

for compensation that is less than is necessary to attract their services. AMSA believes that 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 certain arguments suggest.

For example, AMSA notes, 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.

In response to the AGCT's recommendation that consumers be allowed to reduce the amount they must pay for a carrier to relinquish a COD shipment to "substantially" less than 100 percent of the estimate, and that they be allowed to offset any damages from the balance of any remaining charges owed to the carrier, AMSA states that certain AMSA testimony in 1998 before the U.S. House of Representatives Subcommittee on Surface Transportation of the Committee on Transportation and Infrastructure warrants repeating:

The overwhelming majority of all movers are reputable, regulated businesses. They perform an essential public service by complying with the consumer and other 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. (Testimony of Joseph M. Harrison, President, AMSA, delivered August 5, 1998.)

Attached to Mr. Harrison's testimony were copies of a small sampling of congratulatory letters AMSA members received from customers expressing their satisfaction with the carrier's service. AMSA noted those letters reflect the high level of service all reputable movers strive to achieve. AMSA also noted no publicity was paid to the customer's laudatory comments.

AMSA comments that in the context of estimates of charges versus actual lawful charges, changes in service requirements usually occur either because the shipper requested the changes or because the mover determined they were necessary to properly service a shipment. AMSA argues that one needs merely to review carrier tariffs to understand the many services carriers must perform that may result in changes in estimates of charges. These include vehicle detention, distance and stair carries, impracticable operations, pickup or delivery on Saturdays, Sundays or Holidays, stop-offs, appliance service, shuttle service, and storage-in-transit. Available industry statistics obtained from the AMSA Continuing Traffic Study for COD shipments transported in 1995 indicate the following:

11.7 percent of COD 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 COD shipments required these or other additional services either at the shippers' specific request or because such service was required to accomplish delivery.

AMSA also believes it is 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).

Response to Comments

FMCSA agrees with the AGCT that, at the time of pickup, movers should inquire of site conditions at the destination or other circumstances which may result in the imposition of additional charges at the delivery point. If the mover fails to ask whether there are any long flights of stairs, for example, the mover would relinquish possession and bill the shipper for such additional services rather than demand immediate payment at the time of delivery. We have added appropriate language to the interim final rule to incorporate these comments.

In addition, FMCSA requires in § 375.403(a)(8) in the interim final rule that if a shipper asks for additional services after the goods are in-transit, the mover must inform the shipper additional money must be paid. If a mover believes additional services are necessary to properly service a shipment after goods are in-transit, the mover must inform the shipper what the additional services are before performing those services. The mover must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the shipper agrees to pay for the additional services, the mover must execute a written attachment to the bill of lading and have the shipper sign the written attachment. This could be accomplished through faxes between the parties.

If the additional services are not acceptable by the shipper and the shipment is in transit, the carrier should deliver for the amount of the original estimate and bill for any remainder after 30 days.

FMCSA believes it is the carrier's responsibility to ask and determine at origin if the conditions at the destination require additional services (i.e., shuttle, long carry, elevator, stairs, and other accessorial services) to effect delivery, and to advise the shipper of the cost of such additional services, as well as method of payment for the services at the time of delivery. If the shipper refuses to pay for additional services at origin and before loading, the carrier has the option to accept or deny the shipment. See § 375.403(a)(5) in the interim final rule. If the shipper refuses to pay for additional services at the