees, to persons injured

⁸ See correspondence from Sharon Gordon (Strong & Gentle Moving); Andrew Gutterman (MIFA Moving/Strong & Gentle); Carlotta Gladding (North American Moving Co./Strong & Gentle); Josephine Meany (Yanni/Mayflower Express/Majestic Moving/Majesty Moving); and Samuel Jones (Economy Moving, Inc.). The records of the FHWA fail to indicate any of these "carriers" are authorized by FHWA to engage in the transportation of household goods in interstate commerce.

by the failure of a carrier to obtain appropriate operating authority. Id., § 14707.⁹

Several representative prosecutions of unlicensed, unscrupulous operators pursuant to the Secretary's vast arsenal of enforcement weapons would go a long way toward cleaning out the unlawful segment of the industry. One need only look to the recent FHWA criminal prosecutions in the hours of service area to understand that such government efforts quickly bring order.

II.

In its discussion of Executive Order 12612, NPRM p. 27131, FHWA provides its rationale related to a separate Federalism Assessment. In doing so it posits that "The rule is not intended to preempt any State law or State regulation." We submit that this conclusion is incorrect and is likely to promote uncertainty and potential conflicts with States that either have existing consumer regulations that could be erroneously interpreted to apply to the interstate transportation of household goods or would propose to promulgate such

⁹ The Act contains other provisions which address complaints of the nature submitted in this proceeding. For example, Section 14901 provides civil penalties for a company's failure to comply with any regulation relating to the protection of individual shippers of household goods, as well as additional penalties for falsifying documents which evidence the weight of a shipment, or charge for accessorial services not performed or not reasonably required. The Act further imposes civil and criminal penalties for charging rates different than those contained in a tariff under Section 13702. 49 U.S.C. § 14903. Weight bumping of household goods shipments is flatly prohibited and violations subject violators to criminal penalties. Id., § 14912. Civil penalties are imposed for the evasion of any regulation of the Secretary, as well as for failure to make and keep records and reports required by the Secretary. Id., §§ 14906, 14907.

regulations.¹⁰ The cited sentence therefore has the unintended potential of inviting States (legislatures and lower bodies) and State courts to disregard the force and effect of the FHWA regulations in favor of existing or proposed State regulations.

In promulgating these regulations FHWA has expressly preempted application of any State law that would impact the services required to perform interstate transportation of household goods. States, for example, may not regulate the manner in which household goods carriers are required by FHWA to execute orders for service nor may they enforce any State regulation that would affect any other aspect of the interstate moving service performed by household goods carriers regulated by FHWA. See, e.g., Fidelity Federal S. & L. Assn. v. de la Cuesta, 458 U.S. 141, 73 L.Ed.2d 664 (1982) (Even where Congress has not completely displaced State regulation in a specific area, State law is nullified to the extent that it actually conflicts with Federal law. Federal regulations have no less pre-emptive effect than Federal statutes.)

FHWA authority to issue the proposed regulations is without question. As the NPRM notes, in enacting Section 14104 of the Termination Act, the enabling statute in this proceeding, Congress conferred authority on the Secretary to "issue regulations protecting individual shippers". That is precisely what the Secretary proposes and his action in doing so preempts

¹⁰ Obviously, we are not referring to State regulation of the intrastate transportation of household goods.

all State regulations that would purport to regulate the same activities. For these reasons, the cited sentence should be removed or clarified in the final decision in this proceeding.

In a similar vein, it is appropriate at this point to address certain comments of NACAA. It urges that the proposed regulations should announce that they are supplementary law only and that violations will also subject movers to remedies provided by other Federal, State and local laws, such as State deceptive trade practices laws. (Comments, p. 7).¹¹ This suggestion reflects a fundamental misconception of the Supremacy Clause, U.S. Constitution, Art. VI, clause 2, and Federal preemption.

There are three categories of preemption: (1) express preemption where Congress explicitly states that a particular area of State law is preempted; (2) field preemption where Federal regulation is so pervasive or dominant that an intent to occupy the entire field can be inferred; and (3) conflict preemption where State law stands as an obstacle to the accomplishment of the full purposes and objectives of a Federal statute. English v. General Electric Co., 496 U.S. 72, 110 L.Ed.2d 65, 74 (1990) and CSX Transportation v. Georgia P.S.C., 944 F.Supp. 1573, 1580-1 (N.D.Ga. 1996). Since the earliest days of Federal motor carrier regulation, Congress has subjected the interstate transportation of household goods to extensive

¹¹ A similar argument is contained in the Comments filed on behalf of the Missouri, et al. Attorneys General. (Comments, pp. 2-3). The Missouri Attorney General filed Comments which are joined by the Attorneys General of AZ, AK, AL, FL, HI, ID, IL, IN, IA, KS, MD, MA, NJ, NV, NY, OH, OK, OR, RI, TN, WA, WI.

regulation by the Federal Government. Originally vested in the ICC, the Termination Act split Federal oversight of movers between the Surface Transportation Board (STB) and FHWA. Therefore, household goods carriers and their agents are subject to certain Federal requirements which do not apply to most other motor carriers, viz., rate reasonableness, 49 U.S.C. § 13701; tariff publication, 49 U.S.C. § 13702; antitrust immunity for certain collective activities, 49 U.S.C. § 13703; the pooling of traffic and division of earnings and revenues, 49 U.S.C. § 14302; estimates of rates and guarantees of service, 49 U.S.C. § 13704; arbitration of disputes, 49 U.S.C. § 14708; and weight bumping, 49 U.S.C. § 14912. And, of course, Congress specifically expressed its will for Federal regulation of the relationship between movers and consumers. 49 U.S.C. § 14104. It also provided civil penalties for violations of regulations, 49 U.S.C. § 14901, and criminal penalties for violations of certain household goods statutory provisions. 49 U.S.C. § 14912.

There is not the slightest suggestion in the law or its precedent that Congress ever intended this explicit and comprehensive regulatory scheme to be supplementary to or superseded by any State law or regulation. Congress could not have been clearer in expressing its intent to occupy the field of interstate household goods transportation regulation. NACAA's contention is flatly wrong,

III.

In its analysis dealing with proposed Annual Arbitration Reports and compliance with the requirements of the Paperwork Reduction Act, FHWA estimates that 10 percent, or 60,000 of the approximately 600,000 C.O.D. household goods shippers each year would seek arbitration to resolve their loss or damage claims. This number is actually far lower.

To clarify the record, the moving industry's claim ratio for C.O.D. shipments is 1 claim for every 5.43 shipments or approximately 21 percent. This means that of the estimated 600,000 C.O.D. shipments transported each year, 126,000 shipments will result in a claim. Based on AMSA experience with its Program, about .5 percent (one half of one percent), or 630 of those claims will end in arbitration.

SPECIFIC RECOMMENDATIONS AND RESPONSES TO VARIOUS COMMENTS

§ 375.101 - Who must follow these regulations?

This and subsequent sections, including the definition section, define "you" and/or "yours" as a "motor common carrier engaged in the transportation of household goods." [Emphasis added]. Later, in Appendix A, "What definitions are used in this Pamphlet?", a mover is also defined as a motor common carrier. The Termination Act deleted reference to "common" carriers. See Section 13102(12) of the Act. Likewise, the Part 375 regulations should reflect the terms of the Act and the word "common" should

be stricken wherever it appears in connection with "motor carrier(s)".

§ 375.103(a) - What are the definitions of terms used in this part?

"Advertisement" is defined as "any communication to the public in connection with an offer or sale of any interstate transportation service". (NPRM, p. 27139). This definition should be made more accurate in the context of Part 375 by adding the words "household goods" before the word "transportation".

The revised definition would read as follows:

Advertisement means any communication to the public in connection with an offer or sale of any interstate household goods transportation service.

This section also includes a definition of an "Individual shipper or householder". However, the definition does not correspond to the definition of an individual shipper contained in Section 13102(10)(A) of the Act, which provides that, in addition to owning the goods being transported, the individual shipper is also the party paying for the move. This "arranged and paid for by the householder" provision serves to distinguish moves on behalf of individual shippers from those paid for by national accounts (corporations) for their employees as identified in Section 13102(10)(B) of the Act. National account shippers differ from individual shippers in that orders for service are not required (purchase orders or other similar

documents are frequently issued in lieu of orders for service). National accounts also often have relocation policies that conflict with or supersede certain requirements of the existing regulations. Since this is an important distinction, the wording of this provision should be changed to more accurately define an individual shipper as follows:¹²

Individual shipper or householder means any person who is the consignor or consignee of a household goods shipment identified as such in the bill of lading contract, who also owns the goods being transported and pays the moving charges.

In addition, to be consistent, the definition "**Transportation of household goods**", which includes language patterned after Section 13102(10)(B) of the Act ("arranged and paid for by another party"), should be changed by eliminating subparagraph (2), reading "Another party arranges and pays for the transportation of household goods". This recommended change is also consistent with the clear intention of the ICC 1056 regulations which restricted their application to transportation paid for **by** the householder. See 49 C.F.R. § 1056.1(b)(1). The definition of "Transportation of household goods" should therefore be changed to read as follows:

¹² This change also corresponds to the suggested change in Appendix A - Subpart A. See pages 70 and 71 herein.

Transportation of household goods means the householder (an individual shipper) arranges and pays for the transportation of household goods. This may include transportation from a factory or store when the individual shipper purchases the household goods with the intent to use the goods in his or her dwelling.

The Connecticut Attorney General recommends the definition of "Transportation of household goods" include handling of a shipper's goods at loading, unloading and all handling in between, including storage in transit. (Comments, p. 2). We submit that such a change is not necessary. The definition of "Transportation" contained in Section 13102(19) of the Act, includes each of the services enumerated in the Attorney General's recommendation and for purposes of these regulations, the statutory definition is controlling.

The language defining "**Reasonable Dispatch**" should also be modified to make it clear that shippers are liable for charges related to additional services they request or require, as follows:

For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, plus the costs for additional services that were

performed en-route or at destination which were necessary to complete the transportation, you have not transported the goods with reasonable dispatch.¹³

§ 375.201 - What is my normal liability for loss and damage when I accept goods from an individual shipper?¹⁴

§ 375.201(a). This paragraph explains that the mover is legally liable for loss or damage which occurs during the "Transportation of household goods." This explanation should be modified to eliminate confusion as to the full extent of mover liability. As revised, this provision would read as follows:

(1) Transportation of household goods and all related services.

