

upon delivery, regardless of the extent the actual charges might exceed the broker's estimate.

In *Exec-Van Systems, Inc., Broker Application*, 128 M.C.C. 669, 678 (1978), the ICC noted that a broker's proposal to make estimates "would appear to be inconsistent with our established regulations, since 49 CFR 1056.8(a) places the obligation for making estimates solely upon the carrier. Applicant would, therefore, be advised not to interfere with the carrier in the performance of his obligations in making estimates, as this responsibility is intended by our regulations to be performed solely by the carrier or his agent."

Along these same lines, the Commission, in *Ward Moving & Storage Co., Inc., Household Goods Broker Application*, 132 M.C.C. 589, 596 (1981), stated that "49 CFR 1045.7(b) \* \* \* implicitly forbids the broker offering services or making contractual obligations which only a carrier may offer. It must be clear to the public that the broker is only an arranger of transportation, acting only in an advisory nature and offering services ancillary to the physical transportation." The rule cited in this quotation, now codified in 49 CFR 371.7(b), prohibits brokers from misrepresenting themselves, directly or indirectly, as carriers.

Although brokers may not enter into agency agreements with household goods carriers because they are required to exercise discretion in allocating traffic among carriers, we believe it would be permissible for a carrier to enter into a more limited type of agreement authorizing the broker to provide estimates on behalf of the carrier. Under such an agreement, the carrier would have to adopt the broker's estimate as a carrier-issued estimate and incorporate it into the order for service and bill of lading for purposes of compliance with part 375, particularly the 110 percent rule. We believe that under these circumstances, the individual shipper would not be deprived of the protections provided in part 375 because the carrier would still be held accountable for complying with this part. However, a household goods broker may not issue an estimate without entering into such an agreement with a carrier because otherwise the requirements of part 375 would not apply to the broker-issued estimate.

#### *Section 375.501 Must I Write Up an Order for Service?*

NACAA supports requiring all prices, terms and services to be presented in written documents signed by the mover

and delivered to the shipper before the household goods are packed and loaded; and that these documents must be retained for a period of one year. NACAA also urges us to prohibit movers from requiring shippers to sign blank or incomplete documents, such as estimates, orders for service, or bills of lading.

The AGCT suggests the rules should allow a shipper to proceed against the mover if the mover fails to deliver the shipment in accordance with the time requirements in the contract. It believes that the shipper should not have to pay an additional fee to the mover to ensure pickup and delivery of the goods on the specific dates or within a specific period. The AGCT argues that we should grant the shipper a three-day grace period allowing the shipper to rescind the order for service without any penalty, provided the ordered services are scheduled more than three days after the order is written and that the mover should provide shippers with the items listed in § 375.503(b)(2), (4), (9), (10), and (11).

The AGCT argues that paragraph (a)(5) should allow the shipper to deduct any penalties or per diem amount due to the shipper from any amounts that the shipper owes to the carrier. Alternatively, the mover should be required to make payment to the shipper at the time of delivery in the manner specified by the shipper to level the playing field and allow both parties to collect amounts due them at the same time. Paragraph (a)(6) should require the carrier to affirmatively note the shipper's denial of any special or accessorial services that might be reasonably expected.

In response to the AGCT comments, AMSA argues that shippers do not ordinarily incur additional costs for delivery date commitments unless equipment availability is limited and a specific request requires special operations. With respect to the shipper remedies suggested by the AGCT, AMSA states that: (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, the information listed in § 375.503(b)(2), (4), (9), (10), and (11) 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 CFR part 370, or the carrier's lawful tariffs; and (4) if an accessorial service is requested or required, presumably performance of that service is necessary to safely transport a shipment. AMSA questions the advisability of a rule that

would permit shippers to refuse services that "might be reasonably expected."

#### *Response to Comments*

Although carriers may routinely permit shippers to cancel orders for service without penalty and furnish references to several bill of lading provisions when an order for service is executed, the comments from the AGCT indicate that not all carriers adopt such practices. We believe that mandating a 3-day grace period and reference to the bill of lading provisions provides additional consumer protection (See new paragraphs (e) and (a)(6) through (a)(10) in the interim final rule).

We adopt the AGCT's comment about paragraph (a)(6) (which is codified at (a)(11) in the final rule) and agree with AMSA that a required accessorial service may be necessary to safely transport a shipment if the mover could reasonably expect it. We require, in new paragraph (b) of the interim final rule, that if an accessorial service is necessary to safely transport a shipment, the mover must refuse to accept the shipment. As a safety agency, we will not allow the mover to provide unsafe transportation even when requested by an individual shipper.

In response to comments by NACAA, in new paragraph (d) in the interim final rule we are prohibiting movers from requiring shippers to sign blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

#### *Must I Write Up an Inventory?*

NACAA believes the rules should mandate shipment inventories that itemize every box and item consigned to protect shippers and movers for all weight-rated and hour-rated moves, unless the shipper signs a clear and conspicuous waiver of the inventory. NACAA recommends that an inventory form also be required.

AMSA concurs in the NACAA recommendation stating that detailed inventories of the goods tendered for transportation serve to protect the interests of shippers and carriers. AMSA recommends inclusion of the following provision:

#### *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