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Amendments To Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 375, 383, 384, 385, 386, 390, and 395

RIN 2126–AA96

Amendments To Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Final Rule

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts as final certain regulations required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). These regulations govern State compliance plans under the Motor Carrier Safety Assistance Program; withholding of Federal-aid highway funds based on State noncompliance with the Commercial Driver's License Program; intrastate operations of interstate motor carriers; civil penalties and disqualifications for violations of out-of-service orders; civil penalties for denial of access to records and property and for violations of statutes and regulations governing hazardous materials transportation; exemption from the Federal hours-of-service regulations for operators of commercial motor vehicles engaged in certain defined operations; exemption of drivers of propane service or pipeline emergency vehicles during emergency conditions requiring immediate response; and interstate transportation of household goods. The SAFETEA–LU provisions requiring these rules became effective on August 10, 2005. Adoption of the rules is a nondiscretionary ministerial action that can be taken without issuing a notice of proposed rulemaking and receiving public comment, in accordance with an exception available to Federal agencies under the Administrative Procedure Act.

EFFECTIVE DATE: September 4, 2007. *Petitions for Reconsideration* must be received by the Agency not later than September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Frederic L. Wood, Office of Chief Counsel, Regulatory Affairs Division (MC–CCR), Federal Motor Carrier Safety Administration, Room W61–307, 1200 New Jersey Avenue, SE., Washington, DC 20590; by telephone at (202) 366–0834, or by electronic mail at *frederic.wood@dot.gov*.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

This final rule is based on the authority of the Federal Motor Carrier Safety Administration (FMCSA) to implement statutory directives enacted by several provisions of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144 (Aug. 10, 2005) (SAFETEA–LU). SAFETEA–LU enacted a wide range of provisions modifying various regulatory programs administered by FMCSA affecting motor carriers and related entities. A number of statutory provisions made changes that were mandatory, and their implementation does not require the exercise of discretion by FMCSA.

These statutory changes went into effect upon enactment of SAFETEA–LU on August 10, 2005. However, it is necessary to make conforming changes in the regulations administered by FMCSA to ensure these rules are consistent with the applicable statutes and can be applied and enforced. The provisions enacted by SAFETEA–LU and implemented in this final rule are as follows:

1. Section 4102 Increased penalties for out-of-service violations and false records.
2. Section 4103 Penalty for denial of access to records.
3. Section 4106 Motor carrier safety grants.
4. Section 4107 High Priority Activities and New Entrant Audits.
5. Section 4114 Intrastate operations of interstate motor carriers.
6. Section 4124(c) Commercial driver's license improvements; amounts withheld.
7. Section 4130 Operators of vehicles transporting agricultural commodities and farm supplies.
8. Section 4132 Hours of service for operators of utility service vehicles.
9. Section 4133 Hours-of-service rules for operators providing transportation to movie production sites.
10. Section 4146 Exemption during harvest periods.
11. Section 4147 Emergency condition requiring immediate response.
12. Section 4202 Household goods carriers—Definitions; application of provisions.
13. Section 4203 Household goods carriers—Payment of rates.
14. Section 4205 Household goods carrier operations.
15. Section 4207 Household goods carriers—Liability of carriers under receipts and bills of lading.
16. Section 4208 Household goods carriers—Arbitration requirements.
17. Section 4210 Household goods carriers—Penalties for holding household goods hostage.
18. Section 7112 Unsatisfactory safety ratings.
19. Section 7120 Civil penalty.

Each of the statutory provisions listed above may be incorporated in regulations adopted by FMCSA under authority granted by one or more of the following provisions: 49 U.S.C. 502, 13301, 31102, 31136, or 31317. FMCSA is authorized to implement these statutory provisions by delegation from the Secretary of Transportation in 49 CFR 1.73.

As noted previously, Congress gave the Agency no discretion with respect to implementation of these SAFETEA–LU provisions, and the action taken in this final rule is necessary to conform the Agency's regulations to the statutory directives. Therefore, the Agency may adopt this rule without issuing a notice of proposed rulemaking and receiving public comment, in accordance with an exception available to Federal agencies under the Administrative Procedure Act. The *Rulemaking Analyses and Notices* section of this preamble explains why notice and comment is not required for this final rule.

The final rule adopts these nondiscretionary ministerial regulations under title 49 of the Code of Federal Regulations. The specific changes necessary to conform the regulations to the statutory provisions are described in the next section.

SAFETEA–LU Provisions Implemented by the Final Rule

The Federal Motor Carrier Safety Regulations (FMCSRs) amended by this final rule encompass diverse subject areas. These subject areas include State compliance plans under the Motor Carrier Safety Assistance Program; withholding of Federal-aid highway funds based on State noncompliance with the Commercial Driver's License Program; intrastate operations of interstate motor carriers; civil penalties and disqualifications for violations of out-of-service (OOS) orders; civil penalty assessments applicable to motor carriers, brokers, and freight forwarders for denial of access to records and property; civil penalties for violations of statutes and regulations governing hazardous materials transportation; exemption from the Federal hours-of-service regulations for operators of commercial motor vehicles (CMVs) engaged in certain defined operations; exemption of drivers of propane service or pipeline emergency vehicles during emergency conditions requiring immediate response; and interstate

transportation of household goods.[1] The following discussion organizes by FMCSR subject area the SAFETEA–LU provisions implemented by this final rule. Under *Section-by-Section Discussion of Amendments to the FMCSRs*, we discuss in order of their appearance in the Code of Federal Regulations the specific conforming amendments being adopted.

Motor Carrier Safety Assistance Program (MCSAP) Grants—State Compliance Plans

Sec. 4106 of SAFETEA–LU (119 Stat. 1717) amends 49 U.S.C. 31102(b)(1) to modify and augment the conditions a State must meet to qualify for basic program funds under the MCSAP. The statute requires a State to document in the State Commercial Vehicle Safety Plan (CVSP) its commitment to meet the following seven additional conditions:

- Deploy technology to enhance the efficiency and effectiveness of CMV safety programs;
- Establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported to the Secretary of Transportation (Secretary);
- Participate in a national motor carrier safety data correction system prescribed by the Secretary;
- Include, in both the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;
- Enforce the registration (operating authority) requirements of 49 U.S.C. 13902 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without the required operating authority or beyond the scope of the motor carrier's operating authority;
- Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors; and
- Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

Sec. 4106 also modifies the benchmark by which the State ensures the continuity of annual State expenditures for CMV safety programs documented in the CVSP. Prior to enactment of SAFETEA–LU, section 31102(b)(1)(E) required that the State's total annual expenditures for CMV safety programs ''be maintained at a level at least equal to the average level of such expenditures for fiscal years 1997, 1998, and 1999.'' Sec. 4106 updates and standardizes this benchmark by replacing the words ''for fiscal years 1997, 1998, and 1999'' with the words ''3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.'' This new benchmark ensures aggregate annual expenditures for CMV safety programs reflect the States' previous levels of effort.