§ 375.201(c). This paragraph provides that the mover may incur additional liability if he sells excess liability insurance.

The reference to additional liability exposure is not understood. When a mover arranges for the purchase of insurance and a shipment is transported under separate liability insurance, the mover's liability is specifically limited to 60 cents per

¹³ Similar language should be employed in § 375.217(b) and in the definition of Reasonable Dispatch contained in "Your Rights and Responsibilities" publication. In addition, the same publication explains (1) What payment arrangement, etc. (NPRM, p. 27153); (2) What is the maximum C.O.D., etc. (NPRM, p. 27156); (3) Collection of Charges (NPRM, p. 27157), all of which should be similarly modified.-

¹⁴ The Connecticut Attorney General recommends that the phrase "loss and damage" be changed to "loss or damage". We agree.

pound per article. No additional coverage is provided by the carrier unless he fails to issue a copy of the insurance policy or other appropriate evidence of insurance as explained in Section 375.303(h). Given these circumstances, this provision should be deleted.

The Connecticut Attorney General suggests that the language in Section 375.201 be clarified to explain the difference between carrier liability under released rates orders and the availability of excess liability insurance. (Comments, p. 2).

Such changes are not necessary, Section 375.201 is directed to carriers and is intended to restate their understanding of the parameters of liability. Carriers do not require additional explanations along these lines to understand their liability.

§ 375.203 - What actions of an individual shipper may limit or reduce my normal liability?

§ 375.203 (a). Paragraph (a) provides that the inclusion of perishable household goods in a shipment without notice to the carrier relieves the carrier of liability. To comport with generally applicable tariff provisions which allow the mover to limit liability when perishables are disclosed and accepted for transportation, and the terms of the bill of lading related to **acts** or omissions of the shipper, this provision should be expanded to include reference to hazardous and dangerous articles, as follows:

If an individual shipper includes perishable, dangerous or hazardous articles in the shipment without your knowledge, you need not assume liability for those articles or for the loss or damage caused by their inclusion in the shipment. If the shipper requests that you accept such articles for transportation, you may elect to limit your liability for any loss or damage by appropriately published tariff provisions.

§ 375.203(b) (and throughout). Paragraph (b) includes reference to units of weight and measure in metric terms with the Imperial equivalent expressed parenthetically. This will prove unduly confusing to both individual shippers and the moving industry. Therefore, we recommend that, in conformity with Vice President Gore's recent directive requiring the use of plain English in government regulations, and until such time as the metric system is more commonly recognized, the terms should be reversed, with the metric equivalent shown in parenthesis.

§ 375.205 - May I have Agents?

The Connecticut Attorney General recommends that carriers be required to disclose any agency relationship to shippers. (Comments, p. 2).

We do not object to such a requirement since it is normal industry practice to explain agency relationships. In fact, Your Rights and Responsibilities When You Move contains an

explicit explanation that alerts shippers to the existence of these relationships. See, e.g., Subpart B, "May my mover have agents?"

§ 375.20~ - How must I handle complaints and inquiries?

The Connecticut Attorney General recommends that an affirmative requirement to respond "promptly and appropriately" to shipper complaints be included in this section. (Comments, p. 2). We disagree.

As the Attorney General concedes, the proposed language contemplates that carriers maintain internal systems that are responsive to shippers' complaints. The requirement that telephone numbers be furnished to shippers is sufficient to ensure ready access to the carrier's system and, obviously, what may constitute an "appropriate" response is dependent upon the facts of each situation. This is not a matter that warrants a more explicit attempt to regulate.

§ 375,211 - Must I have an arbitration program?

Subparagraph (a) (3) would require that, upon an individual shipper's request for arbitration, the mover must furnish forms and information necessary to initiate an action to resolve a dispute. The requirement that specific forms be furnished will be unduly burdensome.

Section 14703 of the Act requires that carriers furnish shippers with written information explaining the availability of their Dispute Settlement Programs. One of the benefits of these programs is that the process (at least the AMSA version of the

process) is quite informal and easy to use. No forms are required. Instead, shippers need only submit a written request for arbitration by letter or facsimile. Requiring the use of specific forms to initiate the procedure will only serve to unduly complicate a program that has been running effectively without such forms for more than two years. Accordingly, the words "forms and" should be deleted from this provision.

Comments concerning arbitration programs are also contained in the statements filed on behalf of the Connecticut Attorney General, the Transportation Division of the Oklahoma Corporation Commission and the Missouri, et al. Attorneys General. Our response to each recommendation follows:

The Connecticut Attorney General recommends that the cost of arbitration be borne entirely by carriers to provide an incentive to resolve claims promptly. (Comments, p. 3).

Congress has addressed this point. Shippers may not be assessed more than one-half the cost of arbitration and arbitrators' decisions may include cost assessments. 49 U.S.C. § 14708(b) (5). Also, Congress no doubt viewed the payment by shippers of a portion of the expense of arbitration as a means to discourage the presentation of frivolous claims. Of course, carriers may elect to bear a greater portion or all of these costs if they so elect.

The Transportation Division of the Oklahoma Corporation Commission recommends that arbitration be expanded to include

"Alternative Dispute Resolution", arguing that arbitration alone is limiting. (Comments, p. 2).

Congress has also addressed this point. The applicable statute, Section 14708 of the Act, refers to "arbitration" as a means of settling disputes between carriers and shippers. That aside, "Alternative Dispute Resolution" is a generic term that refers to a wide array of practices which are intended to resolve disagreements at lower cost than would be incurred in litigation and includes arbitration.¹⁵

The Missouri, et al. Attorneys General argue that the proposed arbitration section should be strengthened in several respects by the addition of requirements for prominent disclosure of consumers' rights at the outset of the transportation transaction and expeditious processing of requests for arbitration by impartial third parties. (Comments, pp. 6-10).

AMSA is not opposed to an explicit recitation of carrier responsibilities related to disclosure and other aspects of statutorily mandated arbitration programs. However, the predicate for the Attorneys General's argument is that if the regulations are not explicit, "... many carriers will not participate in arbitration in good faith otherwise." (Comments, p. 7). Such a proposition is obviously inconsistent.

If a carrier is intent on violating the requirements of law, regulatory language explicitness will not act as a deterrent. This is a matter of enforcement. To the extent the

¹⁵ 4 Am Jur 2d, Alternative Dispute Resolution § 1.

Attorneys General have, as they assert, encountered carriers that do not participate in an arbitration program, those carriers should be reported to the FHWA for enforcement action.

Moreover, a reading of the proposed regulation indicates that it contains no less than 14 explicit directives that will govern all aspects of carrier arbitration programs. One of those requirements states that: "You must produce and distribute a concise, easy-to-read, accurate summary of your arbitration program, including the items in this section." Section 375.211(b) [Emphasis added]. In addition, subparagraph (a) (2) requires that "Before the household goods are tendered for transport, your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration, . . ." A fair reading of these provisions and the balance of the proposed regulations clearly indicates that the Attorneys Generals' concerns have been addressed.

§ 375.213 - What information Must I provide to a prospective individual shipper?

The Connecticut Attorney General recommends that carriers be required to provide a blank bill of lading and their tariffs to prospective shippers. (Comments, p. 3).

This is an unrealistic and burdensome proposal. Industry data indicates that roughly three shipment surveys are performed for each shipment booked. To require the distribution of bills of lading and tariffs containing several hundred pages of technical matter to prospective shippers would burden shippers and carriers alike. In any event, Congress has addressed this

issue, Section 13702(c) (1) of the Act requires that carriers provide notice of the availability of their tariffs for shippers who would elect to examine tariff provisions related to their move. Carriers must comply with that requirement.

§ 315.215. How Must I collect charges?

The Oklahoma Transportation Division recommends that shippers be given the option of pre-payment of transportation charges. It argues that if a shipper could elect to pre-pay all freight charges based on pre-determined weight and charges, it would perhaps mitigate the complaints associated with inflated weights, hostage goods and excess payment demands. (Comments, p. 2).

We question whether such an option would serve the interests of shippers. Section 375.401(a) (1) of the proposed regulations provides the mechanism for guaranteed charges. Shippers have the option of electing to tender their goods under a binding estimate and, in fact, many exercise that option.¹⁶ Authorizing payment of transportation charges in advance of the actual delivery of goods could provide unscrupulous carriers with the opportunity to deceive shippers. A case in point is the experience of Ms. Josephine Meany whose complaint is included in the NACAA Comments. Unfortunately, Ms. Meany paid thousands of dollars to an unlicensed mover for what amounted to essentially no service. Her son's goods were not transported to the intended

¹⁶ Industry data indicates that 47.2 percent of all C.O.D. consumer shipments are transported under carrier binding estimate tariff provisions in 1996,

destination and she was forced to hire and pay a second mover to transport the goods. This recommendation should, therefore, be rejected.

§ 375.217(b) - May I collect charges upon delivery?

NACAA proposes modifying this section to state that a mover "may specify two forms of payment -- only one being cash or a cash equivalent." (Comments, p. 12).

If adopted, this recommendation would limit the options available to carriers and their customers to effect the payment of transportation charges. The generally applicable options for payment are cash, certified check, traveler's check or bank check (drawn by a bank and signed by an officer). (HGB Tariff 400-M, Item 29). In addition, the existing credit regulations, 49 C.F.R. § 377.215, consumer regulations, 49 C.F.R. § 1056.19, and proposed Section 375.221, authorize the credit card option for payment and provide specific requirements related thereto. Taken as a whole, these provisions adequately address the concerns expressed by NACAA.

The Connecticut Attorney General argues that nondiscriminatory rules for the collection of transportation charges should be adopted in this proceeding rather than permitting carriers to develop extension of credit provisions in their tariffs. (Comments, p.3).

This recommendation is addressed in the preceding paragraph. Additionally, the Attorney General has apparently neglected to consider the discussion at page 27128 of the NPRM

which outlines the FHWA response to the moving industry's request for amendment of the existing credit regulations. Obviously, household goods carriers are not at liberty to fashion payment and/or extension of credit tariff provisions that would violate the existing or proposed FHWA regulations.

The Oklahoma Transportation Division objects to the substitution of "cashier's check" for "money order" in the regulation and recommends that "money order" be retained and "cashier's check" be added as another cash equivalent.

