

**ORIGINAL**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**STB Ex PARTE No. 662**

**REVIEW OF LIABILITY OF MOTOR COMMON  
CARRIERS OF HOUSEHOLD GOODS**

**JOINT COMMENTS OF  
AMERICAN MOVING AND STORAGE ASSOCIATION  
AND  
HOUSEHOLD GOODS CARRIERS' BUREAU COMMITTEE**

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By decision served May 23, 2006, the Surface Transportation Board (STB or Board) initiated this proceeding to comply with a Congressional directive contained in section 4215 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub.L. No. 109-59; § 4215, 119 Stat. 1144 (2005) (SAFETEA-LU).<sup>1</sup> Section 4215 directs the Board to “review . . . the current Federal regulations regarding the level of liability protection provided by motor carriers that provide transportation

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<sup>1</sup> The Board’s decision was published in the *Federal Register* on May 23, 2006. 71 *Fed. Reg.* 29707-708 (2006).

of household goods and revise such regulations, if necessary, to provide enhanced protection in the case of loss or damage.” More specifically, Congress directed that the Board’s review should include determinations of:

- (1) Whether the current regulations provide adequate protection;
- (2) The benefits of purchase by a shipper of insurance to supplement the carrier’s limitations on liability; and
- (3) Whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of HHG.

As also directed, the Board’s review is to be completed not later than 1 year after the date of enactment of SAFETEA-LU (August 10, 2006).

### **IDENTITY OF THE COMMENTORS**

The American Moving & Storage Association, Inc. (AMSA or Association) is the national trade association of the moving and storage industry. It has approximately 3,600 members worldwide and represents the entire spectrum of the domestic moving and storage industry including national van lines, independent regulated carriers, agents of van lines, most of whom are also regulated carriers in their own right, and international movers. AMSA members operate in every city, town, borough and hamlet

in the United States performing interstate, intrastate and local moving and storage services as required by consumers, industry and government.

AMSA members that are engaged in the interstate transportation of household goods operate by virtue of authority issued by the former Interstate Commerce Commission (ICC or Commission) or the former Federal Highway Administration or the Federal Motor Carrier Safety Administration (FMCSA) and conform their operations to the licensing requirements of the Interstate Commerce Act and numerous FMCSA regulations including the Consumer Protection Regulations codified in the Code of Federal Regulations. As will be explained in these Comments, AMSA, on behalf of its members and consumer shippers, is involved in several aspects of the legitimate moving industry's liability responsibilities and the satisfactory resolution of consumer shippers' claims for loss or damage to goods.

The Household Goods Carriers' Bureau Committee (HGCBC or Bureau Committee) is a standing autonomous Committee of AMSA. The activities of the Bureau Committee are related solely to the joint consideration, initiation or establishment of rates, rules, regulations and practices of its 2,272 motor carrier signatories to a collective ratemaking

agreement identified as Section 5a Application No. 1.<sup>2</sup> As explained in these Comments, the Bureau Committee maintains its member carriers' tariffs which include provisions related to carrier liability for loss or damage including released rates authorities granted by the Board pursuant to the requirements of section 14706(f) of the Interstate Commerce Act (IC Act).<sup>3</sup>

### **THE PROPOSITIONS POSED BY CONGRESS**

#### **(1) Whether the current regulations provide adequate [liability] protection [for shippers of HHG].**

An analysis of so-called liability regulations as posed by Congress must include related orders and decisions and must begin with the authorizing statutory mandates enacted by Congress. Certain statutes are clear directives to regulated motor carriers, while others required the development of implementing regulations by the Secretary of Transportation or the Board to ensure consistent, uniform compliance with the will of Congress. These points will be discussed in greater detail *infra*. As they

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<sup>2</sup> The organizational structure that includes AMSA and HGCBC as a standing autonomous committee of the Association was approved by the Interstate Commerce Commission in *Section 5a Agreement No. 1 (Amendment No. 9) Household Goods Carriers' Bureau, Inc.—Agreement*, decided June 25, 1993.

<sup>3</sup> As discussed *infra*, the current Full Value Protection released rates authority was granted by Board decision in *Amendment No. 4 to Released Rates Decision No. MC-999*, decided December 18, 2001. There is now pending before the Board an Application to Amend that authority which was filed on November 8, 2005. By *Federal Register* notice dated April 13, 2006, 71 *Fed. Reg.* 19234-5, the Board requested comments on the proposal. No comments in opposition to the proposed relief were filed and a decision is awaited.

are, it is necessary that the Board recognize the importance of carrier compliance with the statutory and regulatory processes that have been established by Congress, DOT and the Board to provide consumer shippers with a high degree of relief when loss or damage occurs and recovery options, when it is necessary to pursue that relief.

AMSA and HGCBC strive to represent legitimate operators that comply with all regulatory requirements, including those related to loss or damage to goods. Their members must comply with the various statutory and regulatory requirements discussed in these Comments, and if they do not, they will no longer be members.<sup>4</sup> Both organizations continually caution their members on the importance of compliance. Of course, these efforts do not impact the entire moving industry. All interstate motor carriers of household goods that are licensed by the Federal Motor Carrier Safety Administration<sup>5</sup> are not members of AMSA/HGCBC, and, unfortunately, there are rogue movers (licensed and unlicensed) that use various devices to deceive and exploit consumer shippers. There is no

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<sup>4</sup> AMSA/HGCBC have, *e.g.*, terminated 44 carrier memberships for failure to participate in mandatory arbitration to settle loss or damage claims and reported the identities of the terminated members to FMCSA for enforcement action.

<sup>5</sup> There are approximately 4,000 carriers licensed by FMCSA to transport household goods. Of the 4,000, 2,272 are AMSA/HGCBC members. Of the remaining 1,728 licensed non-AMSA members, hundreds are either out of business or do not actually transport household goods based on an analysis performed by AMSA. However, at least 1,000 or more licensed motor carriers transport household goods shipments and are not AMSA members.

question that rogue operators routinely deny claims for loss or damage regardless of their culpability. It is undisputable that any mover that unlawfully inflates its estimated charges or holds goods hostage will most assuredly not pay a claim for loss or damage. With this background in mind, we discuss the statutes and regulations that are intended to protect the interests of consumer shippers and, as relevant, what legitimate movers are doing to see that that objective is met.