Additionally, sec. 4106 amends section 31102(c) to provide that a State may use a portion of MCSAP grant funds to conduct documented enforcement of State traffic laws—both laws and regulations designed to promote the safe operation of CMVs and laws and regulations relating to non-CMVs, when necessary to promote the safe operation of CMVs—provided the State maintains a level of motor carrier safety activities at least equal to its average level of such activities for fiscal years 2003, 2004, and 2005. However, the statute limits the portion of MCSAP basic program funds a State may use for noncommercial motor vehicle-related enforcement activities to no more than 5 percent, unless the Secretary determines a higher percentage will result in significant increases in CMV safety.

Sec. 4107(a) of SAFETEA–LU amends 49 U.S.C. 31104 to add a provision specifying the safety performance criteria for distribution of High Priority Activity funds as part of the MCSAP grants, as well as the set-aside amounts and eligible grant recipients. Under the newly enacted and currently effective provisions of section 31104(k)(2), the Secretary may set aside up to $15,000,000 for each fiscal year through 2009 for States, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. Sec. 31104(k)(4) provides that at least 90 percent of the amounts set aside shall be awarded in grants to State and local government agencies.

Sec. 4107(b) amends section 31144 to add a similar provision concerning New Entrant Funds. Under the newly enacted and currently effective provisions of section 31144(f), the Secretary shall set aside up to $29,000,000 from MCSAP grant funds per fiscal year and may make grants from this amount to State and local governments for new entrant motor carrier audits, without requiring a matching contribution from such governments. In addition, if the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier audits, the Secretary may use the funds set aside to conduct such audits for the State or local government.

Withholding of Federal-Aid Highway Funds Based on State Noncompliance With the Commercial Driver's License Program

Sec. 4124(c) of SAFETEA–LU (119 Stat. 1730) amends 49 U.S.C. 31314(a) and (b) by providing that the Secretary shall withhold from a State, based on noncompliance with the Commercial Driver's License (CDL) Program, ''up to'' a specified percentage (5 percent and 10 percent for the first and subsequent years, respectively) of Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(1), (3), and (4). As the Federal-aid withholding amounts previously were fixed at the above-noted percentages, this provision allows FMCSA a certain amount of discretion in determining the amount of Federal-aid highway funds to be withheld from a given State.

Intrastate Operations of Interstate Motor Carriers

Sec. 4114 of SAFETEA–LU (119 Stat. 1725) amends 49 U.S.C. 31144 by enhancing FMCSA's regulatory authority over the intrastate operations of interstate motor carriers and by directing the Agency to consider, as part of determining the safety ratings of interstate carriers that also operate in Canada and Mexico, the carriers' safety records in those countries. Specifically, Sec. 4114(a) amends section 31144(a) to affirm the Agency's authority, for the purposes of determining safety fitness ratings, to consider ''among other things the accident record'' (i.e., record of crashes) and safety inspection records of ''an owner or operator operating in interstate commerce'' and also ''the accident record and safety inspection record of such owner or operator * * * in operations that affect interstate commerce.'' Motor carriers already are required by 49 CFR 390.15 to record intrastate accidents on their accident registers. See *Accident Recordkeeping Requirements* issued by the Federal Highway Administration (FMCSA's predecessor organization within the

[1] These FMCSR sugject areas more precisely reflect the regulatory topics affected by the SAFETEA–LU provisions than do the SAFETEA–LU section titles listed in *Legal Basis for the Rulemaking*.

U.S. Department of Transportation), which clarified the definition of ''accident'' in 49 CFR 390.5 (60 FR 44439, Aug. 28, 1995). The provisions of section 31144(a)(1)(A), as amended by SAFETEA–LU, remove any uncertainty about the Agency's authority to utilize such data in determining a carrier's safety fitness. Additionally, sec. 4114(a) authorizes the Agency to consider such data from operations in Canada and Mexico, if the owner or operator also conducts operations within the United States.

Sec. 4114(b) provides that if FMCSA determines a motor carrier is unfit and prohibits the carrier from operating in interstate commerce, the Agency also must place out of service the carrier's operations affecting interstate commerce.

Finally, section 4114(c) provides that, if a State receiving MCSAP funds and using FMCSA's safety rating methodology prohibits the intrastate operations of a carrier whose principal place of business is in that State, FMCSA must take reciprocal action by prohibiting the motor carrier from operating in interstate commerce.

It should be noted that section 4114(a) allows FMCSA to utilize, for purposes of evaluating the safety fitness of motor carriers that operate in the United States, data on ''the accident record and safety inspection record * * * in operations in Canada and Mexico'' whether the owner or operator is domiciled in Canada, Mexico, or the United States. This amendment expands the scope of 49 U.S.C. 31144(a)(1), but it is not an exercise of extraterritorial jurisdiction, because any fitness determinations resulting from utilization of this additional data would be effective only in the United States. Procedures for conducting compliance reviews on Mexico-domiciled carriers are set forth in part 385, subpart B; and FMCSA selectively conducts compliance reviews on Canada-domiciled motor carriers as appropriate. Discussions on harmonizing procedures for safety fitness determinations and expanding data sharing efforts are currently in progress with Mexico and Canada. Implementation of such agreements and procedures will be necessary to make more Canadian and Mexican data available for this purpose.

Civil Penalties and Disqualifications for Violations of Out-of-Service Orders

Sec. 4102(b)(2)–(4) of SAFETEA–LU (119 Stat. 1715) amends 49 U.S.C. 31310(i)(2) by increasing minimum CDL disqualification periods and civil penalty amounts applicable to drivers convicted of violating a driver or vehicle OOS order. It also increases the maximum civil penalty assessment applicable to employer violations of OOS orders.[2] These changes are as follows:

Minimum CDL disqualification periods. Sec. 4102(b) increases the minimum CDL disqualification periods applicable to drivers convicted of violating a driver or vehicle OOS order while transporting nonhazardous materials. Under previous 49 U.S.C. 31310(i)(2), such a driver must be disqualified from operating a CMV for no less than 90 days for the first conviction and at least 1 year for the second conviction. Sections 4102(b)(2) and (3) amend section 31310(i)(2) by increasing these minimum disqualification periods to 180 days for the first conviction and 2 years for the second conviction.

SAFETEA–LU does not affect the maximum disqualification periods prescribed in the FMCSRs for violating an OOS order. The minimum and maximum disqualification periods in the FMCSRs for OOS violations while transporting hazardous materials are also unchanged.

Minimum civil penalty assessments on drivers. Sec. 4102(b) increases the minimum civil penalty assessments applicable to drivers convicted of an OOS violation. Under previous 49 U.S.C. 31310(i)(2)(A) and (B), such violations carried a minimum civil penalty of $1,000 for both a first and second conviction. Sections 4102(b)(2) and (3) amend section 31310(i)(2) by increasing the minimum penalty amount for the first and second convictions to $2,500 and $5,000, respectively.