(Comments, p. 2). AMSA is not opposed to this recommendation,

The Missouri, et al. Attorneys General argue that the form of payment issue is directly related to consumer overcharge complaints. They therefore propose that Section 375.221 require that, if a carrier agrees to accept a credit card at the beginning of the shipment transaction, the credit card should be accepted at delivery. They also propose a related amendment to Section 375.503(b)(9) dealing with bill of lading contents, which would require disclosure of the form of payment required upon delivery if it is different from that agreed to at the outset of the transaction. (Comments, pp. 4-6).

In a similar vein, the Connecticut Attorney General is opposed to permitting carriers to treat the reversal of a credit card transaction as an involuntary extension of credit. In addition, the argument is made that consumers should be authorized to treat a carrier's failure to pay a claim for delay or loss/damage as an "involuntary extension of the shipper's

credit to the carrier", thus subjecting the carrier to the same financial penalties as the consumer bears under the credit regulations (Section 375.807). (Comments, p. 3).

Each of these proposals is fraught with the potential for endless controversies between carriers and shippers. More importantly, they reflect a misunderstanding of Congressional intent.

Section 13707 of the Act provides that carriers ". . . shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made." [Emphasis added]. Since the extension of credit by carriers is permissive, it would be foolhardy to adopt regulations that would attempt to address these issues since they cannot adequately anticipate the many circumstances that occur when drivers and consumers settle accounts at the time of delivery.¹⁷ Such regulations could have the unfortunate result

¹⁷ Accepting a credit card at origin, for example, provide's the consumer with sufficient time to seek alternative means of payment should the charge amount be declined by the card issuer. If a driver delivers on weekends or after hours and the carrier's credit/collection department is closed, the driver cannot call in the charges and the carrier will not be in a position to make certain that the card issuer will accept the charge. Dealing with a credit card at delivery may also cause unnecessary delays. If the charge is declined, the consumer must seek alternative means of payment which could unnecessarily delay delivery. In the meantime, the carrier must wait which could result in additional charges - vehicle detention or storage-in-transit.

of forcing carriers to limit the payment alternatives that are presently offered to shippers.¹⁸

The Connecticut Attorney General also argues that carriers should be required to relinquish possession of a shipment upon payment of an amount "substantially less than the binding or nonbinding estimate" in order to provide consumers with "leverage" in the event a dispute arises. The carrier would then have to pursue a claim against the consumer for the remaining amount due. (Comments, p. 3).¹⁹

AMSA is strongly opposed to any such proposal, It obviously ignores the requirements of Section 13707 of the Act as explained in the preceding discussion and the equally important requirement contained in Section 13702(a) (2) of the Act:

The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

Unfortunately, the Attorneys General, et al. have approached this and a number of other issues as if the regulations to be promulgated should be treated in a vacuum with no consideration given to underlying statutory directives or

¹⁸ In connection with §§ 375.805 and 375.807, the Connecticut Attorney General also proposes that a carrier not be permitted to present a freight bill before the expiration of a 30 day period after delivery. (Comments, p. 7). Such a proposal is also contrary to the requirements of Section 13707 of the Act.

¹⁹ The same argument is made by the Connecticut Attorney General in connection with proposed §§ 375.407 and 375.703.

restraints. They also ignore the fact that carriers have a lien on the goods they transport and may refuse to deliver until their charges are paid or guaranteed. Illinois Steel Co. v. Baltimore & Ohio Railroad Co., 320 U.S. 508, 513 (1944).

§ 375.301 - What service options may I provide?

The Connecticut Attorney General recommends that carriers be required to have liability insurance covering "casualty" losses resulting from their actions. (Comments, p. 4).

The rationale underlying this recommendation is not clear. Carriers are liable for cargo loss and damage pursuant to Section 14706 of the Act and must provide evidence of insurance pursuant to Section 13906(a) (3). As a general proposition, casualty insurance coverage contemplates personal injury losses, a subject that is not related to this proceeding. In any event, carriers are also required by the Act to maintain liability insurance in amounts prescribed by the Secretary covering bodily injury, etc. See Section 13906(a)(1).

§ 375.303 - If I sell excess liability insurance coverage insurance coverage, what must I do?

The language proposed in Section 375.303(a) (1) and 2) is unclear in establishing the conditions under which carriers may sell or procure excess liability insurance coverage for loss or damage. As written, paragraph (a) provides that excess insurance may be procured only under the two conditions set-out in subparagraphs (1) and (2). However, those subparagraphs are not connected with the conjunctive "and" or the disjunctive "or".

Moreover, the language in subparagraph (2) is confusing. It describes a situation where the shipper fails to declare a valuation of \$1.25 per pound and pays or agrees to pay the carrier for assuming liability equal to "the declared value". This condition is at odds with itself."

In any event, we believe subparagraph (2) can be eliminated as unnecessary. Historically, carriers were authorized to sell or procure excess insurance only when the shipment was released to a value not exceeding 60 cents per pound. Although current Section 1056.11(a) contains the additional condition that "the shipper does not declare a valuation of \$1.25 or more", it is clear that the latter condition is superfluous. Although stated as two conditions, they are actually one and the same. If a shipper releases a shipment at 60 cents per pound, he could not declare a valuation at \$1.25 per pound or more. Conversely, if he declares a valuation at \$1.25 or more, he could not release the shipment at 60 cents per pound. This mutual exclusivity is made clear in the Released Rates Orders giving rise to this language. See RRO No. MC-505, Released Rates of Motor Common Carriers of Household Goods, June 7, 1966, and Released Rates Decision No. MC-999, 9 I.C.C.2d 523 (1993). It is therefore recommended that subparagraph (2) be deleted.

²⁰ We point out that under the outstanding STB Released Rates Order, the failure to declare a lump sum value or valuation of \$1.25 per pound will result in the shipment being deemed to have been released to a declared lump sum value of \$1.25 per pound times the weight of the shipment. See 9 I.C.C.2d 523.

In addition, paragraphs (b) and (c) are duplicative to some extent. Current Section 1056.11(a) is limited to insurance for loss and damage just as appears in proposed paragraph (c). It is therefore recommended that paragraph (b) be deleted, and paragraph (c) be re-lettered to (b), and the remaining paragraphs be re-lettered accordingly.

The Missouri, et al. Attorneys General recommend that more explicit language should be employed to preclude what they see as carrier avoidance of payment of loss or damage claims. (Comments, pp. 10-11).

Of course, proposed Section 375.303 does not deal with this issue. Carriers are required to process claims for loss or damage in accordance with the FHWA regulations contained in 49 C.F.R. Part 370. If, as the Attorneys General argue, they encounter situations in which they believe carriers have violated Part 370, the FHWA should be so advised.

The Connecticut Attorney General recommends that carriers be required to procure insurance on behalf of shippers and if they sell or offer to sell insurance, comply with any applicable State licensing requirements. Other related requirements are also suggested. (Comments, p. 4).

This comment appears to confuse the carrier's role in procuring insurance. Carriers do not sell insurance, the sale of which is regulated by State law. Carriers may procure insurance on behalf of a shipper from an insurance entity that is authorized to issue a policy under applicable State law.

§ 375,401 - **Must I estimate charges?**

This section provides that individual shippers must be given a written estimate before an order for service is executed. We commend FHWA for including these provisions in the proposed regulations. Providing as many written estimates as possible will certainly serve to reduce shipper complaints and misunderstandings over final charges. However, there are certain aspects of this requirement that should be considered.

Most moves are booked at least two weeks in advance with the majority booked a month or more in advance. However, situations arise when moves are booked on much less than two weeks' notice or when sudden last-minute changes make the preparation of a written estimate in advance of the move impossible. Situations brought about by compelling circumstances such as unexpected employment changes, domestic disputes, evictions, foreclosures or emergency evacuations do not always permit much in the way of advance notice. We believe that the requirement to provide a written estimate, which is, in turn, subject to the 110 percent rule, will cause some movers to refuse short notice shipments to avoid being held to the 110 percent payment provision because there is no opportunity to perform a visual inspection. Shippers will then be left with fewer options to accommodate their requirements, e.g., move on their own or use unlicensed movers who ignore the FHWA regulations. We therefore recommend that an alternative procedure be adopted for short notice shipments. Shippers would be given the opportunity to

waive the **requirement for a written** estimate (or to waive the 110 percent rule) in short notice situations., In this manner the shipper will nonetheless receive service from a licensed professional mover subject to all of the other protections provided by the proposed regulations. Section 375.401(2) should therefore be amended by revising paragraph (a) and adding a new paragraph (e) as follows:

(a) Before you execute an order for service for a shipment of household goods for an individual shipper, you must estimate the total charges in writing, except as provided in paragraph (e) below. The written estimate must be in one of the following two types:

(e) Waiver - Signatures Required. Subject to the shipper's agreement to waive the requirement for a written binding or non-binding estimate, pursuant to the provisions of § 375.407, you may provide a price quotation which shall be your reasonably accurate estimate of the approximate costs the individual shipper can expect to pay. The shipper's agreement to waive the written estimate requirement must also include collection or credit arrangements acceptable to the shipper for payment of the total charges. The waiver agreement must be in

writing and signed by the shipper before the shipment is loaded, and a copy must be retained as an addendum to the bill of lading.

Fur situations other than short-notice shipments, the provisions of Section 375.407 that have been designed to deal with "hostage shipments" are a welcome addition to the proposed regulations. AMSA routinely receives complaints from desperate shippers whose shipments are being held by unscrupulous movers to be exchanged fur the payment of charges in excess of the 110 percent maximum. If FHWA enforces these provisions, many complaints of this nature will be eliminated.

The Connecticut Attorney General suggests that the term "guaranteed delivery price" be used in this section and throughout in lieu of "binding estimate" since an estimate implies an approximation rather than a fixed price. (Comments, p. 4). While this suggestion may appear to be appropriate, the term "binding estimate" is routed in the underlying statute, Section 13704(a) (1) of the Act.

§ 375.403 - How must I provide a binding estimate?

(a) (5). This subparagraph provides three options for the carrier if the shipper tenders additional household goods or requests additional services that were nut included in the original binding estimate. While the first three options will cover most situations, other circumstances may result in a failure between the mover and the shipper to agree to a price fur

the additional services. Therefore, we believe it is appropriate to include a fourth option to address this situation as follows:

(iv) If an agreement cannot be reached as to the price and/or service requirements for the additional goods or services, you are not required to service the shipment.