The regulatory system that is in place to protect consumers that experience loss or damage to their goods is extremely comprehensive. Its genesis is section 14706 of the IC Act (Carmack Amendment) which requires that motor carriers issue receipts or bills of lading for the goods they transport and imposes liability for the actual loss or injury to property caused by the carrier. Other provisions contained in section 14706 are similarly important to consumers, viz.:

1. time limits for the filing of claims for loss or damage or initiation of civil actions for recovery against carriers;
2. authority for a household goods carrier or group of carriers such as HGCBC to petition the Board for released rates authority;

3. without a written waiver, a carrier's maximum liability for loss or damage to household goods is an amount equal to the replacement value of such goods.

Before addressing these specific provisions, it is appropriate to acknowledge the importance of the Carmack Amendment to the moving industry and the consumer shippers it serves. Carmack determines the carrier's liability in the event of loss, damage or delay to an interstate shipment of household goods or other freight. Carmack's provisions are most commonly applied to loss or damage claims. AMSA conducted a study that found that 121,909 claims for loss or damage to household goods were filed with eight (8) major carriers in its study year. AMSA determined that the carriers paid 96% of all claims. Further, during the May 4, 2006 hearing before the Senate Committee On Commerce, Science, and Transportation's Subcommittee On Surface Transportation and Merchant Marine the Subcommittee members determined that cargo claims were not a problem that they felt necessitated Congressional action. Carmack's importance to both carriers and consumers cannot be overstated for a variety of reasons.

Carmack's preemptive effect, limiting shipper recovery to the actual loss or injury to property, is a stabilizing factor that allows the moving

industry to predict with reasonable certainty its financial exposure or loss or damage to goods. Any expansion of that exposure through, for instance, application of the States' consumer protection laws in loss or damage litigation would have a devastating effect on the industry's cost structure which ultimately must be borne by all consumers that require interstate moving services, thereby driving consumers to the lower cost rogue movers. It is also likely that any scenario that would alter or repeal Carmack would force many interstate household goods carriers to reevaluate their involvement in the interstate moving market, giving consumers less choice.

Consumers would have a more difficult time getting their claims paid and would thus be less protected if Carmack were repealed. Prior to Carmack's enactment, shipping customers were required to prove the elements of negligence before a carrier could be held liable for loss or damage to household goods. Carmack alleviated the need for a customer to prove the elements of negligence.

Instead, a carrier is deemed strictly liable for damage or loss occurring while the household goods are in the carrier's possession. Carmack's trade-off for the elimination of a negligence standard is that carriers were given the right to limit the amount of their liability to the actual loss or damage, by offering various released rate valuation options. If Carmack were repealed,

Carmack's strict liability standard would also be eliminated, and consumers would have a more difficult burden of proof before a carrier would be liable for loss or damage to their household goods.

Another problem that would likely arise if Carmack were eliminated is that the potential recovery of treble damages and attorney's fees will undoubtedly encourage consumers and their attorneys to assert deceptive practices claims, whether meritorious or not, in hopes of forcing carriers to offer a large settlement.

The availability of State remedies would obviate the need for pursuing a Carmack claim. Carmack's "actual loss" liability standard would become null and void. Movers and the nations' various court systems would be burdened by deceptive practices claims. This is not simply a matter of allowing a plaintiff to add another count to his/her complaint. Household goods litigation will proliferate and all of the attendant processes (discovery, motions, lawyer posturing, trials, appeals, etc.) will increase exponentially. If a consumer has the ability to obtain a judgment for treble damages and attorney's fees, the consumer's attorney will be more likely to litigate than to recommend arbitration (see discussion of arbitration at pp 14-17).

Rogue movers don't follow current law, and they are too difficult to find; i.e., they go out of business, change names, or leave the state. Many

operate over the internet without a business address on their website. Consumers won't be able to find these bad actors, leaving only the legitimate movers as a target for frivolous litigation. Repealing Carmack will not provide consumers with more protection since the only movers that will feel the impact of the repeal are movers who already pay in excess of 96% of all loss or damage claims filed by consumers. Obviously, the moving industry is firmly committed to retention of the Carmack Amendment in its present form.

### **Regulations Related to Claims for Loss or Damage**

Addressing the enumerated Carmack provisions in order, section 14706 is the enabling statute for regulations administered by FMCSA governing the investigation and disposition of claims for loss or damage. 49 C.F.R. Part 370. Every aspect of the process is covered with explicit claim processing directions to motor carriers.<sup>6</sup> These regulations were promulgated by the ICC following extensive rulemaking proceedings. *Loss and Damage Claims and Freight Bills*, 365 I.C.C. 581 (1982); *Loss and*

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<sup>6</sup> It appears that section 370.9(b) will require amendment since it deals with the depreciated value of goods for claim settlement purposes. This provision is no longer appropriate in view of the recent enactment of section 14706(f)(2) of the IC Act.

*Damage Claims*, 340 I.C.C. 515 (1972). We submit that the existing regulations in their present form serve the interests of consumers as they have for more than two decades.

In the case of household goods carriers, the FMCSA Consumer Protection Regulations, 49 C.F.R. Part 375, contain numerous rules addressing different aspects of carrier liability coupled with advice to shippers when confronted with shipment loss or damage.<sup>7</sup> Once again the word “comprehensive” is appropriate as the following list of those regulations confirms: (The entire text of each carrier liability and loss or damage regulation and related portions of *Your Rights and Responsibilities When You Move* (YRRWYM) are reproduced in Appendix A hereto.)

Subpart B—Before Offering Service to My Customers  
Liability Considerations

§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

§ 375.203 What actions of an individual shipper may limit or reduce my normal liability?

YRRWYM--Subpart B—Before Requesting Services From Any Mover

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<sup>7</sup> Appendix A to Part 375 requires that household goods carriers give all consumer shippers a copy of the publication *Your Rights and Responsibilities When You Move*, which was prepared by FMCSA to answer myriad questions related to interstate moving.

What is My Mover's Normal Liability for Loss or Damage When My mover Accepts Goods from Me?

What Actions by Me Limit or Reduce My Mover's Normal Liability?

What Are Dangerous or Hazardous Materials That May Limit or Reduce My Mover's Normal Liability?

Subpart E—Pick Up of Shipments of Household Goods Before Loading

§375.501 Must I write up an order for service?

§ 375.505 Must I write up a bill of lading?

§ 375.707 If a shipment is partially lost or destroyed, what charges may I collect delivery?

§ 375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?