Maximum civil penalty assessments on employers. Under previous 49 U.S.C. 31310(i)(2)(C), an employer that knowingly allowed or required an employee to operate a CMV in violation of an OOS order was liable for a civil penalty of not more than $10,000. Sec. 4102(b)(4) amends this section by increasing the maximum civil penalty assessment to $25,000.

[2] The changes in penalties made by sec. 4102(a) of SAFETEA–LU (amending 49 U.S.C. 521(b)(2)(B) to increase the penalties for recordkeeping and reporting violation) does not require any change in the FMCSRs because they are automatically implemented by 49 CFR 386.81. The new criminal offense for knowing and willful violation of an OOS order added to 49 U.S.C. § 31310(i)(2)(D) by 4102(b)(5) of SAFETEA–LU also does not require any changes in the FMCSRs because the general provisions of Title 18 U.S.C. referred to provide for and implement penalties for violations of Federal criminal statutes.

Transportation of Hazardous Materials—Civil Penalty For Violation of Out-of-Service Order

Sec. 7112 of SAFETEA–LU (119 Stat. 1899) amends 49 U.S.C. 5113 and 31144 to provide that an interstate motor carrier owning or operating CMVs designed or used to transport hazardous materials for which placarding of a motor vehicle is required under chapter 51 of 49 U.S.C., that operates in interstate commerce after being placed out of service because of a final ''unsatisfactory'' safety rating, is subject to the civil and criminal penalties set forth in 49 U.S.C. 5123 and 5124. Those are penalties for violations of the Hazardous Materials Regulations (HMRs) that are higher than those found in the general civil and criminal penalty provisions under 49 U.S.C. 521 for violations of the FMCSRs. The maximum penalties available are increased to $100,000 per offense in cases where a violation results in death, serious illness, or severe injury to any person or substantial destruction of property.

Civil Penalties for Violations of Statutes and Regulations Governing Hazardous Materials Transportation

Sec. 7120 of SAFETEA–LU (119 Stat. 1905) amends 49 U.S.C. 5123 and 5124 to revise the maximum and minimum civil penalties pertaining to violations of the HMRs, including violations related to hazardous materials training. The maximum penalties that may be applied are increased to $100,000 per offense in cases where a violation results in death, serious illness, or severe injury to any person or substantial destruction of property. The amendments to the FMCSRs allow FMCSA, in the exercise of its concurrent authority to enforce the HMRs, to apply the penalties prescribed in the hazardous materials law.

Civil Penalties For Motor Carriers, Freight Forwarders, and Brokers That Deny FMCSA the Right To Access Their Records and Facilities

Sec. 4103 of SAFETEA–LU (119 Stat. 1716) amends 49 U.S.C. 521 by adding section 521(b)(2)(E), ''Copying of records and access to equipment, lands, and building.'' This section establishes a civil penalty applicable to a person subject to 49 U.S.C. chapter 51, or to a motor carrier, broker, freight forwarder, or CMV owner or operator subject to part B of subtitle VI, who does not allow, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings, and other

property in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b). Motor carriers and other entities or persons subject to FMCSA regulations must promptly submit accounts, books, records, memoranda, correspondence, and other documents for inspection and copying, as well as make their lands, buildings, equipment, and other property available for examination and inspection by FMCSA (or an employee designated by FMCSA) upon demand and display of a proper credential. The civil penalty established in sec. 4103 for violating this requirement is not to exceed $1,000 for each offense. Each day that access is denied is considered a separate offense; however the total penalty for all offenses related to a single violation may not exceed $10,000.

The primary goal of sec. 4103 is to compel uncooperative parties subject to the FMCSRs and/or the HMRs to promptly produce relevant records and allow access to property upon demand by credentialed FMCSA employees. As provided in the last sentence of section 521(b)(2)(E), additional remedies under 49 U.S.C. 502(d) and 507(c) are available to FMCSA to address situations not covered by the civil penalties added by sec. 4103.

Exemptions From the Federal Hours-of-Service Rules for Operators of CMVs Engaged in Certain Defined Operations

The statutory history of these provisions is complex. First, Sec. 4115 of SAFETEA–LU (119 Stat. 1726) amends title II of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748–1773) (MCSIA) to add a new sec. 229, set out as a note to 49 U.S.C. 31136.[3] Section 229 then was amended by subsequent sections of SAFETEA–LU to revise or add exemptions from the Federal hours-of-service regulations for drivers in certain defined operations. See 49 U.S.C. 31136 note. These exemptions are as follows:

Drivers transporting agricultural commodities. Sec. 4130(a) of SAFETEA–LU (119 Stat. 1743) amends the new sec. 229(a)(1) of MCSIA to restate the previous exemption of certain drivers transporting agricultural commodities or farm supplies for agricultural purposes within a State from regulations regarding maximum driving and on-duty time during planting and harvesting periods (as determined by the State), provided the transportation is limited to an area within a 100 air-mile radius of the source of the commodities or the distribution point for the farm supplies. Section 4130(c) added to section 229 of MCSIA two definitions related to this exemption. Sec. 229(c)(7) defines ''agricultural commodity'' as ''any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).'' Sec. 229(c)(8) defines ''farm supplies for agricultural purposes'' as including ''products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.''

Drivers of utility service vehicles. Sec. 4132 of SAFETEA–LU (119 Stat. 1744) further amends sec. 229(a) of MCSIA to add subsection (a)(4), which exempts drivers of utility service vehicles from the Federal hours-of-service regulations under the circumstances specified in the definition in subsection 229(c)(6) and prohibits enactment of similar regulations by States and other jurisdictions.

Drivers providing transportation to or from a motion picture production site. Sec. 4133 of SAFETEA–LU (119 Stat. 1744) (set out as a note to 49 U.S.C. 31136) provides that drivers transporting property or passengers to or from a theatrical or television motion picture production site located within a 100 air-mile radius of the driver's work-reporting location are exempt from the regulations currently in effect regarding maximum daily hours of service. Such drivers are subject instead to the maximum daily hours-of-service regulations in effect on April 27, 2003. At any time the driver operates beyond 100 air miles of the work-reporting location, this exception does not apply.

Exemption for the transportation of grapes in the State of New York during harvest periods. Sec. 4146 of SAFETEA–LU (119 Stat. 1749) suspends through fiscal year 2009 the applicability of regulations regarding maximum driving and on-duty time for drivers transporting grapes west of Interstate 81 in New York State during harvest periods (as determined by the State). This exception applies only if the transportation is within a 150 air-mile radius of where the grapes are picked and distributed.