(a) (7). This subparagraph provides that the carrier may require full payment for additional services requested by the shipper or required to be performed at destination (such as stair carry, lung carry, storage, etc.). During a typical moving scenario, the shipper may also request additional services while a shipment is en-route, such as a diversion with an extra pick-up or delivery to a friend or relative at an intermediate point. We believe that the proposed language should be clarified to accommodate such requests as follows:

(7) If the individual shipper adds or requires additional services en-route or at destination to complete the transportation, and the services fail to appear on your estimate, you may require full payment at the time of delivery for such added services.

The Connecticut Attorney General proposes that carriers be required to include a binding estimate provision in their tariffs. (Comments, p. 4).

This proposal conflicts with the permissive authority conferred by Sections 13704(a) (1) and 14104(b)(1) of the Act

which states that carriers "may" provide binding estimates of charges.

The Attorney General also argues that carriers should not be permitted to "unilaterally" refuse to honor binding estimates. Further, that carriers should be required to provide service "as originally agreed upon" and negotiate with consumers for any additional services requested at time of pick-up. It is also recommended that carriers be required to inquire about delivery conditions from consumers and if the carrier is not able to prove a negative response, it would not be permitted to charge for additional services. Finally, carriers should be required to relinquish possession of a shipment and bill the consumer for additional services rather than collect for those services at time of delivery. (Comments, p. 4).

Unfortunately, these suggestions reflect a failure to understand the operational conditions carriers often confront in order to properly service shipments. During a typical move, additional services may be required to complete the move or the shipper may request additional services while the shipment is en-route or prior to delivery. Since the transportation of household goods is a labor intensive process, the failure of the shipper to properly inform the carrier of the precise requirements necessary to properly remove the contents of a residence, secure them in an over-the-road vehicle and effect delivery at the new residence, can result in additional services which, in turn, require the assessment of additional charges.

Owner-operators perform the majority of the labor services that are required to load, transport and unload household goods shipments. These individuals cannot nor should they be expected to perform their services without compensation or for compensation that is less than is necessary to attract their services. It should be apparent that the fact that the costs and related charges incurred to perform a move may not agree with an estimate of charges is not the exclusive result of carrier misfeasance or deception as the somewhat insolent tone of certain Commenturs' arguments suggest."

Certain recent AMSA testimony before the U.S. House of Representatives Subcommittee on Surface Transportation of the Committee on Transportation and Infrastructure warrants repeating here:

The overwhelming majority of all movers are reputable, regulated businesses. They perform an essential public service by complying with the consumer and other

²¹ For example, NACAA proposes that, by paying an additional 10 percent, the shipper is not admitting the legitimacy of the expense or waiving any rights to bring a private action under State or local law. NACAA also proposes that the regulations state that it is an unfair, misleading or deceptive act or practice for a mover to fail to deliver the goods after an offer to pay 110 percent is made. (Comments, p. 7).

The Connecticut Attorney General goes so far as to recommend reduction of the amount that a consumer must pay fur a carrier to relinquish a C.O.D. shipment to "substantially" less than 100 percent of the estimate and similarly proposes that a consumer be allowed to offset any damages from the balance of any remaining charges owed to the carrier. (Comments, pp. 4-5). The same suggestion is made in its Comments related to Section 375.703, 705 and 801(b). (Comments, p. 7).

regulations that govern our business and were put in place by the former ICC.

* * *

In its evaluation of this situation, and in its consideration of possible legislative solutions, we urge Congress not to lose sight of the fact that the moving industry performs 1.3 million interstate moves each year, the vast majority of which are accomplished without incidence and to the customer's satisfaction. It is the exceptional, out of the norm "horror story" that attracts media attention and portrays the industry in a bad light. No attention is paid to the hundreds of thousands of incident-free moves that take place each year. [footnote omitted] This is somewhat understandable since the media concentrates on the exception rather than the rule in its attempt to alert the public to what it perceives to be potential problems. My industry understands that motivation. In fact, we also firmly believe the public should be encouraged to make certain they are selecting a licensed, reputable mover when they require moving services. My point is, given the existing, somewhat negative climate the moving industry is dealing with, Congress should not react in a manner that will unduly burden the industry by imposing regulatory obstacles that translate into less efficient, more costly service to the public.²²

Attached to that testimony were copies of a small sampling of congratulatory letters AMSA members recently received from customers expressing their satisfaction with the carrier's service. Those letters reflect the high level of service all reputable movers strive to achieve. And, of course, no publicity has been accorded the customers' laudatory comments.

²² Testimony of Joseph M. Harrison, President, AMSA, delivered August 5, 1998.

In the context of estimates of charges versus actual lawful charges, the obvious point is that changes in service requirements usually occur either because they were requested by the shipper or because they were required to properly service a shipment. One need merely review carrier tariffs to understand the many services carriers must perform that may result in changes in estimates of charges. To name a few, vehicle detention, distance and stair carries, impracticable operations, pickup or delivery on Saturdays, Sundays or Holidays, stop-offs, appliance service, shuttle service, storage-in-transit. The latest available industry statistics, as obtained from the AMSA Continuing Traffic Study for C.O.D. shipments transported in 1995 indicate that 11.7 percent of those shipments required either an extra pick-up, an extra delivery, or both; 14.2 percent required long carry service or elevator service; 14.0 percent required stair carries; and 2.8 percent required shuttle service to complete pickup or delivery at inaccessible locations or waiting time to accommodate shippers' schedules when accomplishing delivery. In the aggregate, 56.8 percent of the C.O.D. shipments required these or other additional services either at the shippers' specific request or because such service was required to accomplish delivery. Therefore, it can be said without fear of contradiction that carriers are routinely advised by shippers that additional services will be required and that shippers who routinely fail to advise carriers that such services will be required.

It is also appropriate to consider the former ICC's analysis of the difficulties associated with estimating. In concluding that 10 percent above estimated charges is the appropriate margin for collection by carriers at delivery, the Commission stated:

In doing so, we recognize that carriers should be permitted some leeway in estimating charges. Calculating approximately the weights of various items of household goods, arriving at an opinion of the total weight of a shipment, and working out the probable costs of accessorial services at origin and destination, all coupled with the element of human error, should not be the bases for establishing the amount beyond which the carrier should be required to extend credit to the shipper. We therefore conclude that a 10 percent margin should be allowed to the carrier in arriving at its reasoned judgment of total charges, and that such a variation will not be an unreasonable burden to the shipper, Practices of Motor Common Carriers of Household Goods, 111 M.C.C. 427, 468 (1970). See also Practices of Motor Common Carriers of Household Goods, 132 M.C.C. 599, 609 (1981).

§ 375.405 - How must I provide a non-binding estimate?

Consistency requires that proposed paragraph (b) be expanded to address the circumstances presented when changes occur in the services required to transport a shipment that moves on a non-binding estimate just as is provided by Section 375.403(a)(5), (6) and (7) for binding estimate shipments. This can be accomplished by adding the following similarly worded subparagraphs to paragraph (b):

(7) If it appears, prior to loading, that an individual shipper has tendered additional

household goods or requires additional services not identified in the non-binding estimate, you are not required to honor that estimate. However, before loading the shipment, you must do one of the following three things:

(i) Reaffirm your initial non-binding estimate;

(ii) Negotiate a revised written non-binding estimate listing the additional household goods or services;

(iii) If an agreement cannot be reached as to price and/or service requirements for the additional goods or services, you are not required to service the shipment.

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect at delivery more than 110 percent of the amount of the original non-binding estimate, plus the full payment for additional services that were performed en-route or at destination that do not appear on your non-binding estimate.²³

²³ The same additions should be made to the Your Rights and Responsibilities When You Move publication at NPRM, p. 27153, under the explanation of Non-Binding Estimates (4th paragraph).

The language of paragraph (b) requires that one additional point be addressed, viz., the words "best estimate" contained in paragraph (b) should be changed to "reasonably accurate estimate". Estimates are just that and accuracy is the goal, not best or worst or some other misnomer.

(c). This paragraph, which is incorrectly identified as paragraph (c) should be deleted for the following reasons:²⁴

A requirement that movers retain records of all non-binding estimates of charges for at least one year from the date the estimate was prepared will be unnecessarily burdensome. As part of the normal course of arranging for a move, shippers are encouraged to obtain multiple estimates before their move. As a result, most movers perform many more estimates than moves. We believe that the intent of paragraph (c) is to ensure that estimates are preserved only for the moves that are actually performed. Thus, the provisions of paragraph (c) should be deleted and instead, the 1-year retention requirement should be added to subparagraph (b) (4), as follows:

(4) You must retain a copy of the non-binding estimate for each move you perform for at least one year from the date you made the estimate as an addendum to the bill of lading.

²⁴ The immediately preceding paragraph (b) is also incorrectly identified. It should be paragraph (c).

For the foregoing reasons, Section 375.403, subparagraph (c) and Section 375.407, subparagraph (d) should also be amended to incorporate these recommended changes.

The Consumers Union (Southwest Regional Office) takes the position that carriers should be required to give consumers a maximum price with a non-binding estimate. (Comments, pp. 4-5).

As we have noted, Congress has addressed this issue. Section 14104(b) of the Act does not mandate binding estimates. Of course, a requirement that carriers furnish maximum prices would be tantamount to a mandated binding estimate.

§ 375.407 - Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

To avoid potential misunderstandings, the wording of paragraph (a) should be changed to comport with the language contained in Section 1056.3(d) of the ICC regulations, as follows:

(a) If an individual shipper pays you at least 110 percent of the estimated charges on a collect-on-delivery shipment on which a non-binding estimate of the approximate costs was furnished, plus the costs, for additional services that were performed en-route or at destination which were necessary to complete the transportation, you must relinquish possession of the shipment at the time of

delivery. YOU may specify the form of payment acceptable to you.

Paragraph (c) includes an explanation of how carriers must handle the collection of balances due in excess of the 110 percent amount paid on shipments that moved under non-binding estimates. The example provided is clear enough; however, to avoid any misunderstandings concerning the assessment of authorized service charges on delinquent payments as would be authorized by proposed Section 375.807, the following sentence should be added at the conclusion of paragraph (c) of Section **375,407:**

If the \$400 is not paid within the 30-day period following issuance of your freight or expense bill, you must assess a service charge of one percent of the freight bill, subject to a \$20 minimum charge for each subsequent 30-day period or fraction thereof.

It is necessary at this point to also consider the language contained in proposed Section 375.801(b), **What types of charges apply to subpart H?**, and the discussion in Subpart H of the Your Rights and Responsibilities publication (NPRM, p. 27157) as they deal with the extension of credit to C.O.D. consumer shippers.