YRRWYM--Subpart E—Pickup of My Shipment of Household Goods  
Must My Mover Write Up an Order for Service?

Must My Mover Write Up a Bill of Lading?

Subpart G—Delivery of Shipments

§ 375.701 May I provide for a release of liability on my delivery receipt?

YRRWYM--Subpart G—Delivery of My Shipment

May My Mover Ask Me To Sign a Delivery Receipt Purporting to Release It from Liability?

Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?

If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?

The current Consumer Protection Regulations were also the subject of extensive rulemaking over a period of 6 years which was concluded in 2004.<sup>8</sup> The original Consumer Protection Regulations were formulated by the ICC and have been completely revised by FMCSA, the administering agency. Certain revisions in Appendix A—*Your Rights and Responsibilities When You Move* were recently implemented by FMCSA to conform to requirements contained in SAFETEA-LU. 71 *Fed. Reg.* 17945 (2006). The FMCSA web site also announced the implementation of other changes in the regulations as a result of SAFETEA-LU.<sup>9</sup> We anticipate that additional proposed revisions required by this legislation will be the subject of future FMCSA rulemaking proceedings. AMSA will participate in those proceedings to ensure that the moving industry operational perspective is available to FMCSA in its decision making process.

The current Consumer Protection Regulations are the result of the latest regulatory thinking on all aspects of the operations conducted by household goods carriers when transporting the property of consumer

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<sup>8</sup> Docket No. FMCSA 97-2979, *Transportation of Household Goods; Consumer Protection Regulations*, 63 *Fed. Reg.* 27126, *et seq.* (1998); 69 *Fed. Reg.* 10570, *et seq.* (2004). A wide range of interests participated in the FMCSA rulemaking proceeding such as AMSA, National Association of Consumer Agency Administrators and numerous State attorneys general.

<sup>9</sup> [www.protectyourmove.gov/regulation-enforcement/regulations/hhg-safetea-lu-hm](http://www.protectyourmove.gov/regulation-enforcement/regulations/hhg-safetea-lu-hm)

shippers, including, of course, regulations related to carrier liability and loss or damage to goods. In fact, it would be difficult to refer to other more current regulations given the recent impact of the SAFETEA-LU mandated revisions. We submit that the regulations and excerpts from *YRRWYM* reproduced in Appendix A adequately inform consumer shippers on questions related to carrier liability and impose upon carriers explicit requirements when dealing with loss or damage to goods. Legitimate movers comply with the regulations and well-informed consumer shippers protect their interests by following the advice contained in *YRRWYM*.

#### **Mandatory Arbitration of Loss or Damage Claims**

The ability to satisfactorily resolve consumer claims for loss or damage is extremely important to the affected consumers and the legitimate moving and storage industry. An important element in the claim settlement process is the statutory requirement that household goods carriers participate in binding arbitration of all claims involving disputes of \$10,000 or less when requested by the shipper. Section 14708 of the IC Act describes the arbitration requirements carriers must meet as a condition of registration as interstate motor carriers of household goods. There are no implementing

regulations since the statute sets forth the explicit requirements imposed on carriers as well as other aspects of mandatory arbitration. However, the FMCSA Consumer Protection Regulations track and substantially restate the requirements of section 14708. The *Your Rights and Responsibilities When You Move* publication also contains appropriate advice to consumer shippers on these points. Appendix B hereto contains reproductions of the FMCSA regulations and the related advice to consumers contained in *YRRWYM*.

The \$10,000 and less mandatory arbitration threshold contained in section 14708 was enacted by Congress as part of SAFETEA-LU.<sup>10</sup> The former threshold was \$5,000. AMSA was a vigorous supporter of the increase to \$10,000, just as it previously supported an increase from the original \$1,000 mandatory amount to \$5,000, as part of the *Motor Carrier Safety Improvement Act of 1999*, P.L. 106-159. Section 14708 also provides that disputes involving amounts in excess of \$10,000 may also be arbitrated if requested by the shipper and agreed to by the carrier. Experience indicates that many AMSA members routinely agree to arbitrate disputes in excess of \$10,000.

Immediately following enactment of the *Interstate Commerce Commission Termination Act of 1995*, P.L. No. 104-88, which first imposed

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<sup>10</sup> At the urging of AMSA, Congress also expanded arbitration to include disputes involving carrier charges that are in addition to those collected at delivery.

the mandatory arbitration requirement and a threshold of \$1,000, AMSA established a dispute settlement program to ensure that its members complied with the statutory requirements. Today the AMSA program is conducted utilizing the arbitration services of the National Arbitration Forum as the program administrator.<sup>11</sup> In the past 5 years AMSA has processed 3,000 consumer inquiries concerning arbitration and successfully concluded nearly 1,300 arbitration cases.

Consumer shippers that are unable to reach an agreement with a carrier to settle a loss or damage dispute through the carrier's normal claim settlement process can utilize arbitration as an expeditious, impartial procedure to resolve the matter. The services of an attorney are not required and the cost to shippers is minimal depending upon the amount of the claim.

SAFETEA-LU contains another important provision designed to ensure the availability of arbitration to consumers which was adopted by Congress at the urging of AMSA. Section 4204 of the legislation requires that all applicants for motor carrier household goods operating authority provide evidence to FMCSA of their participation in an arbitration program

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<sup>11</sup> The Forum is an independent, non-governmental organization that is not affiliated with AMSA. It utilizes the services of retired and former judges and other qualified legal professionals to arbitrate disputes. AMSA receives no compensation for its role in the arbitration program. It is a service to AMSA members and their consumer customers.

and a copy of their notice to shippers describing the availability of arbitration as required by section 14708(b)(2) of the IC Act.

AMSA's support of arbitration has been continuous and in the 11 years since it was first imposed as a condition of carrier registration to transport household goods, it has demonstrated its value to consumers.

### **Released Rates Authority and Replacement Value Recovery**

The second and third important provisions contained in section 14706 that have a significant bearing on the adequacy of liability protection for consumer shippers (released rates authority and replacement value recovery for loss or damage) are interrelated and will be addressed jointly.

