

Response to Comments

FMCSA agrees with AMSA's comments and has modified paragraph (c)(2) in the interim final rule to state the service charge will be assessed for each 30-day extension of the credit period during which the charges go unpaid.

Section 375.901 What Is An Annual Arbitration Report?

We discussed the comments concerning the arbitration report under § 375.211 in our discussion of the arbitration program as a whole. As we have decided to not require such a report, we have removed proposed §§ 375.901–375.907.

Section 375.1001 What Penalties Do We Impose for Violations of This Part? (Section 375.901 in Interim Final Rule)

NACAA supports movers being subject to statutory penalties for failure to comply with these regulations. In addition to these penalties, NACAA proposes that carriers be made subject to actions brought pursuant to State unfair or deceptive trade practices laws by adding the following language to this section:

The regulations are supplementary law; that is, the remedies provided herein shall be cumulative and supplementary to all other remedies otherwise provided by Federal, State and local law.

The OCC requests this section include the following language. "Notwithstanding the above civil penalties, nothing in this Section shall deprive any holder of a receipt of bill of lading

any remedy or right of action under existing law. Where litigation is pursued under other existing rights, the prevailing party shall be allowed attorney fees, trial preparation costs, and court costs." The OCC believes its proposed language should also be paraphrased in YRRWYM on the front page. It believes that shippers should be able to choose the choice of forum in the State of shipping or destination and that a list of State agencies that take complaints concerning household goods moves should be included.

AMSA comments that the NPRM attempted to explain and/or define the penalties, civil and criminal, arising from violations of the proposed regulations. AMSA believes this to be inadvisable. AMSA notes that 49 U.S.C. Chapter 149 consists of 14 specific laws that require 36 pages of written text (sections and related statutory and case notes) defining the scope of these penalty provisions. An attempt to restate these provisions in a short-hand version is likely to lead to misinterpretations and debate over Congressional intent. AMSA believes the statutory penalty provisions speak for themselves and, if invoked, they will prevail and not the proposed regulations. Therefore, AMSA recommends that all but the first two sentences of proposed § 375.1001 be eliminated.

Response to Comments

FMCSA agrees with AMSA's comments on this section and has removed all but the first two sentences

of § 375.1001 (renumbered as 375.901 in the interim final rule). Regarding NACAA's comments, the Carmack amendment, now codified at 49 U.S.C. 14706, imposes a uniform regime of carrier liability for interstate shipments of property designed to eliminate the uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that Carmack preempts (or supercedes) a broad range of State consumer protection laws potentially applicable to interstate household goods carriers, regardless of whether these laws are consistent with Carmack. The language proposed by NACAA is inconsistent with prevailing case law and beyond the authority of FMCSA to impose in this rulemaking proceeding.

We agree with OCC's recommendation that this section include the following language: "Notwithstanding the above civil penalty, nothing in this section shall deprive any holder of a receipt of a bill of lading, any remedy or right of action under existing law."

Appendix A Your Rights and Responsibilities When You Move

FMCSA has modified appendix A to be consistent with the interim final rules as modified by the above comments.

Order of the Final Regulations

The following table specifies the new section of each rule, the old section (if any) where the rule originated, and the title of the new section.

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE

New section	Old section	Title of new section
SUBPART A—GENERAL REQUIREMENTS		
375.101	375.1(a)	Who must follow these regulations?
375.103	375.1(b)	What are the definitions of terms used in this part?
375.105	None	What are the information collection requirements of this part?
SUBPART B—BEFORE OFFERING SERVICES TO CUSTOMERS		
Liability Considerations		
375.201	375.12	What is my normal liability for loss or damage when I accept goods from an individual shipper?
375.203	375.12	What actions of an individual shipper may limit or reduce my normal liability?
General Responsibilities		
375.205	375.14	May I have agents?
375.207	375.17	What items must be in my advertisements?
375.209	375.13	How must I handle complaints and inquiries?
375.211	None	Must I have an arbitration program?
375.213	375.2	What information must I provide to a prospective individual shipper?
Collecting Transportation Charges		
375.215	373, subpart A	How must I collect charges?