The existing FHWA credit regulations make it clear that they do not apply to C.O.D. non-binding estimate shipments that move pursuant to the 110 percent rule. See **49 C.F.R. 377.215(a)**,

and its reference to 49 C.F.R. 375:3(d). This language was lifted in its entirety from the ICC credit regulations, 49 C.F.R. § 1320.8(a), which contained the same inapplicability reference, i.e., 49 C.F.R. 1056.3(d). Under both versions of these regulations, C.O.D. shippers must pay not less than 110 percent of the estimated charges on a non-binding estimate shipment at the time of delivery. If a balance remains beyond the 110 percent amount paid, the carrier may request payment of that amount not sooner than 30 days after the date of delivery. There are no other credit arrangements available for the C.O.D. customer. The extension of credit regulations contained in 49 C.F.R. § 377.215 and 49 C.F.R. § 1320.8 apply to shippers, other than C.O.D. shippers, to whom carriers extend credit. For example, a national account shipper may arrange for the transportation of its employees' goods under a carrier's tariff rather than under a contract. Because of the repetitive nature of that shipper's business, the carrier may elect to extend credit to the shipper for the payment of transportation charges, in which case the provisions of Section 377.215 would apply.

It appears that in the drafting of proposed Section 375.801 and the narrative contained in Subpart H of Your Rights and Responsibilities, it was incorrectly assumed that the existing credit regulations apply to C.O.D. shippers whose goods move under the 110 percent rule. Therefore, language and instructions such as that contained in the paragraphs beginning with "On 'to be prepaid shipments,' etc.", "On 'collect'

shipments, etc.", "If your mover extends credit to you, etc." are bound to create confusion among consumer shippers who may assume that their carrier will defer its request for payment and extend credit 30 days or more beyond the date of delivery. Therefore, to avoid potential misunderstandings on this point between consumer shippers and carriers, proposed Section 375.801 and Subpart H should be rewritten to make it perfectly clear that carriers will expect payment of not more than 110 percent of the estimated charges on a C.O.D. non-binding estimate shipment at the time of delivery and that the shipper will be billed for any balance due not sooner than 30 days after delivery.

Subpart E - Pickup of Shipments of HHG Before Loading

§§ 375,501 and 375,503 require that carriers issue an Order for Service and a Bill of Lading. NACAA recommends that an Inventory Form also be required. (Comments, pp. 12-13).

AMSA concurs in the NACAA recommendation. Detailed inventories of the goods tendered for transportation serve to protect the interests of consumers and carriers. AMSA therefore recommends inclusion of the following provision:

AMSA Proposed § 375,502 - Must I write up an inventory?

(a) You must prepare a written, itemized inventory for each shipment of household goods you transport for an individual shipper. The inventory must identify every carton and every uncartoned item that is included in the shipment. When you prepare

the inventory, an identification number that corresponds to the inventory must be placed on each article that is included in the shipment.

(b) You must prepare the inventory before the shipment is loaded in the vehicle for transportation in a manner that provides the individual shipper with the opportunity to observe and verify the accuracy of the inventory if he or she so requests.

(c) You must furnish a complete copy of the inventory to the individual shipper before beginning to load the shipment. A copy of the inventory, signed by both you and the shipper, must be provided to the shipper, together with a copy of the bill of lading, before you begin to load the shipment.

(d) Upon delivery, you must provide the shipper with the opportunity to observe and verify that the same articles are being delivered and the condition of those articles. You must also provide the shipper the opportunity to note, in writing, any missing articles and the condition of any damaged or destroyed articles. In addition,

you must also provide the shipper with a copy of all such notations.

(e) You must retain inventory forms for at least one year from the date you created the form.

The foregoing recommended addition also entails a change in that portion of the Your Rights and Responsibilities publication which deals with this issue (**Subpart E - Pick Up of My Shipment of Household Goods**). We therefore recommend the following language in lieu of that shown:

Should my mover write up an Inventory of the shipment?

Yes. Your mover should prepare an inventory of your shipment before loading. The inventory should be a detailed listing of the cartons and uncartoned articles included in your shipment noting any damage or unusual wear to any articles. The purpose of the inventory is to make a list of the articles included in your shipment and a record of the condition of each article,

After completing the inventory, both you and the driver should sign each page. Before you sign it, make sure that the inventory lists every item in the shipment and that the entries regarding the condition of each

article are accurate. **YOU** have the right to note any disagreement in the form. When your mover delivers your shipment, your ability to prove that any articles were lost or damaged may depend on the accuracy of the inventory.

Your mover should give you a copy of the inventory. Be sure to keep your copy in a safe place; it is an important part of your shipment records. Your mover will keep the original. If your mover's driver completed the inventory, the mover will attach the complete inventory to the bill of lading as an addendum.

§ 375.501 - Must I write up an Order for Service?

The Connecticut Attorney General believes the specification of delivery dates is meaningless unless the carrier incurs a penalty for failure to meet a commitment. Also, consumers should not have to pay additional fees to ensure delivery on specific dates or within specific periods.

(Comments, p. 5).

Shippers do not ordinarily incur additional costs for carrier delivery date commitments unless equipment availability is limited and a specific request requires special operations. The Attorney General also suggests that consumers be given (1) a 3-day grace period during which an order for service may be cancelled; (2) reference to several bill of lading provisions

when an order for service is written; (3) offset of "any penalties or per diem" due the consumer from any amount owed the carrier, or alternatively, that the carrier be required to make payment at the time of delivery; and (4) notation of the consumer's denial of any special or accessorial services which "might be reasonably expected". (Comments, pp. 5-6).

Our response is: (1) shippers routinely cancel orders for service for a variety of personal reasons and incur no penalty for doing so; (2) as a general rule, this information is routinely furnished when an order for service is executed; (3) any amount that may be due a shipper as a result of loss, damage or inconvenience must be presented and processed pursuant to the regulations at 49 C.F.R. Part 370, or the carrier's lawful tariffs; (4) if an accessorial service is requested or required, presumably performance of that service is necessary to safely transport a shipment. We question the advisability of a practice that would refuse services that "might be reasonably expected",

§ 375.511 - May I use an alternative method for shipments weighing 454 kilograms or less?

This section adopts the provisions of the current "1056" regulations which provide that shipments weighing 1,000 pounds²⁵ or less may be weighed on a certified platform or warehouse scale in lieu of a scale designed for weighing motor vehicles.

²⁵ For the reasons explained in connection with Section 375.203(b) *infra*, the use of metric and Imperial weight units should be reversed.

We understand FHWA's concerns regarding an increase in the minimum shipment weight threshold as discussed at page 27129 of the NPRM. However, we do not agree that these concerns will actually occur if the 1,000 pound small shipment weight is increased.

Historically, tariff charges have not been linked to the 1056 minimum weight determination threshold. For more than 40 years, the tariff minimum weight remained at 500 pounds (even though the minimum scale weight was 1,000 pounds) as personal effects shipments continued to gradually increase in weight. As a result, in June 1984, the tariff minimum was increased to 1,000 pounds, not because the increase corresponded to the 1056 threshold, but because of increases in the fixed administrative costs associated with the servicing of small shipments.

As a matter of practice, the moving industry already considers shipments weighing less than 3,000 pounds to be classified as small shipments and has adjusted its principal tariff series accordingly. A small shipment surcharge applicable to shipments weighing less than 3,000 pounds was initiated in May 1989 to offset the administrative costs associated with handling these shipments. This surcharge remained in effect until May 1996 when it was incorporated into the linehaul tariff rates. Therefore, an increase in the minimum scale weight will not impact existing tariff provisions since they have already been adjusted to reflect the costs associated with the handling of small shipments.

With this history in mind, and because the minimum scale weight and the minimum tariff rate have been unrelated to one another, we do not agree that an increase in the minimum scale weight to 3,000 pounds will have a causal effect on tariff rates. Instead, we believe that increasing the weight limit to 3,000 pounds will promote greater efficiency in the weighing of shipments on certified warehouse and platform scales which will, in turn, help reduce tractor-trailer traffic and congestion in areas where larger motor vehicle scales are operated.

The Missouri, et al. Attorneys General recommend that Sections 375.509 and 375.519 provide disclosures to consumers necessary to assure that carriers do not double bill on split loads since a weight ticket from a nearby certified public scale may not reveal whether another load was on the trailer. They argue that each consumer shipment should be weighed separately. (Comments, pp. 14-15).

The proposed and current regulations require that if -shipment charges are weight-based, the carrier must obtain a gross and tare weight for each shipment. Separate weight tickets identifying each weighing of a shipment are required to be provided to the shipper. The certificates list the scale name/location, weighing date, identification of tare, gross or net weights, vehicle identification, and the name of the shipper. Clearly, this is sufficient to ensure that carriers obtain accurate shipment weights,

Also, a requirement that each consumer shipment be weighed separately would result in operating gridlock. To comply with such a rule, carriers would be required to unload one shipment that is on a van to accommodate a second shipment solely for weighing purposes. The impracticalities of coordinating such operations should be obvious.

§ 375.515 - May an individual shipper waive his/her right to observe each weighing?

This provision should be modified by indicating that the shipper's decision not to observe weighings constitutes a waiver of that right. Preceding Section 375.513 clearly requires that carriers ". . . must give the person who will observe the weighings a reasonable opportunity to be present to observe the weighings." Assuming a shipper elects not to observe the weighings, to be consistent, Section 375.515 should be amended to indicate that that right was waived. Also, the statute, Section 14104(c) of the Act, requires that shipper waiver of the right to observe reweighings must be accomplished in writing. Therefore, to accommodate both situations, the revision should read as follows:

If an individual shipper elects not to observe a weighing, the shipper is presumed to have waived that right. If an individual shipper elects not to observe a reweighing, the shipper shall waive that right in writing. This does not affect any other

rights of the individual shipper under this part or otherwise.