Section 4207 of SAFETEA-LU amended section 14706(f) of the IC Act by requiring that a carrier's maximum liability for loss or damage to goods shall be an amount equal to the replacement value of the goods unless the shipper executes a written waiver of the carrier's liability. However, maximum liability for any article or the entire shipment shall not exceed the declared value of the shipment. Also, these provisions are subject to rules issued by the Surface Transportation Board. The practical effect of these amendments is to largely convert the requirements of the Board's December 18, 2001, decision in Amendment No. 4 to *Released Rates Decision No.*

*MC-999, Released Rates of Motor Common Carriers of Household Goods,* to a statute. The released rates authority granted to motor carriers of household goods by the Board contains substantially the same requirements (replacement valuation subject to the shipper's declaration unless a valuation of 60 cents per pound is declared).<sup>12</sup> Obviously, any subsequent amendment of the Board's released rates authority cannot affect the statutory requirements imposed by section 14706(f).

The current replacement value released rates authority is the result of an application filed by the HGCBC on August 5, 1999, when three shipment valuation options were available to consumers – (1) 60 cents per pound per article; (2) actual (depreciated) value up to the declared shipment value with a minimum valuation of \$1.25 times the number of pounds in a shipment; and (3) Full Value Protection if the carrier maintained appropriate tariff provisions through its right of independent announcement under section 13703(a)(4) of the IC Act. The Bureau Committee's application proposed elimination of the \$1.25 per pound depreciated valuation basis for recovery and establishment of a general application Full Value Protection basis for shipper recovery. In support of its application the Bureau Committee

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<sup>12</sup> Unlike the new statutory requirement imposing replacement value liability unless waived by the shipper in writing, the Board's decision imposed a depreciated value basis for recovery if the shipper failed to select Full Value Protection or the 60 cents per pound liability limitation.

demonstrated that the interests of consumer shippers would be served by elimination of the somewhat confusing \$1.25 per pound basis and establishment of the Full Value Protection basis. The Board agreed and imposed certain notice requirements that are designed to result in informed carrier liability elections by shippers. The 2001 decision requires that a notice appear on carrier bills of lading or orders for service describing the carrier liability options available to the shipper and an acknowledgement that the shipper received a brochure which explains the options in detail.<sup>13</sup>

Following the Board's 2001 decision, HGCBC filed a petition seeking clarification that the released rates authority applied to all motor carriers of household goods and not only HGCBC carriers and that HGCBC carriers were not required to cancel full value protection tariff items they established under their right of independent action as authorized by section 13703(a)(4) of the IC Act. The requested clarification was granted by Board decision entered on April 19, 2003.

HGCBC also obtained authority from the ICC to facilitate the identification of articles of extraordinary value that are tendered as part of household goods shipments. In *Released Rates Decision No. 989, Household Goods Carriers' Bureau, Inc.*, decided October 1, 1990, the

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<sup>13</sup> This information is now contained in the FMCSA *Your Rights and Responsibilities When You Move* publication. See Appendix A, pp. 2-3.

Commission authorized the establishment of tariff provisions limiting carrier liability to \$100 per pound for any article that is included in a shipment that exceeds a value of \$100 per pound and is not identified by the shipper in the carrier's inventory of articles of extraordinary value. This authority has facilitated the care required by articles of extraordinary value thus enabling carriers to identify those articles and avoid subsequent disputes concerning their inclusion in a shipment and value in the event of loss or damage.

No question should exist concerning the benefits realized by shippers as a result of the Board's 2001 decision and the refinement effected by Congress' amendment of section 14706(f). The option to extend carrier liability to repair or current replacement value of goods clearly provides adequate protection to consumer shippers.

**(2) The benefits of purchase by a shipper of insurance to supplement the carrier's limitations on liability.**

A decision not to declare a shipment's valuation, release the shipment to a value of 60 cents per pound per article and obtain insurance, with or without a carrier's assistance, is one that is made by the consumer shipper. Many factors enter into that decision such as the amount of the carrier's declared valuation charge versus the cost of insurance through an insurance

carrier or the consumer's homeowner's liability policy.<sup>14</sup> In addition, consumers must decide whether they prefer pursuing loss or damage recovery claims through a household goods carrier or an insurance carrier. If they elect to obtain insurance, they deal with the insurance carrier to settle any claims for loss or damage under applicable insurance principles. If they recover, they subrogate their claim to the insurance carrier, thus authorizing action against the motor carrier. However, the consumer must be aware of the substantive differences between insurance coverage and valuation coverage. For example, if the consumer obtains insurance coverage in an amount that is less than the total value of his or her shipment, the amount of the consumer's claim settlement could be reduced under the principle of co-insurance. No such issue exists under the carrier's level of liability coverage. In fact, an underlying principle of the carrier's level of liability coverage is that the shipper indicates whatever value of the shipment the shipper wants to declare, up to the total value of the shipment which establishes the liability of the carrier for the shipment. The charge for the carrier's level of liability coverage is lower if the total value indicated by the shipper for the shipment is less than 100% of the shipment's total value.

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<sup>14</sup> Homeowners' liability policies typically offer residence-to-residence moving coverage at an additional cost to the homeowner.

When household goods carriers offer to assist consumers in obtaining insurance they are required to comply with the FMCSA Consumer Protection Regulations. Appendix C hereto is a reproduction of the applicable regulation and the text of the *Your Rights and Responsibilities When You Move* publication advice to shippers on this point. Motor carriers that offer this service are also required to maintain tariff provisions describing this service.

As for insurance as a means of supplementing a carrier's limitation of liability, obviously, if a shipper declares the minimum valuation available through the carrier (60 cents per pound per article), it would behoove the shipper to obtain insurance for the actual value of the goods transported. And, in fact, the CFR regulations authorize carrier assistance in procuring, etc., insurance only if the shipper releases the shipment to a value of 60 cents per pound.<sup>15</sup> Thus, from the carrier's standpoint, its liability is limited to the minimum authorized limitation and the prudent shipper will protect its interests by obtaining insurance from whatever available source.

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<sup>15</sup> As a general rule, household goods motor carriers do not "sell" insurance to shippers since, to do so, would require compliance with the States' insurance licensing requirements and related insurance regulations.

**(3) Whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss or damage to a shipment of HHG.**

The regulations, statutes and decisions referred to in these Comments adequately protect the interests of consumer shippers when dealing with loss or damage. To the extent abuses of the current regulations, etc. occur, those abuses are perpetrated by operators that choose to ignore or deliberately violate the regulations. It is a case of the proverbial “you can’t legislate good behavior.” If a consumer selects an unscrupulous or rogue mover to perform a moving service, it can expect that any declared shipment valuation or attempt to be compensated for loss or damage will prove to be a meaningless exercise. It is in the consumers’ best interests to carefully evaluate the capabilities and reputations of prospective movers before they contract for their services.

