

estimated charge. It also suggests that language should be added clarifying that the consumer, in accepting delivery, is not waiving any rights to proceed against the mover in a private action to recover transportation charges, or waiving State or local enforcement. It argues that the rules should provide that it is unfair, misleading and a deceptive act or practice to fail to deliver household goods when a mover is offered 110 percent of the written estimate.

The AGCT recommends the rules substantially reduce the amount of money that the consumer must pay to the carrier in order for the carrier to relinquish possession of the shipment. The AGCT strongly supports the deferred payment provision of paragraph (c) and believes the consumer should be permitted to offset any damages from the balance of any remaining charges owed to the carrier.

AMSA recommends that to avoid potential misunderstandings, the wording of paragraph (a) should be changed to comport with the language contained in current § 375.3(d), 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. Although it believes that the example provided in the NPRM is clear, AMSA would like language added to avoid any misunderstandings concerning the assessment of authorized service charges on delinquent payments as would be authorized by proposed § 375.807. AMSA recommends adding the following sentence at the conclusion of paragraph (c) of § 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.

AMSA also believes it is necessary to consider the language contained in proposed § 375.801(b) *What types of charges apply to subpart H?*, and the discussion in Subpart H of the Your Rights and Responsibilities publication

as they deal with the extension of credit to COD shippers.

AMSA believes the existing credit regulations make it clear that they do not apply to COD non-binding estimate shipments that move under the 110 percent rule. It refers to 49 CFR 377.215(a), and its reference to 49 CFR 375.3(d). This language was lifted in its entirety from the former ICC credit regulations, 49 CFR 1320.8(a), which contained the same inapplicability reference, *i.e.*, 49 CFR 1056.3(d). Under both versions of these regulations, COD 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 COD customer. The extension of credit regulations contained in 49 CFR 377.215 and 49 CFR 1320.8 apply to shippers, other than COD 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 § 377.215 would apply.

AMSA believes that in the drafting of proposed § 375.801 and the narrative contained in Subpart H of Your Rights and Responsibilities, we incorrectly assumed that the existing credit regulations apply to COD shippers whose goods move under the 110 percent rule. AMSA believes the language and instructions in proposed § 375.801 are bound to create confusion among individual shippers who may assume that their mover will defer its request for payment and extend credit 30 days or more beyond the date of delivery. AMSA recommends rewriting § 375.801 and subpart H to avoid misunderstandings between individual shippers and movers. It believes the regulations and shipper guidance must make it perfectly clear carriers will expect payment of not more than 110 percent of the estimated charges on a COD non-binding estimate shipment at the time of delivery. It also believes the mover rule and shipper guidance must make it perfectly clear the shipper will be billed for any balance due not sooner than 30 days after delivery.

## Response to Comments

We do not agree with the AGCT proposal to reduce the amount of payment required at delivery to substantially less than 110 percent of the estimated charges. We believe the 110 percent requirement strikes a fair balance between the carrier's right to receive prompt payment for its services and the shipper's right to pay an amount reasonably close to the estimated charges at the time of delivery. Allowing shippers to offset damages from any remaining charges owed the carrier would violate 49 U.S.C. 13702, which requires household goods carriers to charge and receive the rate specified in their tariffs. In response to NACAA, the right to take claims to court is established by law and does not need to be specifically mentioned in these regulations.

FMCSA agrees with the AMSA comments. We have modified the section to state that the mover may expect payment of no more than 110 percent of the estimated charges on a COD 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. We have also modified the last sentence in paragraph (a) to state the mover must accept the form of payment agreed upon at time of estimate, including credit card, and relinquish the shipment.

### *Section 375.409 May Household Goods Brokers Provide Estimates?*

We have added new § 375.409 to eliminate confusion regarding the authority of household goods brokers to issue estimates of transportation charges. Twenty-five years ago, the Interstate Commerce Commission concluded that brokers were prohibited from providing estimates because the duty to comply with the household goods regulations rests with the carrier, and shippers aggrieved by an act or omission of a broker would be unprotected by the regulations. In *Entry Control of Brokers*, 126 M.C.C. 476, 520 (1977), the Commission stated:

For example, if a broker provides a c.o.d. shipper with an estimate it has made, on which the shipper relies, the shipper would be deprived of the protection of 49 CFR 1056.8(b) of the household goods regulations, which provides that where the transportation charges exceed a carrier-made estimate by more than 10 percent, the shipper must pay only 110 percent of the charges upon delivery and is given a period of 15 days following delivery to make payment in full. Since this protection applies only to carrier-made estimates, a c.o.d. shipper who relies upon an incorrect estimate of a broker will have to pay the carrier's entire freight charges