AMSA Proposed § 375.523 - May I provide a shipper the option of obtaining the net weight of a shipment by using an on-board trailer scale?²⁶

AMSA urges FHWA to acknowledge the advantages of advances in technology that have become available throughout the moving industry for the weighing of shipments. The procedures employed in the use of on-board scales promotes consumer satisfaction by producing immediate, on-site shipment weights without the need to follow a tractor trailer to an available scale. While adoption of the recommended provision will serve to keep pace with the latest technology, it includes the safeguard of protecting consumers' rights by requiring that shippers observe the weighing procedure. Moreover, shippers are afforded the opportunity of rejecting the results of the weighing procedure and requiring that the shipment be weighed on a traditional scale. Therefore, with these safeguards in mind, the recommended provision would read as follows:

If a trailer is so equipped, at the shipper's option, shipment weight may be determined with an on-board trailer scale if the shipper observes the weighing of the trailer both

²⁶ The Missouri, et al. Attorneys General oppose the use of on-board trailer scales in their discussion of complaints about partial and split loads, etc. (Comments, pp. 13-14). To the contrary, the use of on-board trailer scales should allow shippers to observe shipment weights at the time they are taken which would satisfy these complaints.

prior to and after the loading of the shipment. If the shipper accepts the final weight determination, you must obtain a signed statement to that effect and retain it as part of the shipment file. If the shipper rejects the on-board scale weight determination, the shipment must be weighed on a certified motor vehicle scale in accordance with the requirements of Section 375.509.

§ 375.605 - How must I notify an individual shipper of any service delays?

There is a basic problem with the language employed in this section which states that a carrier must notify a shipper of service delays. The inconsistency lies in the fact that if a carrier is unable to pick-up a shipment on the agreed upon date(s), he must notify the shipper of the delay and amend the order for service. It makes little sense to amend an order for service for delay at origin. The practical result of this section, as written, is that carriers will never be responsible for delays at origin because the order for service will reflect that the shipment was actually loaded on the agreed upon pick-up date. Appropriate changes should be made.

In addition, subparagraph (b) (6) requires that, in the instance of delay notification, the mover must furnish the shipper with a "true copy" of the notice by first class mail or in person. This provision, while carried over from the existing

regulations, will be no more feasible to perform under the proposed regulations than it is under the existing regulations.

During the course of a move, while both the shipment and the shipper are in transit, there is no practical benefit in mailing a copy of the delay notification to the shipper. Since the shipper, who has already received notice of a delay by telephone, telegram or in person is not at his old or his future address, no purpose is served by mailing a duplicate notice. We submit that the solution lies in simply adding the words "if the shipper requests a copy of the notice." Such a revision would ensure that "interested shippers" who desire a copy of the notice for their records or to support a claim for delay or inconvenience will be furnished a copy, while duplicate copies would not be automatically forwarded to other shippers who have already received their shipments and have no need for the notice.

§ 375.607 - What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date or period of time?

The Connecticut Attorney General proposes that subsection (c) preclude carriers from limiting their "liability" for storage-in-transit. In addition, it is suggested that this subsection be modified to only permit the carrier to limit its "liability" to the last day of the period specified in the bill of lading. (Comments, p. 6).

The proposed regulation speaks in terms of "responsibility" and not "liability". The rule is apparently intended to authorize carriers, at their option, to not assess

storage charges, or, alternatively, to assess charges beyond the agreed date. In support of its position the Attorney General argues that it is "inequitable" to allow carriers to avoid liability for delays with no similar mechanism to excuse shipper delays. In answer, we submit that carriers routinely honor delay and/or inconvenience claims in accordance with their tariff provisions which, obviously, are not intended to avoid carrier liability.

§ 375.609 - What must I do for shippers who store household goods in transit?

Paragraph (d) will require that notifications to shippers regarding the expiration of storage-in-transit be accomplished by certified mail, return receipt requested.

This provision should be expanded to include notification by facsimile transmission and overnight courier. Such a change will permit movers to take advantage of faster methods of transmitting the required notifications. This is particularly important for SIT periods of less than 10 days when only 1-day notice is required as contemplated by Section 375.609(e).

In connection with subparagraph (b)(2), the Connecticut Attorney General suggests that the nine month claim filing time period be modified to acknowledge the consumer's right to rely on the State statutory time period. (Comments, p. 6).

Obviously, this suggestion conflicts with the nine month statutory period provided for the filing of claims for loss or damage. See Section 14707(e)(1) of the Act.

The Attorney General further proposes that subsection (g) be modified to impose carrier liability until ten days after the carrier actually gives notice to the consumer, rather than to the end of the day following the date on which notice is actually given.

Although the reason given for this request is that paragraph (g) should be consistent with paragraph (c), we fail to see why the notice related to the expiration of storage-in-transit should be allowed to unduly extend the SIT period since shippers are advised at the time their goods are placed in storage that the SIT storage period is 90 days. Or, if a longer period applies by virtue of a particular carrier's tariff, the shipper is so advised.

§ 375.701(b) - May I provide for a release of liability on **my** delivery receipt?

NACAA opposes authorizing a statement on carrier delivery receipts to the effect that the property was received in apparent good condition, except as noted on the shipping documents, unless it is accompanied by "clear and conspicuous alternative check-box options" denoting, for example, that a shipper has not had an opportunity to open all boxes to verify the condition of the contents or determining missing items. In the alternative, NACAA proposes that a statement be required that "mover remains liable for all losses suffered by shipper" with an explanation of the procedure and time limit for making a claim. (Comments, pp. 10-11).

The Missouri, et al. Attorneys General also express concern about this section and recommend an amendment to make it explicit that the "apparent good condition" language is not binding. (Comments, p. 12).

The Connecticut Attorney General argues that a carrier should not be allowed to include a statement that property was received in good condition on the grounds that it creates a barrier to the shipper's ability to successfully assert damage claims. (Comments, p. 6).

Paragraph (a) makes it clear that any carrier statement attempting to release it from liability is not permitted. The general statement NACAA objects to is a general acknowledgement indicating that the services ordered have been accomplished and the shipment has been delivered in "apparent" good condition. The shipper is only expected to note conspicuous loss or damage at the time of delivery, and any presumption the objected-to statement may create is routinely rebutted by shippers after they have had an opportunity to unpack and perform a more thorough inspection.

§ 375.703(b) - What is the maximum collect-on-delivery amount I may demand at the time of delivery?

The maximum C.O.D. amount that may be collected on a non-binding estimate shipment is 110 percent of the estimated amount. This provision should be revised to mirror our earlier suggested change in Section 375.403(a)(7), to provide that the carrier may also require full payment for additional services requested or required by the shipper that do not appear on the

estimate and were performed by the mover en-route or at destination. The proposed subsection would read as follows:

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of charges, except that full payment may be collected at the time of delivery for any added additional services that were performed en-route or at destination which were necessary to complete the transportation and do not appear on your non-binding estimate. You may specify the form of payment acceptable to you.

§ 375.705 - If a shipment is transported on more than one vehicle, what charges may I collect at delivery?

The proposed section is patterned after the existing regulation and, on split delivery shipments, it would authorize carriers to defer collection of transportation charges until final delivery or collection of a pro-rata portion of those charges based upon the quantity of goods included in the first delivery.

The Connecticut Attorney General objects to the collection of any portion of transportation charges until final delivery of all goods has been accomplished, arguing that shipments are split primarily for carrier convenience.

(Comments, p. 7).

This argument also ignores the requirements of Section 13707 of the Act which provides that carriers must not relinquish

possession of goods until transportation charges are paid. (See pages 27-28, supra). Thus, collection of a pro-rata portion of transportation charges equal to the quantity of goods delivered is required by statute.

From an operational standpoint, industry data indicates that less than 2 percent of the consumer shipments transported in 1994 moved in two or more vans.²⁷ This percentage is nearly equal to the number of shipments (2%) that weighed more than 18,000 to 20,000 pounds, the normal capacity of a moving van, and required the service of two or more vans. Therefore, contrary to the Attorney General's position, most shipments that involve split deliveries are not the result of carrier convenience. They are dictated by operational requirements.

§ 375.707(b) (4) - If a shipment is partially lost or destroyed, what charges may I collect at delivery?

As proposed, in the event of partial loss or destruction of a shipment, the mover must determine, at its own expense, the portion of the shipment that was delivered in tact. The wording of this provision should be revised to clarify the item and avoid confusion concerning the basis for refunding charges that were applicable to lost or destroyed portions of shipments, as follows:

(b)(4) You must determine, at your own expense, the proportion of the shipment,

²⁷ The latest year for which such data is available from the AMSA Continuing Traffic Study.

based on actual or constructive weight, but
lost or destroyed in transit.

The Connecticut Attorney General objects to the proposed regulation because it permits the collection of charges notwithstanding partial loss and is silent as to "when the carrier must refund the amount of the lost or destroyed shipment to the consumer" (presumably referring to transportation charges). They propose that if any portion of a shipment is lost or destroyed, the carrier should be forced to relinquish possession of the shipment and bill the consumer for the amount due 30 days after delivery. (Comments, p. 7).

The Attorney General's supporting argument evokes the same degree of incredulity as that contained in their comments on this point.

Carriers routinely process claims for loss or damage, the sum of which includes a portion of the transportation charge related to lost goods. It is difficult to understand rationale that would deny payment on a 10,000 pound shipment if, for example, cartons weighing 500 pounds were not tendered at the time of delivery. In such a situation, the carrier is liable for the value of the lost goods and a pro-rata portion of the transportation charges. And, as we have previously noted, the Act requires that carriers ". . . shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made." Section 13707.

§ 375.709(a) - If a shipment is totally lost or destroyed, what charges may I collect at delivery?

As proposed, movers will not be entitled to collect or require shippers to pay freight charges (including charges for accessorial or terminal services) when a shipment is totally lost or destroyed in transit. The provisions of subparagraph (2) appear to be in conflict by providing that "you may apply paragraph (a) of this section only to the transportation of household goods and not to charges for other services the individual shipper ordered." We are unclear as to the difference between the prohibited "accessorial services" charges referred to in paragraph (a) and the permitted "other services" charges referred to in paragraph (a) (2). We recommend that subparagraph (a)(2) be deleted to avoid confusion concerning the meaning of this section.

The Connecticut Attorney General comments again to the effect that carriers should not be allowed to collect charges when the total loss or destruction of a shipment occurs and they 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 date, less the specific valuation charge.

(Comments, p. 7).

The settlement of claims for loss or damage do not fall into the simple scenario presented by the Attorney General. All such claims must be substantiated. If a claimant declared a shipment value of \$100,000, that does not automatically entitle the claimant to that amount in the event of a total loss. If the

goods are actually valued at \$75,000 and the claimant can substantiate that amount, the carrier will honor a claim for the same amount. Section 14706 of the Act imposes liability ". . . for the actual loss or injury to the property . . ." The FHWA regulations require that claims for loss or damage be submitted, in writing in accordance with the requirements of 49 C.F.R. Part 370, and that they, inter alia, include a "certification of values [and] depreciation reflected thereon." 49 C.F.R. § 370.7(b). Obviously, the processing and settlement of claims for loss or damage by carriers must follow the explicit requirements of the FHWA regulations.