The relevant regulations, etc. do not include provisions that are inherently unfair or simply work to the disadvantage of consumer shippers. In fact, as previously noted, section 4207 of SAFETEA-LU favorably resolves certain paperwork-related problems that were the basis of shipper complaints by mandating that maximum carrier liability for loss, damage, etc. is an amount equal to the replacement value of goods, subject to a maximum amount equal to the declared value of the shipment, unless

waived in writing by the shipper. Prior to this amendment, an element of confusion and misunderstanding existed concerning carrier liability if the liability section of the bill of lading was not completed or was improperly completed since the default liability was not one of the liability options available to the consumer (60 cents per pound per article or full value protection), but was a depreciated value basis. In these situations, even though consumers may have thought they were receiving full value protection, they received inferior depreciated value protection due to faulty paperwork either on the part of the carrier or the shipper. Now, as required by SAFETEA-LU, even if the paperwork is faulty, whether by carrier or shipper omission, the consumer's goods are transported at full value protection carrier liability.

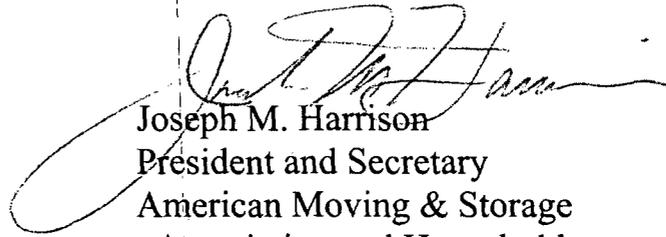
It should be apparent that the entire body of regulations addressed in these Comments was formulated primarily with the interests of consumers in mind. Carriers are presumed to be at an economic and operational advantage when dealing with consumers since they move infrequently and are not familiar with the nuances of moving as evidenced by the detailed advice to shippers contained in the FMCSA *Your Rights and Responsibilities When You Move*. No doubt this accounts for the fact that the decisions and

regulations promulgated by the STB, FMCSA and the former ICC clearly reflect this overriding concern for the interests of consumer shippers.

### CONCLUSION

Consumer shippers have replacement value protection available to redress the consequences of carrier loss or damage to their household goods. This option was available well before amendment of section 14706(f) of the IC Act by SAFETEA-LU. The Board's 2001 Released Rates decision authorizing elimination of the former \$1.25 per pound basis for shipper recovery and approving Full Value Protection recovery for application by all household goods carriers established it as the primary basis for carrier liability and shipper recovery. As the Board noted in its 2001 decision, shippers that elect to release their goods according to the replacement value option ". . . in many cases would cover more than the 'actual' value of household goods because it provides for replacing a lost or damaged item (which usually has been used) with a new, replacement item" (2001 Decision, sheet 8). The Board's review should therefore conclude that this level of liability protection continues to provide adequate protection in the event of loss or damage to consumer shippers' goods.

Respectfully submitted,



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Dated: June 22, 2006

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
TRANSPORTATION OF HOUSEHOLD GOODS  
CONSUMER PROTECTION REGULATIONS  
49 C.F.R. PART 375**

[Regulations and advice to consumers  
related to carrier liability]

**Subpart B—Before Offering Services to My Customers**

**Liability Considerations**

**§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?**

(a) In general, you are legally liable for loss or damage if it happens during performance of any transportation of household goods and all related services identified on your lawful bill of lading.

(b) You are liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's released rates order. Contact the Surface Transportation Board for a current copy of the Released Rates of Motor Carrier Shipments of Household Goods. The rate may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(c) As required by § 375.303(g), you may have additional liability if you sell liability insurance and you fail to issue a copy of the insurance policy or other appropriate evidence of insurance.

(d) You must, in a clear and concise manner, disclose to the individual shipper the limits of your liability.

**§ 375.203 What actions of an individual shipper may limit or reduce my normal liability?**

(a) If an individual shipper includes perishable, dangerous, or hazardous articles in the shipment without your knowledge, you need not assume liability for those articles or for the loss or damage caused by their inclusion in the shipment. If the shipper requests that you accept such articles for transportation, you may elect to limit your liability for any loss or damage by appropriately published tariff provisions.

(b) If an individual shipper agrees to ship household goods released at a value greater than 60 cents per pound (\$1.32 per kilogram) per article, your liability for loss and damage may be limited to \$100 per pound (\$220 per kilogram) per article if the individual shipper fails to notify you in writing of articles valued at more than \$100 per pound (\$220 per kilogram).

(c) If an individual shipper notifies you in writing that an article valued at greater than \$100 per pound (\$220 per kilogram) will be included in the shipment, the shipper will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

**[Related advice to shippers contained in  
Your Rights and Responsibilities When You Move]**

**Subpart B—Before Requesting Services From Any Mover**

**What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?**

In general, your mover is legally liable for loss or damage that occurs during performance of any transportation of household goods and of all related services identified on your mover's lawful bill of lading.

Your mover is liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's Released Rates Order. You may obtain a copy of the current Released Rates Order by contacting the Surface Transportation Board at the address provided under the definition of the Surface Transportation Board. The rate may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment. Your mover may have additional liability if your mover sells liability insurance to you.

All moving companies are required to assume liability for the value of the goods transported. However, there are different levels of liability, and you should be aware of the amount of protection provided and the charges for each option.

Basically, most movers offer two different levels of liability under the terms of their tariffs and the Surface Transportation Board's Released Rates Orders. These orders govern the moving industry.

**FULL VALUE PROTECTION (FVP).** This is the most comprehensive option available for the protection of your goods. **Unless you waive full value protection in writing and agree to Released Value Protection as described below**, your shipment will be transported under your Mover's **FULL (REPLACEMENT) VALUE** level of liability. If any article is lost, destroyed or damaged while in your mover's custody, your mover will, at its option, either 1) repair the article to the extent necessary to restore it to the same condition as when it was received by your mover, or pay you for the cost of such repairs; 2) replace the article with an article of like kind; or 3) pay you for the cost of a replacement article at the current market replacement value, regardless of the age of the lost or damaged article. Your mover will charge you for this level of protection, or you may select the alternative level of liability described below.

The cost for FVP is based on the value that you place on your shipment; for example, the valuation charge for a shipment valued at \$25,000 would be about \$250.00. However, the exact cost for full value protection may vary by mover and may be further subject to various deductible levels of liability that may reduce your cost. Ask your mover for the details and cost of its specific plan.