Exemption of Drivers of Propane Service or Pipeline Emergency Vehicles During Emergency Conditions Requiring Immediate Response

Section 4147 of SAFETEA–LU (119 Stat. 1749) added a new subsection (f) to sec. 229 of MCSIA to provide an exception from regulations prescribed under the authority of 49 U.S.C. 31136 or 49 U.S.C. 31502 for drivers of CMVs used primarily in the transportation of propane winter heating fuel or used to respond to a pipeline emergency, if such a regulation would prevent the driver from responding to an emergency condition requiring immediate response. This exception applies to the driver, not to the CMV. Therefore, the regulations from which these drivers will be exempted while such emergency conditions prevail are limited to those in 49 CFR parts 390–399 that apply to the driver. The driver will not be exempted from the controlled substances and alcohol use and testing regulations and the commercial driver's license regulations in parts 382 and 383, respectively, because those regulations are prescribed under 49 U.S.C. chapter 313 rather than under sections 31136 or 31502 specified in section 4147. *See also* 49 CFR 382.103(a), 382.107 (definition of commercial motor vehicle), 383.3(a), and 383.5 (definition of commercial motor vehicle), which continue to apply the controlled substance and alcohol use and testing regulations and the CDL regulations to drivers who might be exempt from other regulations under section 229(f) of MCSIA.

The exception applies only when an otherwise applicable regulation in parts 390–399 would prevent the driver from responding to an emergency condition requiring immediate response. The driver's exemption from applicable regulations is not automatic or carte blanche. Rather, the determination whether the exemption is applicable must be made on a case-by-case basis after consideration of all facts and circumstances related to the emergency condition. Further, the circumstances that may constitute emergency conditions requiring immediate response are not limited to those identified in the statute. Any claim by the motor carrier or the driver that circumstances not specified in the statute constitute such an emergency condition must be evaluated by motor carrier enforcement personnel on a case-by-case basis.

[3] Section 229 was previously enacted as sec. 345 of Public Law 104–59, 109 Stat. 613 (November 28, 1995) and was also set out as a note to 49 U.S.C. 31136.

Interstate Transportation of Household Goods

This final rule amends certain FMCSRs governing elements of the interstate transportation of household goods, as follows:

A. Definitions and Applicability

Sec. 4202(b) of SAFETEA–LU (119 Stat. 1751) amends 49 U.S.C. 13102 by adding the statutory definitions for ''household goods motor carrier'' and ''individual shipper.'' The new statutory definition for individual shipper modifies the existing definition in 49 CFR 375.103. This final rule adds to § 375.103 the statutory definition of a household goods motor carrier. Under the definition, a motor carrier that transports household goods is considered a household goods motor carrier if it offers some or all of four additional services: (1) Providing binding and nonbinding estimates; (2) inventorying; (3) protective packing and unpacking of individual items at personal residences; and (4) loading and unloading at personal residences. As required by the statute, the definition excludes a motor carrier transporting household goods in containers or trailers that are entirely loaded and unloaded by an individual who is not employed by or acting as an agent of the carrier. Only carriers that are considered household goods motor carriers are subject to the provisions of 49 CFR part 375.

Sec. 4202(c) of SAFETEA–LU provides that the statutes (and, by extension, the implementing regulations) governing the transportation of household goods apply only to household goods motor carriers, as now defined in 49 U.S.C. 13102. Household goods motor carriers are subject in addition to provisions of statutes and regulations applicable to all motor carriers of property, unless specifically excluded.

B. Payment of Transportation Charges

Sec. 4203 of SAFETEA–LU amends 49 U.S.C. 13707(b) to limit the transportation charges individual shippers must pay to household goods motor carriers to obtain delivery of a shipment of household goods and to regulate procedures concerning additional charges.

Estimated charges. The motor carrier is required to relinquish the household goods at destination upon payment by the individual shipper of either 100 percent of a binding estimate or not more than 110 percent of a non-binding estimate. However, if only partial delivery of the goods is made, the carrier may not charge more than a prorated percentage of either (1) the binding estimate or (2) up to 110 percent of the non-binding estimate. The prorated amount must be based on the percentage of the weight of that portion of household goods delivered relative to the total weight of the shipment.

Additional charges. As applicable, the carrier also may require at destination payment of charges for (1) additional services requested by the shipper and not included in the estimate (post-contract services) and (2) impracticable operations, as defined by the carrier's tariff. Charges collected at delivery for impracticable operations must not exceed 15 percent of all other charges due at delivery. However, the individual shipper must pay any remaining impracticable operations charges within 30 days after the carrier presents its freight bill.

C. Operations and Estimates

Sec. 4205 of SAFETEA–LU (119 Stat. 1753) amends 49 U.S.C. 14104(b) by requiring the household goods motor carrier to conduct a physical survey of the household goods to be transported on behalf of the individual shipper. The carrier must then provide the shipper with a written estimate, based on the physical survey, of charges for the transportation and all related services. The statute permits two exceptions to the requirement for a physical survey.

First, the motor carrier need not conduct a physical survey if the household goods are located beyond a 50-mile radius of the location of the carrier's household goods agent preparing the written estimate provided to the individual shipper.

Second, the individual shipper may elect to waive a physical survey of the household goods. Such a waiver agreement is subject to several requirements. The waiver must be in writing; it must be signed by the individual shipper before the household goods shipment is loaded; and the motor carrier must retain a copy of the waiver as an addendum to the bill of lading. The copy of the waiver agreement is subject to the same record retention requirements that apply to the bill of lading, as provided in § 375.505(d).

Section 4205 also codified or added certain requirements for household goods motor carriers to provide two informational publications to individual shippers—''Ready to Move?'' and ''Your Rights and Responsibilities When You Move'' or any successor publications.

D. Limitations on Liability and Released Rates

Sec. 4207 of SAFETEA–LU (119 Stat. 1757) amends the liability provisions in 49 U.S.C. 14706(f) to impose on the household goods motor carrier a ''full value protection obligation'' with respect to the individual shipper. The motor carrier is liable for the full value of household goods that are lost, damaged, destroyed or otherwise not delivered to the final destination unless the individual shipper waives such liability in writing. The carrier's liability is equal to the replacement value of the household goods, subject to a maximum amount equal to the declared value of the shipment and to rules issued by the Surface Transportation Board (STB) and applicable tariffs. If the household goods motor carrier receives from the individual shipper a written waiver of liability for full value protection, the released rates established by the STB shall apply.

E. Arbitration Requirements

Sec. 4208 of SAFETEA–LU (119 Stat. 1757) amends the provisions governing procedures for arbitration of disputes in 49 U.S.C. 14708 as follows—

Sec. 14708(b), as amended by section 4208(b), increases from $5,000 to $10,000 the threshold amount at which the carrier must agree to submit certain disputes to binding arbitration at the individual shipper's request. If the dispute involves a claim of $10,000 or less and the shipper requests arbitration, the arbitration shall be binding on the parties. If a shipper requests arbitration involving a claim of more than $10,000, the decision of the arbitrator shall be binding on the parties only if the carrier agrees to the arbitration. Sec. 14708(b) is further amended by section 4208(c) to provide that the arbitrator may, among other appropriate remedies listed in the statute, order the shipper to pay additional carrier charges.

