

Response to Comments

We believe it is sufficient to ensure ready access to the carrier's system by requiring a telephone number. As AMSA points out, what may constitute an "appropriate" response, and even a prompt response, is dependent upon the facts of each situation. We do not believe explicit regulation is warranted. We believe shippers are knowledgeable enough, and should be responsible enough, to inquire with better business bureaus and us if they are dissatisfied with a mover's complaint handling. Better business bureaus also monitor the number of and types of complaints businesses receive.

Section 375.211 Must I Have an Arbitration Program?

A majority of household goods complaints we receive involve loss and damage claims. The 24 individual shippers who submitted docket comments generally complain about the handling of their loss and damage claims rather than commenting directly about any particular aspect of the proposed rule or solutions to correct such problems. The ICCTA imposes an arbitration requirement for the handling of most loss and damage claims against interstate movers. See 49 U.S.C. 14708. We proposed to amend the former "information for shippers" section of the regulations, formerly 49 CFR 375.2 (proposed § 375.213), to replace the required summary of the carrier's dispute settlement program with a summary of its arbitration procedures and results.

As we discussed in the NPRM, Congress established the arbitration system in the ICCTA to afford consumers a forum for resolving loss and damage claims arising from transportation of household goods and to replace the informal dispute resolution functions previously handed by the ICC. The ICC conducted the informal dispute resolution functions under its general authority to regulate movers, but did not have a specific statutory requirement to perform that function. The Congress wanted "private, commercial disputes to be resolved the way all other commercial disputes are resolved—by the parties." See H.R. Rep. No. 104–311, at 87–88 (1995). See also pages 117 and 121. The MCSIA expanded the availability of arbitration by requiring that carriers provide arbitration, upon shipper request, for claims of up to \$5,000 (as opposed to the \$1,000 limit in the ICCTA). The GAO report also studied the roles of consumers in preventing and resolving disputes.

NACAA supports having movers maintain an arbitration program for loss and damage claims.

The Consumers Union recommends we require each mover give its arbitration information at the time an estimate is made rather than before executing an order for service.

The OCC believes arbitration should be expanded to include a format for alternative dispute resolution. Arbitration alone limits available dispute resolution means, and inasmuch as alternative dispute resolution enjoys widespread recognition, it would seem illogical to omit it.

The AGCT requests FMCSA require the mover to provide a fair and prompt process that is paid for by the mover. By requiring the mover to bear the cost of the arbitration, the mover has an incentive to resolve claims and arbitration proceedings in a timely manner.

The 25AG suggest modifying proposed § 375.211(a)(2) to include a paragraph (iv) to require conspicuous disclosure of the right to the information contained in § 375.211(a)(3). They believe that § 375.211(a)(2) and (b) are inadequate as disclosure requirements because they provide no guidance as to either the timing or manner of disclosure.

The 25AG also believe consumers need to know of their right to forego arbitration and pursue court action under 49 U.S.C. 14704. They claim that many movers refuse to participate in their own program or do so in a dilatory fashion. They recommend that we require arbitration be provided at a reasonable cost and at a reasonable location, without undue delay before a neutral independent third party. The arbitrator should be empowered to grant whatever relief would be available in court under law or in equity.

In AMSA's view, a requirement that all household goods carriers file annual arbitration reports would likely not be useful to consumers, itself, and the moving industry. AMSA disagrees that such reports would assist us in meeting our statutory responsibility to report to Congress regarding arbitration, and in providing individual consumers with relevant claims information.

Details regarding arbitration and the relative success or failure of the single program that represents virtually all movers are readily available from AMSA, it asserts. To assist us in meeting our statutory reporting requirements, AMSA stated that it sent reports to FHWA containing the results of its arbitration program, both in advance of the June 1997 due date of the

FHWA report to Congress and after June 1997.

AMSA believes that the information contained in the periodic AMSA reports is sufficient. It believes we can use its reports to monitor the moving industry under 49 U.S.C. 14708(g). From a consumer standpoint, AMSA is not convinced that the requested claims handling information would provide consumers with meaningful claims data. Furthermore, it also is not convinced that individual consumers are interested in claims data when it comes to their selection of a mover. Consumers are more interested, AMSA believes, in whether the mover is properly licensed, has insurance, has a good professional reputation, and complies with the regulations. AMSA reported the industry has a claims frequency ratio of roughly 21 percent, *i.e.*, only one in every five shipments results in a claim. AMSA interprets this to mean that the proposed report would have no relevance to almost 80 percent of the consumer shippers whose shipments do not sustain loss or damage. It asserts that the incidence of arbitration is even less frequent. AMSA's experience is that less than one percent of all claims result in arbitration; thus more than 99 percent of the shipments transported will not become involved in the arbitration process.

From a technical standpoint, AMSA believes the proposed report only requires the reporting of the total number of shipments transported and the number of claims less than and over the statutory maximum for mandatory arbitration. It believes the meaning of our "total shipments" (all household goods shipments; only COD shipments, excluding civilian government, military and national accounts) is unclear, as is the "number of claims" (claims filed; claims paid, and so on). AMSA presumes that 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 arbitration cases could be construed to mean the carrier has an unacceptable claims experience when precisely the opposite may be true since the number of arbitrations may bear no relation to the number of claims.

In addition, AMSA asserts that the language of the proposal makes it clear that FMCSA will be required to process and maintain over 2,000 carrier annual