Under the FVP level of liability, movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically lists these article on the

shipping documents. An article of extraordinary value is any item whose value exceeds \$100 per pound (for example, jewelry, silverware, china, furs, antiques, oriental rugs and computer software). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and to make the necessary declaration.

**Released Value of 60 Cents Per Pound Per Article.** This is the most economical protection option available; however, this no-cost option provides only minimal protection. Under this option, the mover assumes liability for no more than 60 cents per pound, per article. Loss or damage claims are settled based on the weight of the article multiplied by 60 cents per pound. For example, if a 10-pound stereo component valued at \$1000 were lost or destroyed, the mover would be liable for no more than \$6.00 (10 pounds x 60¢ per pound). Obviously, you should think carefully before agreeing to such an arrangement. There is no extra charge for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it. If you do not select this alternative level of liability, your shipment will be transported at the Full (Replacement) Value level of liability and you will be assessed the applicable valuation charge.

**These two levels of liability are not insurance agreements** that are governed by State insurance laws, but instead are contractual tariff levels of liability authorized under Released Rates Orders of the Surface Transportation Board of the U.S. Department of Transportation.

In addition to these options, some movers may also offer to sell, or procure for you, separate liability insurance from a third-party insurance company when you release your shipment for transportation at the minimum released value of 60 cents per pound (\$1.32 per kilogram) per article. This is not valuation coverage governed by Federal law, but optional insurance regulated under State law. If you purchase this separate coverage and your mover is responsible for loss or damage, the mover is liable only for an amount not exceeding 60 cents per pound (\$1.32 per kilogram) per article, and the balance of the loss is recoverable from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance, and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.

#### **What Actions by Me Limit or Reduce My Mover's Normal Liability?**

Your actions may limit or reduce your mover's normal liability under the following three circumstances:

- (1) You include perishable, dangerous, or hazardous materials in your household goods without your mover's knowledge.
- (2) You choose the alternative level of liability (60 cents per pound per article) but ship household goods valued at more than 60 cents per pound (\$1.32 per kilogram) per article.
- (3) You fail to notify your mover in writing of articles valued at more than \$100

per pound (\$220 per kilogram). (If you do notify your mover, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.)

### **What Are Dangerous or Hazardous Materials That May Limit or Reduce My Mover's Normal Liability?**

Federal law forbids you to ship hazardous materials in your household goods boxes or luggage without informing your mover. A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124). You could also lose or damage your household goods by fire, explosion, or contamination.

If you offer hazardous materials to your mover, you are considered a hazardous materials shipper and must comply with the hazardous materials requirements in 49 CFR parts 171, 172, and 173, including but not limited to package labeling and marking, shipping papers, and emergency response information. Your mover must comply with 49 CFR parts 171, 172, 173, and 177 as a hazardous materials carrier.

Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, and radioactive materials. Examples: Nail polish remover, paints, paint thinners, lighter fluid, gasoline, fireworks, oxygen bottles, propane cylinders, automotive repair and maintenance chemicals, and radio-pharmaceuticals.

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your household goods and certain smoking materials carried on your person. For further information, contact your mover.

### **Subpart E—Pick Up of Shipments of Household Goods Before Loading**

#### **§ 375.501 Must I write up an order for service?**

(a) Before you receive a shipment of household goods you will move for an individual shipper, you must prepare an order for service. The order for service must contain the information described in the following 15 items:

\*\*\*

(10) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The released rates may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(h) You have the option of placing the valuation statement on either the order for service or the bill of lading, provided the order for service or bill of lading states the appropriate

valuation selected by the shipper.

**[Related advice to shippers contained in  
Your Rights and Responsibilities When You Move]**

**Subpart E—Pickup of My Shipment of Household Goods**

**Must My Mover Write Up an Order for Service?**

We require your mover to prepare an order for service on every shipment transported for you. You are entitled to a copy of the order for service when your mover prepares it.

The order for service is not a contract. Should you cancel or delay your move or if you decide not to use the mover, you should promptly cancel the order.

If you or your mover change any agreed upon dates for pickup or delivery of your shipment or agree to any change in the non-binding estimate, your mover may prepare a written change to the order for service. The written change must be attached to the order for service.

The order for service must contain the following 15 elements:

\* \* \*

(10) If not provided in the Bill of Lading, the Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment.

\* \* \*

You and your mover must sign the order for service. Your mover must provide a dated copy of the order for service to you at the time your mover signs the order. Your mover must provide you the opportunity to rescind the order for service without any penalty for a three-day period after you sign the order for service, if you scheduled the shipment to be loaded more than three days after you sign the order.

**§ 375.505 Must I write up a bill of lading?**

(a) You must issue a bill of lading. The bill of lading must contain the terms and conditions of the contract. A bill of lading may be combined with an order for service to include all the items required by § 375.501 of this subpart. You must furnish a partially complete copy of the bill of lading to the individual shipper before the vehicle leaves the residence at origin. The partially complete bill of lading must contain all relevant shipment information, except the actual shipment weight and any other information necessary to determine the final charges for all services performed.

(b) On a bill of lading, you must include the following 14 items:

\*\*\*

(12) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The released rates may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

\*\*\*

(e) You have the option of placing the valuation statement on either the order for service or the bill of lading, provided the order for service or bill of lading states the appropriate valuation selected by the shipper.

**[Related advice to shippers contained in  
Your Rights and Responsibilities When You Move]**

**Must My Mover Write Up a Bill of Lading?**

The bill of lading is the *contract* between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports. *The information on a bill of lading is required to be the same information shown on the order for service.* The driver who loads your shipment must give you a copy of the bill of lading before or at the time of loading your furniture and other household goods.

*It is your responsibility to read the bill of lading before you accept it. It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.*

The bill of lading requires the mover to provide the service you have requested. You must pay the charges set forth in the bill of lading. *The bill of lading is an important document. Do not lose or misplace your copy.* Have it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

A bill of lading must include the following 14 elements:

\*\*\*

(12) If not provided for in the Order for Service, the Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The Board's required released rates may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment.

\*\*\*

A copy of the bill of lading must accompany your shipment at all times while in the possession of your mover or its agent(s). When your mover loads the shipment on a

vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. Your mover must retain bills of lading for shipments it transported for at least one year from the date your mover created the bill of lading.