F. Penalties for Holding Household Goods Hostage

Sec. 4210 of SAFETEA–LU (119 Stat. 1758) amends chapter 149 of title 49 U.S.C. to add section 14915, which makes household goods motor carriers subject to civil and criminal penalties, as well as to suspension of registration, for failure to give up possession of the household goods upon tender of appropriate payment by the individual shipper. The civil penalty shall be not less than $10,000 for each violation, and each day the household goods are held hostage constitutes a separate violation. A violation may additionally result in the suspension of the household goods

motor carrier's registration under the provisions of 49 U.S.C. chapter 139. These penalties complement the provisions for payment of rates added by sec. 4203 as discussed previously.

Section-by-Section Discussion of the FMCSR Amendments [4]

A. Part 350—Commercial Motor Carrier Safety Assistance Program

In part 350, we revise §§ 350.111, 350.201, 350.211, and 350.309 to implement the amended requirements in sec. 4106(c)(2) of SAFETEA–LU concerning MCSAP-eligible funding for documented enforcement of State and local traffic laws and regulations designed to promote the safe operation of CMVs and non-CMVs. We further amend § 350.201, and amend § 350.301, to align the qualifying conditions for MCSAP Basic Program Funds and expenditure levels with those in sec. 4106(a)(1)(A), (a)(2)(E), (a)(3)(Q), (A)(3)(U), (A)(3)(V), and (A)(3)(X). These expanded requirements are captured as well in amended § 350.211, which provides the required format of the certification necessary for receipt of MCSAP Basic Program funding. The revisions to § 350.111 include minor editorial clarifications.

Changes to part 350 also are required by sec. 4107 of SAFETEA–LU, which amends the provisions regarding High Priority Activity funds and adds provisions for New Entrant Funds. In § 350.105, we amend the definition for High Priority Activity Funds and add a definition for New Entrant Funds to implement sec. 4107(a) and (b), respectively. As required by sec. 4107(a), High Priority funds are now to be allocated only to ''State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies,'' and used for ''carrying out high priority activities and projects that improve commercial motor vehicle safety * * *.'' Additionally, projects eligible for high priority funds include demonstration of new technologies and public awareness and education.

We implement this heightened specificity regarding High Priority grant recipients not only in the amended definition under § 350.105 but also in § 350.313(c). The set-asides for High Priority and New Entrant grants provided in sec. 4107(a) and (b), respectively, are implemented in § 350.313(a). The High Priority annual set-aside (which is up to $15,000,000 for fiscal years 2006 through 2009) is implemented as well in § 350.319(d).

Similarly, § 350.321(d) provides that in each fiscal year the Administrator shall set aside for New Entrant activities an amount of MCSAP funding up to the maximum allowed by law. For each year, the maximum allowable amount is $29,000,000. To allow for future adjustments of the set-aside amounts by Congress, the regulatory text does not specify the amounts and applicable fiscal years. Section 350.321 (whose heading is revised to read, ''What are permissible uses of New Entrant Funds?'') provides in addition that FMCSA will allocate New Entrant funds to State and local governments without requiring a matching contribution.

We further implement sec. 4107 in § 350.329, whose heading is revised to read ''How may a State or local agency qualify for High Priority or New Entrant Funds?''

Finally, we remove § 350.217. This section concerns MCSAP grant funds authorized under sec. 103(b)(1) of MCSIA, which is no longer in effect.

B. Part 375—Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

We amend § 375.103 to revise the definition of ''individual shipper'', to add a definition for ''household goods motor carrier'', as required by sec. 4202(b) of SAFETEA–LU, and to revise the related definitions of ''you'' and ''your'' to reflect the new definition. As sec. 4202(c) limits the applicability of the regulations governing interstate transportation of household goods to household goods motor carriers as defined in sec. 4202(b), we amend § 375.101, entitled ''Who must follow these regulations?'', to replace the words ''for-hire motor carrier'' with the words ''household goods motor carrier,'' consistent with the definition in § 375.103.

To implement the sec. 4207 requirement that the motor carrier provide the individual shipper with full value protection against loss of, or damage to, household goods, unless the shipper waives the carrier's full value liability in writing, we amend §§ 375.201(b) and (c), 375.501(a)(10), 375.505(b)(12), and the sections ''What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?'' and ''What Actions by Me Limit or Reduce My Mover's Normal Liability?'' in subpart B of appendix A to part 375.

We amend § 375.211 to implement the sec. 4208 requirements governing arbitration of disputes between the carrier and shipper regarding loss of or damage to the household goods. The introductory text to amended § 375.211(a) implements the provision in section 4208(c) requiring arbitration on the issue of whether the individual shipper must pay additional carrier charges not collected at delivery. Sections 375.211(a)(7) and (8) implement the increased claim-amount thresholds at which arbitration requested by the individual shipper shall be binding, as provided in section 4208(b). Both provisions also are described in subpart B of appendix A to part 375, under ''Must My Mover Have an Arbitration Program?''. The section 4208(c) provision concerning payment of additional carrier charges not collected at delivery is described as well in the section ''Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?'' under subpart H of this appendix.

We amend § 375.213 by revising paragraph (a) to implement the sec. 4205 requirement that the carrier provide the shipper a copy of the Department of Transportation publication FMCSA–ESA–03–005 entitled ''Ready to Move?'' (or its successor publication) [5] when providing the written estimate. We also make minor editorial revisions in § 375.213(c). We inform the individual shipper of the mover's obligation to provide him or her with a copy of ''Ready to Move?'' in ''What Information Must My Mover Provide Me?'' under subpart B of appendix A to part 375—the consumer pamphlet ''Your Rights and Responsibilities When You Move.''

The requirement in 49 U.S.C. 14104(b)(2) for the household goods motor carrier to provide the shipper with a copy of the publication ''Your Rights and Responsibilities When You Move'' is already contained in § 375.213. The contents of this publication are specified in Appendix A to part 375. The publication was reissued in 2006 (71 FR 17945, Apr. 7, 2006) to reflect most, but not all, of the statutory changes implemented by regulations now adopted in this final rule.[6] The revised publication, which also includes the remaining changes required by SAFETEA–LU, together

[4] To achieve a logical sequence of regulatory provisions, certain of the amended FMCSR sections include paragraphs that are redesignated (i.e., renumbered) but not otherwise revised.

