

applies by virtue of a particular carrier's tariff, the shipper is so advised.

Response to Comments

In the interim final rule, FMCSA has added to paragraph (d) that notification can be made by facsimile, overnight courier, e-mail, or certified mail return receipt. All of these methods can confirm delivery notification to the shipper. We cannot adopt the AGCT's comment about the shipper's right to bring an action within a State's statutory limitation period. The Federal statute takes precedence for interstate moves. Also, FMCSA cannot add a new requirement that would impose on carriers a potential additional 9 days of liability when it has failed to give the 10 day notification under paragraph (c). The rule, as adopted, imposes liability on a carrier for an indefinite period if it does not give notice and ensures the shipper of at least 24 hours notice that a carrier liability for goods in storage will end.

Section 375.701 May I Provide for a Release of Liability on My Delivery Receipt?

NACAA supports the requirement that movers must not include in their paperwork a release from liability for damages, but believes permitting carriers to include the "statement the property was received in apparent good condition except as noted in the shipping documents" is not justified and can lead to serious shipper harm. It suggests that proposed § 375.701(b) be removed. It also proposes requiring check boxes with statements such as "I have not had an opportunity to open all boxes to verify the condition of their contents or determine if anything is missing." It believes the rules should mandate inclusion of a statement that the "mover remains liable for all losses suffered by shipper" with an explanation of the procedure and time limits for making a claim.

The AGCT recommends amending this section to make explicit that the "apparent good condition" language is not binding and the rules should not allow a carrier to include a statement that the property was received in good condition unless otherwise noted. It asserts that the shipper does not have the time to inspect all goods as the carrier unloads them. This is especially true for any items that are boxed and unavailable for inspection at the time of delivery. It believes the regulation creates a barrier to the shipper's ability to successfully assert damage claims against the carrier.

AMSA argues that paragraph (a) makes it clear that any carrier statement

attempting to release it from liability is not permitted. The statement NACAA objects to is a general acknowledgment indicating that the services ordered have been accomplished and the shipment has been delivered in "apparent" good condition. The shipper is only expected to note conspicuous loss or damage at the time of delivery. The presumption of "apparent" good condition is routinely rebutted by shippers after they have had an opportunity to unpack and perform a more thorough inspection.

Response to Comments

FMCSA agrees with AMSA's comments on this section and believes no changes are necessary.

Section 375.703 What Is the Maximum Collect-on-Delivery Amount I May Demand at the Time of Delivery?

The AGCT recommends requiring carriers to relinquish possession of the shipment in an amount substantially less than 100 percent of the estimate.

AMSA comments that the maximum COD amount that may be collected on a non-binding estimate shipment is 110 percent of the estimated amount. It states that this provision should be revised to mirror its earlier suggested change in § 375.403(a)(7), to provide that the carrier may also require full payment for additional services requested or required by the shipper that do not appear on the estimate and were performed by the mover en-route or at destination. The proposed subsection would read as follows:

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of charges, except that full payment may be collected at the time of delivery for any added additional services that were performed en-route or at destination which were necessary to complete the transportation and do not appear on your non-binding estimate. You may specify the form of payment acceptable to you.

Response to Comments

We have not made the changes to this section suggested by AMSA since we are providing in § 375.403(a)(7) that the carrier may not require full payment for additional services required by the shipper that do not appear on the estimate and were performed by the mover en-route or at destination. We believe that all shipments based on non-binding estimates should be released to the shipper for no more than 110 percent of the original estimate and the remainder billed after 30 days.

Section 375.705 If a Shipment Is Transported on More Than One Vehicle, What Charges May I Collect at Delivery?

The AGCT requested the rules should not permit demand for payment until the entire shipment is delivered. Shipments are not split for the shipper's benefit, but only for the convenience of the carrier. Shippers should only be required to tender payment upon the carrier delivering the entire shipment.

AMSA comments that the proposed section is patterned after the existing regulation and, on split delivery shipments, it would authorize carriers to defer collection of transportation charges until final delivery or collection of a pro-rata portion of those charges based upon the quantity of goods included in the first delivery.

AMSA argues the AGCT also ignored the requirements of 49 U.S.C. 13707, that provides that carriers must not relinquish possession of goods until transportation charges are paid. Thus, collection of a pro-rata portion of transportation charges equal to the quantity of goods delivered is required by statute.

From an operational standpoint, AMSA alleges, industry data indicates that less than 2 percent of the shipments transported in 1994 moved in two or more vans. This percentage is nearly equal to the number of shipments (2 percent) that weighed more than 18,000 to 20,000 pounds, the normal capacity of a moving van, and required the service of two or more vans. AMSA stated this data came from the latest year for which such data was available from the AMSA Continuing Traffic Study, though AMSA did not submit the study as part of its comments. Therefore, AMSA contends that, contrary to the AGCT's position, most shipments that involve split deliveries are not the result of carrier convenience. They are dictated by operational requirements.

Response to Comments

FMCSA agrees with the AMSA comments on this section and has made no changes to the proposed rule.

Section 375.707 If a Shipment Is Partially Lost or Destroyed, What Charges May I Collect at Delivery?

The AGCT comments that it is unimaginable that a carrier can lose or destroy part of a shipment and yet demand full payment before being obligated to relinquish possession of the remainder of the shipment. It believes this provision is abhorrent and strongly anti-shipper. The proposed regulation is silent as to when the carrier must refund