§ 375.805 - If I am forced to relinquish a collect-on-delivery shipment before the payment of all charges, how do I collect the balance?

In order to collect the balance of charges due on collect-on-delivery shipments, proposed Section 375.8~5 would require carriers to present the freight bill within 7 days from the date the shipment was delivered at destination. Such a requirement is unreasonably short and unrealistic. Typically, a freight bill cannot be prepared until all shipment paperwork is received from the delivering driver. It is **not** uncommon for this process to consume most of the proposed 7 day period. A 7 day requirement is also inconsistent with the 15-day requirement contained in proposed Section 375.807, and there is no justification for the two different time periods. It is therefore recommended that Section 375.805 be revised to read:

On "collect-on-delivery" shipments, you must present your freight bill for all transportation charges as provided in Section 375.807(a).

§ 375.807(b) (2) - What actions may I take to collect the charges upon my freight bill?

As proposed, individual shippers will be assessed a service charge equal to one percent of the amount of the freight bill, subject to a \$20 minimum charge, for extension of the normal credit period.

This wording should be clarified to indicate that the one-percent fee applies in 30-day increments, rather than once for the entire extended credit period. For example, if the bill remains unpaid for 60 additional days following the initial 30-day period (for a total of 90 days), the 1 percent service charge would be applied 3 times, once for each 30-day extension or fraction thereof.

The Connecticut Attorney General urges that consumers not be automatically subjected to a 1 percent service charge by operation of a regulation. Rather, they suggest that the regulation should limit to 1 percent any service charge imposed by carriers. (Comments, p. 8).

Clearly, this is an unreasonable request. Indisputedly, the cost of credit and capital and the cost to carriers of carrying delinquent accounts does not equate to a flat 1 percent of an outstanding amount.

§§ 375,901 through 375.907. Filing Annual Arbitration Reports.

This subpart provides that all movers must file an Annual Arbitration Report by March 31 of each year for the preceding calendar year. While AMSA supports the decision to abolish the filing requirement for the former Annual Performance Report, we seriously question the wisdom of requiring an Annual Arbitration Report for the following reasons,

Historically, the former Performance Report was not helpful to consumers because:

1. the performance information was difficult for consumers to interpret;
2. the data reported was unreliable (suspect) since the ICC did not have the resources to audit or verify the data;
3. there was no effective way for the ICC to identify which carriers should file Reports, Non-compliance was the rule, not the exception, except for major carriers that were well-known and easily identified; and,
4. the Report was looked upon by most carriers as a marketing tool, As a result, there was a natural tendency to "sell your attributes" and not advertise your negatives,

In our view, a requirement that all household goods carriers file Annual Arbitration Reports will be equally unlikely to prove useful to consumers, the FHWA and the moving industry. While FHWA reasons that the filing of such a Report will assist it in meeting its statutory responsibility to report to Congress regarding Dispute Settlement Programs, and in providing

individual consumers with relevant claims information, we disagree.

Details regarding arbitration and the relative success or failure of the single program that represents virtually all household goods carriers are readily available to FHWA from AMSA. To assist FHWA in meeting its statutory reporting requirements, AMSA has, in the past, sent reports to FHWA containing the results of its Dispute Settlement Program, both in advance of the June 1997, due date of its report to Congress, and subsequent thereto. However, we are not aware that FHWA filed a report with Congress on June 29, 1997, as required by Section 14708(g) of the Act.

We believe that the information contained in the AMSA reports, periodically updated, is sufficient for FHWA and Congress to monitor the moving industry's Dispute Settlement Program pursuant to Section 14708(g). From a consumer standpoint, we are not convinced that the requested claims handling information will provide consumers with meaningful claims data. Furthermore, we are also not convinced that individual consumers are interested in claims data when it comes to their selection of a mover. Consumers are more interested in whether the mover is properly licensed, has insurance, and has a good professional reputation while adhering to the regulations of the FHWA and the Surface Transportation Board. As importantly, with an industry claims frequency ratio of roughly 21 percent, only one in every five shipments results in a claim, which means

that the proposed Report would have no relevance to almost 80 percent of the consumer shippers whose shipments do not sustain loss or damage. The incidence of arbitration is even far less. AMSA's experience over the last 2-1/2 years has shown that less than 1 percent of all claims result in arbitration. This means that more than 99 percent of the shipments transported will not become involved in the arbitration process.

From a technical standpoint, the proposed Report only requires the reporting of the total number of shipments transported and the number of claims of less than- ~1,000 and over \$1,000. It is unclear as to the meaning of "total shipments" (all household goods shipments; only C.O.D. shipments, excluding civilian government, military and national account), or what is meant by "number of claims" (claims filed; claims paid, and so on). Presumably, it would be left to consumers to try to calculate a claims frequency ratio from the data provided and, if they get that far, to compare their particular mover's frequency with that of other movers or with industry average data. Complicating this situation is the fact that some carriers encourage the use of arbitration, while others do not, Therefore, individual carrier data may be entirely misleading, e.g., a high number of cases could be construed to mean the carrier has an unacceptable claims experience when precisely the opposite may be true since the number of cases bears no relation to the number of claims.

In addition, the language of the proposal makes it clear that the FHWA will be required to process and maintain over 2,000 carrier Annual Reports in order to respond to consumer requests for information. Also, FHWA must allocate resources to answer consumer questions regarding the Reports and compile aggregate statistics if it is to be in a position to answer consumer questions regarding the import and meaning of a given carrier's data. Consumers will be unable to make informed decisions regarding Report data unless they know how specific carrier data compares to industry average data. All of this assumes that FHWA has the necessary staff to collect, process and disseminate more than 2,000 such Reports each year to even a fraction of the 600,000 individual shippers who may choose to request a copy. Since experience has shown that considerably less than 1,000 shippers will request arbitration in any year, any benefits that may be derived from this system will be overshadowed by the time, effort, and money expended preparing, filing, copying and disseminating such Reports.²⁸

²⁸ The Paperwork Reduction Act of 1995, 44 U.S.C. § 3501, et seq., (PRA) and the implementing Office of Management and Budget (OMB) regulations, 5 C.F.R. § 1320.1, et seq., set forth specific detailed requirements an agency must meet to obtain OMB approval of collection of information regulatory proposals. See 5 C.F.R. §§ 1320.5, 1320.8, 1320.9, 1320.11. OMB regulations provide that an agency's NPRM must state that the collection of information requirements of the proposed rule have been submitted to OMB for review under 44 U.S.C. § 3507(d), and also direct that public comments be filed with OMB. In turn, the statute requires OMB to provide at least 30 days for public comment prior to making a decision approving or disapproving the collection of information. 44 U.S.C. § 3507(b). To our knowledge FHWA has not directed that public comments concerning its proposed Arbitration Reports be filed with OMB. Nor has OMB issued a notice seeking

Finally, we believe that instead of collecting and mailing copies of Arbitration Reports, FHWA's limited resources could be put to better use enforcing other substantive requirements of the proposed regulations. Consumers and the moving industry will be much better served if requirements related to licensing, reasonable dispatch, estimating practices, and truthful advertising are enforced.

The NACAA, the Missouri, et al. Attorneys General and the Consumers Union have each commented on the proposed Report. We believe the foregoing comments address the points made by these commentators. Suffice it to say that their comments do not provide sufficient grounds for prescription of the proposed Report.

Subpart J - Penalties, § 375.1001 - What penalties do we impose for violations of this part?

In this section FHWA attempts to explain and/or define the penalties, civil and criminal, that may arise from violations of the proposed regulations. We believe this is inadvisable.

public comments. Under the statutory scheme, the public is entitled to comment to OMB before approval is given. It is noteworthy that the underlying standard for OMB approval is whether the collection requirement is necessary for the proper performance of the agency's functions. This is to be considered in relation to the burden imposed. While the ICC Termination Act imposes on carriers the obligation to participate in an Arbitration Program, disclosure or dissemination of the results of arbitration does not serve any agency function. The only agency function in this respect is to ensure that carriers participate in such programs. The proposed Report requirement that numbers of cases be reported and not verification of carrier participation in an arbitration program is not necessary or relevant to that function.

Chapter 149 of Title 49 consists of 14 specific sections which require 36 pages of written text (sections and related statutory and case notes) defining the scope of these penalty provisions. An attempt to restate these provisions in a short-hand version is likely to lead to misinterpretations and debate over Congressional intent. Congress has spoken on this issue. The penalty provisions speak for themselves and, if invoked, they will be consulted and not the proposed regulations. Therefore, AMSA recommends that all but the first two sentences of proposed Section 375.1001 be eliminated.

NACAA reasons that the perceived absence of effective FHWA enforcement of a uniform body of Federal regulations justifies changing Federal law so that State and local governments could enforce their individual State and local laws with respect to interstate transportation of household goods. In addition to the penalties stated in Section 375.1001, NACAA proposes that carriers be made subject to actions brought pursuant to State unfair or deceptive trade practices laws by adding the following language to this section: "The regulations are supplementary law; that is, the remedies provided herein shall be cumulative and supplementary to all other remedies otherwise provided by Federal, State and local law." (Comments, pp. 6-8).

The Oklahoma Transportation Division also encourages FHWA to fashion regulations that would not only extend other Federal and State remedies to individual shippers, but state that

the prevailing **party** in **any such** action shall be allowed attorney fees, trial preparation costs and court costs. Coupled with these rights would be the option of the shipper to a choice of forum, either the shipping or destination State. Further, that related information be prominently displayed on the pre-move booklet. (Comments, p. 4).

We have previously discussed the scope of enforcement by the States and will not repeat that discussion here. See, pp. 9 to 12 herein.

Appendix A - Your Rights and Responsibilities When You Move - Subpart A.

The term "individual shipper" is used throughout the proposed regulations and Appendix A. In order to distinguish individual shippers from national account and contract shippers, the term should be defined in Subpart A as follows:

Individual shipper - You are an individual shipper of household goods if you are the consignee or the consignor of the shipment, and are identified as such on the bill of lading, own the goods being transported and you pay for the move yourself.