[5] This publication is available on the FMCSA's Protect Your Move Web site at *http://www.protectyourmove.gov/documents/ReadyToMove-2006-april.pdf.*

[6] The current version of this publication, No. FMCSA–ESA–03–006, is also available on the same Web site at *http://www.protectyourmove.gov/documents/moving-rights-v9-final.pdf.*

with certain clarifying edits, is being published in this final rule.

We amend §§ 375.401(a), 375.403(a), and 375.405(b)(1) to implement the sec. 4205 requirement that the motor carrier's written estimate (whether binding or non-binding) be based on a physical survey of the household goods. The two exceptions to this requirement—the physical survey is not required if the household goods are located beyond a 50-mile radius of the carrier's agent preparing the estimate or if the shipper waives the requirement in writing—are found in amended §§ 375.401(a)(1) and (2). Amended §§ 375.403(a) and 375.405(b) include minor editorial revisions. Corresponding information is provided to the individual shipper in the section ''Must My Mover Estimate the Transportation and Accessorial Charges for My Move?'' under subpart D of Appendix A to part 375.

We further amend §§ 375.401, 375.403, 375.405, and 375.407 to implement certain provisions of 49 U.S.C. 13707(b), as amended by sec. 4203 of SAFETEA–LU. Under amended section 13707(b)(3)(C), the motor carrier may charge the shipper at delivery for post-contract services requested by the shipper. Post-contract services means services requested by the individual shipper after the bill of lading, which contains the terms and conditions of the contract between the carrier and the individual shipper, has been issued as provided in 49 CFR 375.505(a). Under amended section 13707(b)(3)(D), the carrier may require the shipper to pay charges at delivery for impracticable operations, provided these charges do not exceed 15 percent of all other charges due at delivery, and allow the shipper only a 30-day credit period for the remaining charges. These rules are implemented in §§ 375.401(e), 375.403(a)(9) and (10); 375.405(b); 375.407(a), (b), and (d); 375.703, 375.707(a)(2) and (3); 375.807(c)(1); and appendix A to part 375. A minor, clarifying editorial revision is included in § 375.407(b).

The Appendix A revisions noted above are found in subparts D, G, and H. See ''Must My Mover Estimate the Transportation and Accessorial Charges for My Move?''; ''How Must My Mover Estimate Charges Under the Regulations?''; and ''What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?'' in subpart D; ''What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?'' in subpart G; and ''How Must My Mover Present Its Freight or Expense Bill to Me?''; ''If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?''; and ''What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?'' in subpart H.

We implement in § 375.707 the sec. 4203 prohibition (as codified in amended 49 U.S.C. 13707(b)(3)(B)) against a motor carrier's demanding full payment of freight charges at delivery after making only partial delivery of a shipment. Corresponding information is provided to individual shippers in the amended section ''If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?'' under subpart G of appendix A to part 375.

C. Part 383—Commercial Driver's License Standards; Requirements and Penalties

In part 383, we implement the increased civil penalty assessments against drivers and employers for violations of OOS orders (provided in sec. 4102(b)(2)–(4) of SAFETEA–LU) by amending § 383.53(b)(1) and (2), respectively. The increased minimum disqualification periods for drivers convicted of such violations are implemented in amended table 4 to § 383.51 (§ 383.51(e)).

D. Part 384—State Compliance With Commercial Driver's License Program

We implement the sec. 4124(c) provision concerning Federal-aid highway fund withholding amounts based on State noncompliance with the CDL Program in amended § 384.401(a) and (b), respectively (as renumbered as a result of the change described in the next paragraph), by replacing, in the phrase ''equal to 5 percent'' and the phrase ''equal to 10 percent,'' the words ''equal to'' with ''up to.'' We also add § 384.301(c), which allows States up to 3 years from the effective date of the final rule to come into compliance with the newly adopted requirements of subpart B to part 384. This provides sufficient time for the States to revise State legislation and establish procedures to incorporate the new requirements into existing systems.

In addition, this final rule makes a technical correction by removing §§ 384.401(a)(2) and (b)(2) and renumbers the preceding paragraphs accordingly. Like the previously discussed § 350.217, also being removed in this rule, §§ 384.401(a)(2) and (b)(2) refer to certain MCSAP grant funds authorized under sec. 103(b)(1) of MCSIA, which is no longer in effect.

E. Part 385—Safety Fitness Procedures

Sec. 4114 of SAFETEA–LU enhances FMCSA's regulatory authority over the intrastate operations of interstate motor carriers (*i.e.*, to intrastate operations affecting interstate commerce) and allows the Agency to consider, in determining the safety rating of an interstate carrier that also operates in Canada and/or Mexico, the carrier's safety records in those countries. We implement this requirement by adding a definition for ''motor carrier operations in commerce'' in § 385.3, amending the part 385 provisions concerning determination of motor carrier safety ratings, and amending the explanation of the safety rating process in appendix B to part 385.

''Motor carrier operations in commerce'' are defined as including both CMV transportation operations in interstate commerce and operations affecting interstate commerce in conformity with the statutory grant of authority. We use the term ''motor carrier operations in commerce'' throughout amended part 385—specifically §§ 385.7, 385.13, 385.17(g), and appendix B to part 385 (in new paragraph (f) and amended § II(B)). Minor editorial revisions are included in amended § 385.17(g) and § II(B) of appendix B to part 385.

To implement sec. 4114(a), which allows FMCSA to utilize among other things, for the purposes of safety ratings, the accident record and safety inspection record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of an owner or operator in operations that affect interstate commerce, both within the United States and (as such data becomes available) in operations in Canada and Mexico if the owner or operator also operates within the United States, we amend §§ 385.7(c), (d), (f), and (g).

We amend § 385.13(d)(1) to implement sec. 4114(b), which provides that if FMCSA determines that a motor carrier is unfit and then prohibits the carrier from operating in interstate commerce, the Agency also must place out of service any operations by the carrier that affect interstate commerce. Operations that affect interstate commerce are essentially any intrastate operation. We implement in § 385.13(d)(2) and (3) the complementary provision under sec. 4114(c) which requires that if a State receiving MCSAP funds and using FMCSA's safety rating methodology prohibits the intrastate operations of a carrier whose principal place of business is in that State, FMCSA must

take reciprocal action by prohibiting the motor carrier from operating in interstate commerce.

F. Part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings

In Appendix B to part 386, as required by sec. 7112 of SAFETEA–LU, we implement the increased maximum civil penalties to which motor carriers transporting hazardous materials in interstate commerce in quantities requiring placarding (in accordance with 49 U.S.C. chapter 51) are subject following receipt of a final ''unsatisfactory'' safety rating by revising paragraph (e)(1), revising and redesignating paragraph (e)(3), and adding paragraphs (e)(4) and (f)(2). The increased civil penalties in sec. 7120(a)(3) for violations of training-related HMRs are implemented in amended paragraph (e)(2) and new paragraph (f)(2) of this appendix B. New paragraphs (e)(5) and (f)(2) implement the higher civil penalties in sec. 7120(a)(2) for violations of statutes and regulations governing hazardous materials transportation where the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property.