### **Subpart G—Delivery of Shipments**

#### **§ 375.701 May I provide for a release of liability on my delivery receipt?**

(a) Your delivery receipt or shipping document must not contain any language purporting to release or discharge you or your agents from liability.

(b) The delivery receipt may include a statement the property was received in apparent good condition except as noted on the shipping documents.

### **[Related advice to shippers contained in Your Rights and Responsibilities When You Move]**

### **Subpart G—Delivery of My Shipment**

#### **May My Mover Ask Me To Sign a Delivery Receipt Purporting To Release It From Liability?**

At the time of delivery, your mover will expect you to sign a receipt for your shipment. Normally, you will sign each page of your mover's copy of the inventory.

Your mover's delivery receipt or shipping document must not contain any language purporting to release or discharge it or its agents from liability.

Your mover may include a statement about your receipt of your property in apparent good condition, except as noted on the shipping documents.

*Do not sign* the delivery receipt if it contains any language purporting to release or discharge your mover or its agents from liability. Strike out such language before signing, or refuse delivery if the driver or mover refuses to provide a proper delivery receipt.

\* \* \*

#### **Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?**

Should your move result in the loss of or damage to any of your property, you have the right to file a claim with your mover to recover money for such loss or damage.

You should file a claim as soon as possible. If you fail to file a claim within 9 months, your mover may not be required to accept your claim. If you institute a court action and win, you may be entitled to attorney's fees if you submitted your claim to the mover within 120 days after delivery or the date delivery is scheduled (whichever is later); and (1) the mover did not advise you during the claim settlement process of the availability of

arbitration as a means for resolving the dispute; (2) a decision was not rendered through arbitration within the time required by law; or (3) you are instituting a court action to enforce an arbitration decision with which the mover has not complied.

While the Federal Government maintains regulations governing the processing of loss and damage claims (49 CFR part 370), it cannot resolve those claims. If you cannot settle a claim with the mover, you may file a civil action to recover your claim in court under 49 U.S.C. 14706. You may obtain the name and address of the mover's agent for service of legal process in your state by contacting the Federal Motor Carrier Safety Administration. You may also obtain the name of a process agent via the Internet. Go to <http://www.fmcsa.dot.gov> then click on Licensing and Insurance (L&I) section.

In addition, your mover must participate in an arbitration program. As described earlier in this pamphlet, an arbitration program gives you the opportunity to settle certain types of unresolved loss or damage claims and disputes regarding charges that were billed to you by your mover after your shipment was delivered through a neutral arbitrator. You may find submitting your claim to arbitration under such a program to be a less expensive and more convenient way to seek recovery of your claim. Your mover is required to provide you with information about its arbitration program before you move. If your mover fails to do so, ask the mover for details of its program.

**§ 375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?**

(a) If a shipment is partially lost or destroyed, you may first collect your freight charges for the entire shipment, if you choose. If you do this, you must refund the portion of your published freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services), at the time you dispose of claims for loss, damage, or injury to the articles in the shipment under part 370 of this chapter.

(b) To calculate the amount of charges applicable to the shipment as delivered, you must multiply the percentage corresponding to the delivered shipment by the total charges applicable to the shipment tendered by the individual shipper. The following four conditions also apply:

- (1) If the charges computed exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of household goods and not to charges for other services the individual shipper ordered.
- (2) You must collect any specific valuation charge due.
- (3) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.
- (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.

(c) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) partially lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

**[Related advice to shippers contained in  
Your Rights and Responsibilities When You Move]**

**If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?**

Movers customarily make every effort to avoid losing, damaging, or destroying any of your items while your shipment is in their possession for transportation. However, despite the precautions taken, articles are sometimes lost or destroyed during the move.

In addition to any money you may recover from your mover to compensate for lost or destroyed articles, you may also recover the transportation charges represented by the portion of the shipment lost or destroyed. Your mover may only apply this paragraph to the transportation of household goods. Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you. Your mover must require you to pay any specific valuation charge due.

For example, if you pack a hazardous material (*i.e.*, gasoline, aerosol cans, motor oil, etc.) and your shipment is partially lost or destroyed by fire in storage or in the mover's trailer, your mover may require you to pay for the full cost of transportation.

Your mover may first collect its freight charges for the entire shipment, if your mover chooses. At the time your mover disposes of claims for loss, damage, or injury to the articles in your shipment, it must refund the portion of its freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services).

**§ 375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?**

(a) You are forbidden from collecting, or requiring an individual shipper to pay, any freight charges (including any charges for accessorial or terminal services) when a household goods shipment is *totally lost or destroyed* in transit. The following two conditions also apply:

- (1) You must collect any specific valuation charge due.
- (2) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.

(b) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) totally lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
TRANSPORTATION OF HOUSEHOLD GOODS  
CONSUMER PROTECTION REGULATIONS  
49 C.F.R. PART 375**

[Regulations and advice to consumers  
related to the arbitration of loss or damage disputes]

**Subpart B—Before Offering Services to My Customers**

**Liability Considerations**

**§ 375.211 Must I have an arbitration program?**

(a) You must have an arbitration program to resolve property loss and damage disputes for individual shippers. You must establish and maintain an arbitration program with the following eleven (11) minimum elements:

- (1) You must design your arbitration program to prevent you from having any special advantage in any case where the claimant resides or does business at a place distant from your principal or other place of business.
- (2) Before execution of the order for service, you must provide notice to the individual shipper of the availability of neutral arbitration, including all three of the following items:
  - (i) A summary of the arbitration procedure.
  - (ii) Any applicable costs.
  - (iii) A disclosure of the legal effects of election to use arbitration.
- (3) Upon the individual shipper's request, you must provide information and forms you consider necessary for initiating an action to resolve a dispute under arbitration.
- (4) You must require each person you authorize to arbitrate to be independent of the parties to the dispute and capable of resolving such disputes, and you must ensure the arbitrator is authorized and able to obtain from you or the individual shipper any material or relevant information to carry out a fair and expeditious decision-making process.
- (5) You must not charge the individual shipper more than one-half of the total cost for instituting the arbitration proceeding against you. In the arbitrator's decision, the arbitrator may determine which party must pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.
- (6) You must refrain from requiring the individual shipper to agree to use arbitration before a dispute arises.
- (7) Arbitration must be binding for claims of \$10,000 or less, if the individual shipper requests arbitration.
- (8) Arbitration must be binding for claims of more than \$10,000, if the individual shipper requests arbitration and the carrier agree to it.
- (9) If all parties agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.
- (10) The arbitrator must render a decision within 60 days of receipt of written

notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

- (11) The arbitrator may extend the 60-day period for a reasonable period if you or the individual shipper fails to provide, in a timely manner, any information the arbitrator reasonably requires to resolve the dispute.
- (b) You must produce and distribute a concise, easy-to-read, accurate summary of the your arbitration program, including the items in this section.

