

the amount of the lost or destroyed shipment to the shipper. The AGCT argues the carrier should be forced to relinquish possession of a shipment and only bill the shipper for amounts due and owing 30 days after delivering the shipment to the shipper.

AMSA comments that as proposed, in the event of partial loss or destruction of a shipment, the mover must determine, at its own expense, the portion of the shipment that was delivered intact. It recommends that the wording of this provision be revised for clarity to avoid confusion concerning the basis for refunding charges that were applicable to lost or destroyed portions of shipments, as follows:

(b)(4) You must determine, at your own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

AMSA argues that the AGCT's comments evoke the same degree of incredulity that the AGCT professes regarding the proposed rule. AMSA argues that carriers routinely process claims for loss or damage, the sum of which includes a portion of the transportation charge related to lost goods. It is difficult to understand the rationale that would deny payment on a 10,000 pound shipment if, for example, cartons weighing 500 pounds were not tendered at the time of delivery. In such a situation, the carrier is liable for the value of the lost goods and a pro-rata portion of the transportation charges. As AMSA had commented previously, the ICCTA requires that carriers " * * * shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made."

Response to Comments

FMCSA agrees with the AMSA comments on this section and has modified paragraph (b)(4) in the interim final rule accordingly.

Section 375.709 If a Shipment Is Totally Lost or Destroyed, What Charges May I Collect at Delivery?

The AGCT comments that carriers should be required to pay shippers the declared value of a lost or destroyed shipment on or before the last day of the contractually agreed on delivery date, less the specific valuation charge.

AMSA comments that under this section as proposed, movers will not be entitled to collect or require shippers to pay freight charges (including charges for accessorial or terminal services) when a shipment is totally lost or destroyed in transit. The provisions of

paragraph (a)(2) appear to be in conflict by providing that "you may apply paragraph (a) of this section only to the transportation of household goods and not to charges for other services the individual shipper ordered." AMSA is unclear as to the difference between the prohibited "accessorial services" charges referred to in paragraph (a) and the permitted "other services" charges referred to in paragraph (a)(2). AMSA recommends that paragraph (a)(2) be deleted to avoid confusion concerning the meaning of this section.

AMSA states that the settlement of claims for loss or damage does not fall into the simple scenario presented by the AGCT. All such claims must be substantiated. If a claimant declared a shipment value of \$100,000, that does not automatically entitle the claimant to that amount in the event of a total loss. If the goods are actually valued at \$75,000 and the claimant can substantiate that amount, the carrier will honor a claim for the same amount. 49 U.S.C. 14706 imposes liability " * * * for the actual loss or injury to the property * * * " The regulations require that claims for loss or damage be submitted, in writing in accordance with the requirements of 49 CFR part 370, and that they, inter alia, include a "certification of values [and] depreciation reflected thereon." 49 CFR 370.7(b). Obviously, the processing and settlement of claims for loss or damage by carriers must follow the explicit requirements of the regulations.

Response to Comments

FMCSA agrees with AMSA's comments for this section and has changed the interim final rule accordingly.

Section 375.801 What Types of Charges Apply to Subpart H?

The AGCT again asserts the rules should require carriers to relinquish possession of shipments in an amount substantially less than 100 percent of the estimate.

Response to Comments

FMCSA does not agree with the AGCT comments. We believe that all binding estimates should be released to the shipper for no more than 100 percent of the original estimate. Sections 375.801–375.807 do not apply to non-binding estimates.

Section 375.805 If I Am Forced To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Do I Collect the Balance?

The AGCT comments that carriers should not be allowed to present freight

or expense bills before the expiration of a 30-day period after delivery.

AMSA comments that in order to collect the balance of charges due on collect-on-delivery shipments, proposed § 375.805 would require carriers to present the freight bill within 7 days from the date the shipment was delivered at destination. Such a requirement is unreasonably short and unrealistic. Typically, a freight bill cannot be prepared until all shipment paperwork is received from the delivering driver. It is not uncommon for this process to consume most of the proposed 7-day period. A 7-day requirement is also inconsistent with the 15-day requirement contained in proposed § 375.807, and there is no justification for the two different time periods. It therefore recommends that § 375.805 be revised to read:

On "collect-on-delivery" shipments, you must present your freight bill for all transportation charges as provided in § 375.807(a).

Response to Comments

FMCSA agrees with AMSA's comment and has changed the rule text to be 15 days as required by § 375.807.

Section 375.807 What Actions May I Take To Collect the Charges Upon My Freight Bill?

The AGCT comments that shippers should not be automatically subjected to a one percent service charge by the operation of a regulation and believes the FMCSA should consider imposing a one percent ceiling on any service charge imposed by the carrier.

AMSA comments that as proposed, individual shippers will be assessed a service charge equal to one percent of the amount of the freight bill, subject to a \$20 minimum charge, for extension of the normal credit period. AMSA believes this wording should be clarified to indicate that the one-percent fee applies in 30-day increments, rather than once for the entire extended credit period. For example, if the bill remains unpaid for 60 additional days following the initial 30-day period (for a total of 90 days), the one percent service charge would be applied three times, once for each 30-day extension or fraction thereof.

AMSA believes the AGCT suggestion that the regulation should limit to one percent any service charge imposed by carriers is an unreasonable request. AMSA asserts the cost of credit and capital and the cost to carriers of carrying delinquent accounts does not equate to a flat one percent of an outstanding amount.