New paragraph (g)(21) of this appendix B implements the civil penalty established in sec. 4210 of SAFETEA–LU for failure by a household goods motor carrier to relinquish a shipment for which the individual shipper has tendered payment in accordance with part 375. Lastly, we add paragraph (h) to this appendix B to implement the civil penalty established in sec. 4103 for a motor carrier, broker, or freight forwarder, or any person subject to 49 U.S.C. chapter 51, who denies FMCSA the right to access the company's records and facilities.

G. Part 390—Federal Motor Carrier Safety Regulations; General

In part 390, we implement sec. 4147 of SAFETEA–LU by adding to the existing exceptions in § 390.3(f) the exception for drivers responding to emergency conditions, and by adding in § 390.5 a definition for ''emergency condition requiring immediate response.'' As provided in §§ 382.103(c) and 383.3(b), the exceptions in § 390.3(f) are not applicable to part 382, Controlled Substances and Alcohol Use and Testing, and part 383, Commercial Driver's License Standards; Requirements and Penalties.

H. Part 395—Hours of Service of Drivers

Sec. 4130, 4132, 4133, and 4146 of SAFETEA–LU provide specific exceptions from the hours-of-service regulations for operators of vehicles transporting agricultural commodities and farm supplies, operators of utility service vehicles, transportation of property or passengers to or from motion picture production sites, and operators of CMVs transporting grapes west of Interstate 81 in the State of New York during a harvesting period, respectively. We implement sec. 4130 and 4132 by amending §§ 395.1(k)(2) and (n), respectively. Sec. 4133 is implemented by adding § 395.1(p), while the sec. 4146 exemption concerning the transportation of grapes during the harvest period in New York is implemented by adding § 395.1(q).

Rulemaking Analyses and Notices

Administrative Procedure Act

Generally agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the Administrative Procedure Act (APA), as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides a good cause exception from these requirements when notice and an opportunity to comment would be unnecessary. FMCSA finds that notice-and-comment is unnecessary prior to adoption of each provision in this final rule because the changes to regulations are statutorily mandated by Congress and the Agency is performing a nondiscretionary ministerial act. Therefore, notice-and-comment procedures under 5 U.S.C. 553 are not required by the APA and are not otherwise required by law.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA determined that this action does not meet the criteria for a ''significant regulatory action'' either as specified in Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). Therefore, this rule has not been reviewed by the Office of Management and Budget (OMB). We anticipate the economic impact of this rulemaking will be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Costs and Benefits of Safety Regulations

Although a full regulatory evaluation is unnecessary because of the low economic impact of this rulemaking, FMCSA prepared a cost-benefit analysis of the impact of the various SAFETEA–LU provisions implemented by this final rule. This economic analysis examined each provision to determine whether it is economically significant, *i.e.*, whether it is likely to result in a cost of $100 million or more in any given year. FMCSA determined that the rule provisions, considered both individually and in the aggregate, will neither rise to the level of economic significance nor significantly impact public safety. The details of this cost-benefit analysis are provided in the Regulatory Evaluation developed by the Agency, which is available in the docket for this rulemaking.

Generally, the provisions of this final rule entail minor changes to operating procedures in specific segments of the industry that will have little if any impact on industry costs. Our analysis shows that the sec. 4114 provisions governing the intrastate operations of interstate carriers placed out of service as a result of an ''unsatisfactory'' safety rating, and the accident and safety records of interstate carriers while operating in Canada and/or Mexico, will negatively impact a small number of carriers. In addition, some motor carriers who transport household goods will bear added costs due to this rule. These provisions will not impose costs of $100 million or more in any one year. Moreover, given the poor safety ratings of the small number of motor carriers affected by the intrastate operations provision, placing their intrastate operations out of service would likely produce modest safety benefits. FMCSA believes, therefore, that the collective impacts of provisions in this final rule will not be economically significant.

Prior to prescribing any regulations under chapter 311 of title 49 U.S.C., FMCSA must consider their costs and benefits ''to the extent practicable and consistent with the purposes of'' that chapter. 49 U.S.C. 31136(c)(2)(A). The changes in 49 U.S.C. 31144 made by sec. 4114 of SAFETEA–LU are subject to this requirement. As indicated in the Regulatory Evaluation, these changes will result in a modest net safety benefit each year.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required

to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The regulations adopted in this final rule, taken together, will not impose an unfunded Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $128.1 million or more (as adjusted for inflation) in any one year. Therefore, FMCSA is not required either to consult with elected State officials or to comply with other requirements of this statute.

Executive Order 13132 (Federalism Assessment)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, Aug. 10, 1999). The requirements being promulgated in this final rule are required by statute. Although the regulation implementing sec. 4114 of SAFETEA–LU may appear, from a technical standpoint, to preempt State law, the Agency promulgates this rule exercising no discretion, since the statutory provisions are self-executing. Based on the preemptive effect of sec. 4114, FMCSA has consulted with elected State officials regarding the effects of this final rule. However, since this rule is not significant as defined by Executive Order 12866, no Federalism Summary Impact statement is required.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to the programs covered by this final rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA analyzed each provision of this final rule and determined that certain provisions require changes to existing information collections (ICs). The IC revisions will require approval by OMB before taking effect. The affected ICs are titled ‘‘Motor Carrier Safety Assistance Program’’ (2126–0010), and ‘‘Transportation of Household Goods; Consumer Protection’’ (2126–0025).

In November 2006, the Agency published a **Federal Register** notice providing a 60-day comment period on its intent to request OMB approval of the revised ICs (71 FR 67198, Nov. 20, 2006). This notice sought comment on the revisions to the two ICs referred to above, as well as a third—‘‘Commercial Driver Licensing and Test Standards’’ (2126–0011). FMCSA has since determined that this final rule will not affect the currently approved information collection in this third item.

These two ICs affected by this final rule, and the total annual burden hours estimated by FMCSA, are as follows:

OMB Control Number: 2126–0010.

Title: Motor Carrier Safety Assistance Program.

Type of Review: Revision of a currently approved collection.

Respondents: State Grant Applicants.

Number of Respondents: 52 (per quarter).

Estimated Time per Response: 80 hours.

Expiration Date of OMB Approval: November 30, 2007.

Frequency: Quarterly (reports) and annually (grant application).

Total Annual Burden: 11,232 hours.

Form Numbers: MCSAP–1, MCSAP–2, and MCSAP–2A.

OMB Control Number: 2126–0025.

Title: Transportation of Household Goods; Consumer Protection.

Type of Review: Revision of a currently approved collection.

Respondents: Motor Carriers and Individual Shippers of Household Goods.

Number of Respondents: 5,400.

