

#### Response to Comments

FMCSA agrees with AMSA and has added language to the interim final rule that a shipper's waiver of the right to observe a re-weighing must be in writing. We allow the shipper to send the writing via fax, e-mail, or any other electronic means.

#### *Section 375.521 What Must I Do if an Individual Shipper Wants To Know the Actual Weight or Charges for a Shipment Before I Tender Delivery?*

NACAA supports requiring movers to comply with the shipper's requests for notice of the shipment weight and charges before delivery.

#### Response to Comments

The proposed notification requirement is adopted without change.

#### *Section 375.601 Must I Transport the Shipment in a Timely Manner?*

NACAA supports requiring movers to transport goods in a timely manner.

#### Response to Comments

The proposed reasonable dispatch requirement is adopted without change.

#### *Section 375.605 How Must I Notify an Individual Shipper of Any Service Delays?*

NACAA supports requiring movers to retain notices relating to service delays for a period of one year and supports requiring movers to notify shippers of service delays.

AMSA believes there is a basic problem with the language employed in this section. The section states that a carrier must notify a shipper of service delays. AMSA believes the inconsistency lies in the fact that if a carrier is unable to pick up a shipment on the agreed upon date(s), it must notify the shipper of the delay and amend the order for service. It makes little sense to AMSA 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, AMSA notes that paragraph (b)(6) requires the mover, in the instance of delay notification, to furnish the shipper with a "true copy" of the notice by first class mail or in person. AMSA believes 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. AMSA submits 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.

#### Response to Comments

FMCSA agrees with AMSA's comments on this section and has made appropriate changes in the interim final rule language.

#### *Section 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 AGCT comments that carriers should be required to deliver the shipment in accordance with the delivery dates or periods specified in the contract. Paragraph (c) should preclude a carrier from limiting its liability for storage-in-transit to the delivery period. It is inequitable to allow a carrier to avoid any liability for delays in shipment while providing no similar mechanism to excuse a shipper's delay, even if the delay is caused by circumstances beyond the shipper's control. It recommends we should permit movers only limit their liability to the last day of the delivery period specified in the bill of lading.

AMSA comments on this AGCT proposal that paragraph (c) preclude movers from limiting their "liability" for storage-in-transit. In addition, it is suggested that this subsection be modified to only permit the mover to limit its "liability" to the last day of the period specified in the bill of lading. The proposed regulation speaks in terms of "responsibility" and not "liability." The rule is apparently intended to authorize movers, at their option, to not assess storage charges, or, alternatively, to assess charges beyond the agreed date. In support of the AGCT's position, it argues that it is "inequitable" to allow carriers to avoid liability for delays with no similar mechanism to excuse shipper delays. AMSA believes that movers

routinely honor delay and/or inconvenience claims in accordance with their tariff provisions that are not intended to avoid carrier liability.

#### Response to Comments

FMCSA agrees with the comments of this section.

#### *Section 375.609 What Must I Do for Shippers Who Store Household Goods in Transit?*

NACAA supports requiring movers to retain notices issued under this section for a period of one year.

The AGCT comments that the nine-month limitation on a shipper's right to file a claim against the carrier for damage or loss of goods in paragraph (b)(2) runs counter to a shipper's right to bring an action within the State of Connecticut's statutory period. It believes the rules should acknowledge the shipper's right to rely on a State-established statutory period for bringing an action against the carrier. Any other action is not shipper protection in its opinion. It also recommends that we modify paragraphs (a) and (b) to impose liability on the carrier until ten days after the carrier actually gave notice to the shipper that the period of storage-in-transit will expire and the shipment will be governed by rules and charges of the warehouseman. It believes the ten-day period is consistent with the provisions in paragraph (c).

AMSA asserts that paragraph (d) will require that notifications to shippers regarding the expiration of storage-in-transit (SIT) 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 § 375.609(e).

In connection with paragraph (b)(2), AMSA believes that the AGCT's suggestion conflicts with the nine-month statutory period provided for the filing of claims for loss or damage in 49 U.S.C. 14706(e)(1).

In response to the AGCT proposal to retain carrier liability until 10 days after the carrier actually gives notice, AMSA does not believe that a notice related to the expiration of storage-in-transit should be allowed to unduly extend the SIT period. AMSA states shippers are advised at the time their goods are placed in storage that the SIT storage period is 90 days and if a longer period