The definition of "Agent" should be clarified since use of the words "larger" and "national" may not be appropriate in all cases. The revision would read as follows:

Agent - A local moving company that is authorized to act on behalf of an interstate

carrier that is licensed by the D.O.T. to transport household goods.

**Subpart B - Before Requesting Services From Any Mover -
Option 4: Full Value Protection**

In order to simplify tariffs and the assessment of valuation charges for Full Value Protection service, industry practice in providing this option has changed. Many carriers now assess such charges as flat rates based on the weight of the shipment, subject to a valuation factor of \$4.00 per pound and a minimum valuation of \$5,000. However, these charges vary by carrier and may be subject to differing deductible amounts. For example, certain carriers offer lower charges for providing Full Value Protection if the shipper is willing to assume liability for the first \$100, \$250, or \$500 of possible loss or damage. Therefore, in order to avoid confusion and misstatement of rates, the first two sentences of the second paragraph under "Option 4: Full Value Protection" should be deleted. The remaining paragraph would then read as follows:

The exact cost for Full Value Protection may vary by mover and may be further subject to various deductible levels of liability.

These liability levels may reduce your cost.

Ask your mover for the details of its specific plan.

Subpart B - What actions by me limit or reduce my mover's normal liability?

Part (1) of this provision should be amended to add "hazardous or dangerous" articles to the description of articles that may reduce the mover's liability. This change corresponds to the change recommended in Section 375.203(a). See page 18 herein.

Parts (2) and (3) and the unnumbered paragraph that follows are unclear in their proposed context. These provisions are the counterpart responses to carriers set forth in Section 375.203(b) and (c). It appears that, in the conversion process from one format (carrier), to the other (shipper), certain language was inadvertently omitted. In fact, what was one sentence in Section 375.203(b), was erroneously converted to parts (2) and (3) in Subpart B, resulting in two incorrect statements. In addition, the unnumbered paragraph is also unclear in meaning and is ambiguous in its application to the numbered paragraphs. It is therefore recommended that the paragraphs be revised as follows:

(1) You include perishable household goods, or dangerous or hazardous articles without your mover/s knowledge. In such a case, your mover need not assume liability for those articles or for loss or damage caused by their inclusion in the shipment.

The final unnumbered paragraph should be deleted and Parts (2) and (3) should be combined and revised as follows:

(2) If you ship household goods released at a value greater than 60 cents per pound (\$1.32 per kilogram) per article, and you fail to notify your mover in writing that articles valued at more than \$100 per pound (\$220 per kilogram) are in the shipment. In case of loss of or damage to such articles, the mover's maximum liability shall be limited to \$100 per pound (\$220 per kilogram) per article, not to exceed the declared value of the entire shipment.

Subpart B - Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?

The second paragraph of this subpart is confusing in its description of where tariff provisions limiting carrier liability may be found. The proposed text refers to "a second tariff" and "a third tariff" and so on. The word "tariff" as used therein should be replaced with the word "provision". The second paragraph would then read as follows:

Tariffs may include provisions limiting the mover's liability. This would generally be described in a section on declaring value on the bill of lading. A second provision may set the time periods for filing claims. This would generally be described in Section 6 on the reverse side of the bill of lading. A third provision may reserve your mover's

right to assess additional charges for additional services performed. For non-binding estimates, another provision may base charges upon the exact weight of the goods transported. Your mover may have other tariff provisions in effect that may affect your move. Please refer to your mover's tariffs for exactly what those might be.

Subpart B - **How** must my mover collect charges?

For the sake of clarity, the first sentence of this provision should be deleted and the following language included to explain that the carrier need not issue a separate bill or invoice in order to receive payment:

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. The mover's bill must identify the services provided and the charge for each service. Many movers use a copy of the bill of lading as your bill; however, some movers use an entirely separate document for this purpose. Both methods are acceptable as long as your mover provides you with complete billing information for your shipment.

If your shipment was transported under a non-binding estimate, your mover's bill must include the following 19 items, where

applicable. If your shipment moved under a binding estimate, your bill will be based on the binding estimate amount. Therefore, the number of packages, rates, weight, volume or measurement of the freight, routes, participating carriers and transfer points of your shipment need not be shown.

Also, since the majority of all household goods shipments are transported in single-line service, we believe that Items 17 and 18 providing for the disclosure of routes, participating carriers and transfer points should be amended by adding the language "if applicable".

Subpart B - May my mover collect charges upon delivery?

In order to accommodate situations where the shipper has added quantities or services to the original estimate, the language employed should **be** amended to reference applicable additional charges. This change corresponds to the provisions of Subpart C - **How must my mover estimate charges under the regulations?**, and would read as follows:

Yes. Your mover may set nondiscriminatory rules governing collection of collect-on-delivery service and the collection of collect-on-delivery funds. If you pay your mover at least 110 percent of the approximate costs of a non-binding estimate, plus the charges for any added or

required services or quantities that you requested, on a collect-un-delivery shipment, your mover must relinquish possession of the shipment at the time of delivery. Your mover must defer payment of the balance of any remaining charges for 30 days. Your mover may specify the form of payment acceptable to it.

Subpart B - May my mover extend credit to me?

For the reasons previously discussed addressing proposed Section 375.807, the first paragraph must be clarified to explain that movers may extend credit on C.O.D. shipments only with respect to that portion of the charges which exceed 110 percent of a nonbinding estimate.

The second paragraph specifies three conditions that must be met by the mover in order to assess a service charge on unpaid amounts. The governing provisions that provide for the assessment of such charges are contained in Section 375.807(c)(2). Since movers are expressly authorized to assess service charges, notice conditions should not be imposed to effect collection. Simply informing the shipper of the existence of a service charge on unpaid amounts is sufficient. We are not aware of any credit card companies, retail organizations or other service companies that routinely extend credit who explain that the application of the associated service charge (interest or late payment penalties) are "to encourage prompt payment" and "to

prevent free use of the organization's funds." Consumers are thoroughly familiar with the concept of credit and do not need a remedial explanation of service charges on shipping documents.

Subpart C - How must my mover estimate charges under the regulations?

In the fifth paragraph of this provision dealing with binding estimates, seven requirements for binding estimates are specified. The first is confusing in that it states "Your mover must retain a copy of each binding estimate as an addendum to the bill of lading." Most shippers only receive one binding estimate, which may later be revised or added to if the quantities and services requested or required by the shipper change prior to shipment. This provision should provide that: "Your mover must retain a copy of the binding estimate and any revisions thereto as an addendum to the bill of lading."

Subpart F - What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?

The second sentence of this provision reads "This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment." This language can be made clearer by replacing the phrase "its own" with "your mover's". The sentence would then read as follows:

This will be under your mover's account and
at your mover's expense in a warehouse
located in proximity to the destination of
your shipment.

Subpart F - What must my mover do for me when I store household goods in transit?

The third unnumbered paragraph provides that prior to the expiration of the storage-in-transit period, "your mover must notify you by mail." In order to maintain proper documentation related to this important change in the status of a shipment, the current requirements should be retained. As previously noted, shippers should be notified by certified mail - return receipt requested, facsimile or overnight courier service,

Subpart G - What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?

In order to allow for situations where the shipper has added quantities or services to the original estimate, including destination services such as elevator, stair carry and excessive distance carry charges, the provisions of this paragraph applicable to both binding and non-binding estimates should be revised to include "If you have requested your mover to provide more services than those included in the estimate, your mover may demand full payment for these added services at the time of delivery."

The Consumers Union urges FHWA to redraft the booklet text into plainer language, claiming -the language and format is dense and confusing, e.g., Subpart K, summary section, should be at the front of the pamphlet. (Comments, p. 5).

We disagree, The proposed publication is a substantial revision of the former ICC publication. It significantly

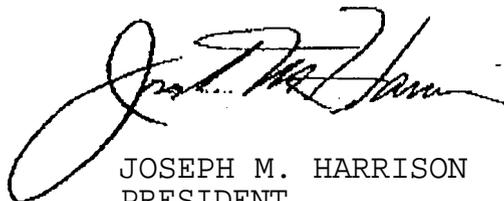
clarifies many points that are important to consumers in language that represents a major improvement over the former ICC language.

CONCLUSION

For the foregoing reasons, the American Moving and Storage Association respectfully requests that the recommendations contained in these Comments be carefully considered for inclusion in the proposed regulations. As the principal spokesman for the moving industry, AMSA and its thousands of mover members have a vital interest in the development of regulations that fairly meet the needs of consumers without hampering the industry's ability to provide its essential services to the public. FHWA must not lose sight of the fact that the moving industry performs 1.3 million interstate moves each year, the vast majority of which are accomplished without incidence and to the customer's satisfaction. It must not allow the formulation of consumer regulations to be driven by the exceptional, out of the norm "horror story" that attracts media attention. The industry must not be burdened by the imposition of regulations that translate into less efficient, more costly service to the public.

Respectfully submitted,

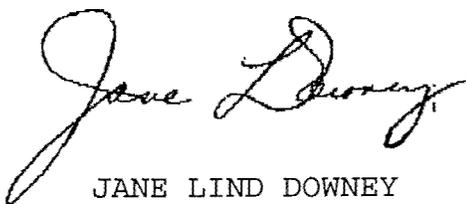
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ASSOCIATION, INC.



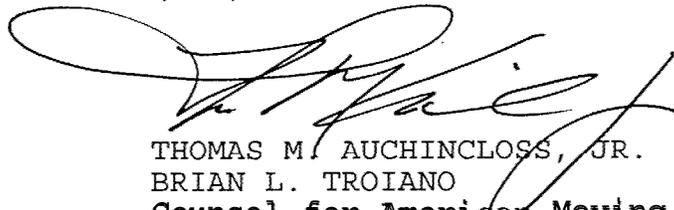
JOSEPH M. HARRISON
PRESIDENT



DAVID L. HAUENSTEIN
DIRECTOR, TECHNICAL SUPPORT



JANE LIND DOWNEY
VICE PRESIDENT & GENERAL COUNSEL
1611 Duke Street
Alexandria, VA 22314
(703) 683-7410



THOMAS M. AUCHINCLOSS, JR.
BRIAN L. TROIANO
Counsel for American Moving
and Storage Association, Inc.
Suite 570
1707 L Street, NW
Washington, DC 20036
(202) 785-3700

OF COUNSEL:

REA, CROSS & AUCHINCLOSS
SUITE 570
1707 L STREET, NW
WASHINGTON, DC 20036

DUE AND DATED: OCTOBER 13, 1998