### **§ 375.213 What information must I provide to a prospective individual shipper?**

- (a) Before you execute an order for service for a shipment of household goods, you must furnish to your prospective individual shipper, all five of the following documents:

\* \* \*

- (4) A concise, easy-to-read, accurate summary of your arbitration program.

\* \* \*

### **[Related Advice to Shippers contained in Your Rights and Responsibilities When You Move]**

#### **Must my mover have an arbitration program?**

Your mover must have an arbitration program for your use in resolving disputes concerning loss or damage to your household goods and disputes regarding charges that were billed to you in addition to those collected at delivery of your shipment. You have the right not to participate in the arbitration program. You may pursue court action under 49 U.S.C. 14706 to seek judicial remedies directly. Your mover must establish and maintain an arbitration program with the following 11 minimum elements:

- (1) The arbitration program offered to you must prevent your mover from having any special advantage because you live or work in a place distant from the mover's principal or other place of business.
- (2) Before your household goods are tendered for transport, your mover must provide notice to you of the availability of neutral arbitration, including the following three things:
  - (a) A summary of the arbitration procedure.
  - (b) Any applicable costs.
  - (c) A disclosure of the legal effects of electing to use arbitration.
- (3) Upon your request, your mover must provide information and forms it considers necessary for initiating an action to resolve a dispute under arbitration.
- (4) Each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes fairly and expeditiously. Your mover must ensure the arbitrator is authorized and able to obtain from you or your mover any material or relevant information to carry out a fair and expeditious decision-making process.
- (5) You must not be required to pay more than one-half of the arbitration's cost. The arbitrator may determine the percentage of payment of the costs for each party in the arbitration decision, but must not make you pay more than half.

- (6) Your mover must not require you to agree to use arbitration before a dispute arises.
- (7) You and your mover will be bound by arbitration for claims of \$10,000 or less if you request arbitration.
- (8) You will be bound by arbitration for claims of more than \$10,000 only if you request arbitration and your mover agrees to it.
- (9) If you and your mover both agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.
- (10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.
- (11) The 60-day period may be extended for a reasonable period if you fail, or your mover fails, to provide information in a timely manner. Your mover must produce and distribute a concise, easy-to-read, accurate summary of its arbitration program.

\* \* \*

### **What Other Information Must My Mover Provide Me?**

At the time your mover provides a written estimate, it must provide you with a copy of the Department of Transportation publication FMCSA-ESA-03-005 (or its successor publication) entitled "Ready to Move?". Before your mover executes an order for service for a shipment of household goods, your mover must furnish you with the following four documents:

- (1) The contents of Appendix A, "*Your Rights and Responsibilities When You Move*"—this pamphlet.
- (2) A concise, easy-to-read, accurate summary of your mover's arbitration program.
- (3) A notice of availability of the applicable sections of your mover's tariff for the estimate of charges, including an explanation that you may examine the tariff sections or have copies sent to you upon request.
- (4) A concise, easy-to-read, accurate summary of your mover's customer complaint and inquiry handling procedures. Included in this summary must be the following two items:
  - (a) The main telephone number you may use to communicate with your mover.
  - (b) A clear and concise statement concerning who must pay for telephone calls.

Your mover may, at its discretion, provide additional information to you.

## APPENDIX C

### FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION TRANSPORTATION OF HOUSEHOLD GOODS CONSUMER PROTECTION REGULATIONS 49 C.F.R. PART 375

[Regulation and advice to consumers related to  
liability insurance]

#### **§ 375.303 If I sell liability insurance coverage, what must I do?**

(a) You, your employee, or an agent, may sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments of any individual shippers only when the individual shipper releases the shipment for transportation at a value not exceeding 60 cents per pound (\$1.32 per kilogram) per article.

(b) You may offer, sell, or procure any type of insurance policy on behalf of the individual shipper covering loss or damage in excess of the specified carrier liability.

(c) If you sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments:

- (1) You must issue to the individual shipper a policy or other appropriate evidence of the insurance that the individual shipper purchased.
- (2) You must provide a copy of the policy or other appropriate evidence to the individual shipper at the time you sell or procure the insurance.
- (3) You must issue policies written in plain English.
- (4) You must clearly specify the nature and extent of coverage under the policy.
- (5) Your failure to issue a policy, or other appropriate evidence of insurance purchased, to an individual shipper will subject you to full liability for any claims to recover loss or damage attributed to you.
- (6) You must provide in your tariff for the provision of selling, offering to sell, or procuring liability insurance coverage. The tariff must also provide for the base transportation charge, including your assumption for full liability for the value of the shipment. This would be in the event you fail to issue a policy or other appropriate evidence of insurance to the individual shipper at the time of purchase.

**[Related advice to shippers contained in  
Your Rights and Responsibilities When You Move]**

#### **If My Mover Sells Liability Insurance Coverage, What Must My Mover Do?**

If your mover provides the service of selling additional liability insurance, your mover must follow certain regulations.

Your mover, its employees, or its agents, may sell, offer to sell, or procure additional liability insurance coverage for you for loss or damage to your shipment if you release

the shipment for transportation at a value not exceeding 60 cents per pound (\$1.32 per kilogram) per article.

Your mover may offer, sell, or procure any type of insurance policy covering loss or damage in excess of its specified liability.

Your mover must issue you a policy or other appropriate evidence of the insurance you purchased. Your mover must provide a copy of the policy or other appropriate evidence to you at the time your mover sells or procures the insurance. Your mover must issue policies written in plain English.

Your mover must clearly specify the nature and extent of coverage under the policy. Your mover's failure to issue you a policy, or other appropriate evidence of insurance you purchased, will subject your mover to full liability for any claims to recover loss or damage attributed to it.

Your mover's tariff must provide for liability insurance coverage. The tariff must also provide for the base transportation charge, including its assumption of full liability for the value of the shipment. This would offer you a degree of protection in the event your mover fails to issue you a policy or other appropriate evidence of insurance at the time of purchase.