Estimated Time per Response: Varies from 30 minutes to distribute consumer publication to 150 minutes to conduct physical survey.

Expiration Date of OMB Approval: August 31, 2008.

Frequency: On occasion.

Total Annual Burden: 4,552,737 hours.

Form Number: MCSA–2P.

The Agency received one comment in response to the November notice, which contained no substantive remarks pertaining to any of the information collections, and consequently was not incorporated into the supporting statement. Subsequently in April 2007, FMCSA published in the **Federal Register** a notice requesting public comment to OMB within 30 days on the requested approval of the IC revisions (72 FR 20164, April 23, 2007).

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and determined under FMCSA environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that all except two provisions of the rule are categorically excluded (CE) based on Appendix 2 of the FMCSA Order. Not categorically excluded from environmental analysis are (1) the requirements in part 385 concerning the ‘‘accident record and safety inspection record’’ of motor carrier operations in commerce and the ‘‘accident record and safety inspection record’’ of interstate carriers while operating in Canada and/or Mexico (sec. 4114 of SAFETEA–LU) and (2) the hours-of-service exemptions in part 395 for operators of CMVs in certain defined operations (sec. 4130, 4132, 4133, and 4146 of SAFETEA–LU).

FMCSA conducted an Environmental Assessment (EA) to analyze the impacts of these two provisions. The Agency's EA finds that the provisions collectively will have no significant environmental impacts. It includes a chart indicating whether or not the provisions are categorically excluded from environmental analysis and the CE for each, where applicable.

Based upon the EA findings, no Environmental Impact Statement is required for this rule. The Agency prepared a Finding of No Significant Impact (FONSI) in accordance with the procedures in FMCSA Order 5610.1 and NEPA requirements and guidance.

We also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it implements an administrative action or organizational change via the rulemaking process. See 40 CFR 93.153(c)(2). This action will not result in any significant emissions increase, nor does it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule will not increase total commercial motor vehicle mileage, change the routing of commercial motor vehicles, change how commercial motor vehicles operate, or change the commercial motor vehicle fleet-mix of motor carriers. While the exemptions from the hours-of-service regulations in part 395 for drivers in certain defined operations may slightly

increase overall commercial motor vehicle mileage, this change should likewise be *de minimis*.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agency's EA, discussed under *National Environmental Policy Act*, would result in high and adverse environmental impacts.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not create an environmental risk to health or safety that would disproportionately affect children. Therefore, we have determined the rule is not a ''covered regulatory action'' as defined under Executive Order 13045.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, FMCSA amends 49 CFR parts 350, 375, 383, 384, 385, 386, 390, and 395 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 is revised to read as follows:

Authority: 49 U.S.C. 13902, 31100–31104, 31108, 31136, 31140–31141, 31144, 31161, 31310–31311, 31502; and 49 CFR 1.73.

■ 2. Amend § 350.105 to revise the definition for ''High Priority Activity Funds'' and to add, in correct alphabetical placement, a definition for ''New Entrant Funds'' to read as follows:

§ 350.105 What definitions are used in this part?

* * * * *

High Priority Activity Funds means funds provided for carrying out high-priority activities and projects that improve CMV safety and compliance with CMV safety regulations (including activities and projects that are national in scope), increase public awareness and education, demonstrate new technologies, and reduce the number and rate of accidents involving CMVs.

* * * * *

New Entrant Funds means funds provided to State and local governments to conduct safety audits on New Entrant motor carriers under the New Entrant Safety Assurance Program.

* * * * *

■ 3. Revise § 350.111 to read as follows:

§ 350.111 What constitutes traffic enforcement for the purpose of the MCSAP?

Traffic enforcement means enforcement activities of State or local officials, including the stopping of vehicles operating on highways, streets, or roads for moving violations of State or local motor vehicle or traffic laws (e.g., speeding, following too closely, reckless driving, improper lane changes).

■ 4. Amend § 350.201 to revise paragraphs (b), (f), (s), and (t)(1) and to add paragraphs (w), (x), and (y) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

* * * * *

(b) Implement performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of CMV safety programs.

* * * * *

(f) Maintain the aggregate expenditure of funds by the State and its political subdivisions, exclusive of Federal funds, for CMV safety programs eligible for funding under this part, at a level at least equal to the average level of expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.

* * * * *

(s) Establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and ensure the State's participation in a national motor carrier

safety data correction system prescribed by FMCSA.

* * * * *

(t)(1) Enforce registration (i.e., operating authority) requirements under 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a by prohibiting the operation of (i.e., placing out of service) any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.

* * * * *

(w) Include in the training manual for the licensing examination to drive a CMV and the training manual for the licensing examination to drive a non-CMV information on best practices for driving safely in the vicinity of non-CMVs and CMVs.

(x) Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

(y) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border maintenance facility, destination, or other location where a motor carrier may make a planned stop.

■ 5. Amend § 350.211 to revise paragraphs 8., 11., and 13. through 17., and to add paragraphs 18., 19., 20., and 21. to read as follows:

§ 350.211 What is the format of the certification required by § 350.209?

* * * * *

8. The State must maintain the average aggregate expenditure of the State and its political subdivisions, exclusive of Federal assistance and State matching funds, for CMV safety programs eligible for funding under the Basic program at a level at least equal to the average level of expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year. These expenditures must cover at least the following four program areas, as applicable:

a. Motor carrier safety programs in accordance with 49 CFR 350.109.

b. Size and weight enforcement programs in accordance with 49 CFR 350.309(c)(1).

c. Drug interdiction enforcement programs in accordance with 49 CFR 350.309(c)(2).

d. Traffic safety programs in accordance with 49 CFR 350.309(d).

* * * * *

11. The State will establish a program to provide FMCSA with accurate, complete, and timely reporting of motor carrier safety information that includes documenting the effects of the State's CMV safety programs; participate in a national motor carrier safety data correction program (DataQs); participate in SAFETYNET; and ensure information is exchanged in a timely manner with other States.

* * * * *

13. The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to CMV safety.

14. The State will ensure that MCSAP agencies have departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

15. The State will ensure that requirements relating to the licensing of CMV drivers are enforced, including checking the status of CDLs.

16. The State will ensure that MCSAP-funded personnel, including sub-grantees, meet the minimum Federal standards set forth in 49 CFR part 385, subpart C for training and experience of employees performing safety audits, compliance reviews, or driver/vehicle roadside inspection.

17. The State will enforce operating authority requirements under 49 CFR 392.9a by prohibiting the operation of any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.

18. The State will enforce the financial responsibility requirements under 49 CFR part 387 as applicable to CMVs subject to the provisions of 49 CFR 392.9a.

19. The State will include, in the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for safe driving in the vicinity of noncommercial and commercial motor vehicles.

20. The State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

21. The State will ensure that, except in the case of an imminent or obvious safety hazard, an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where motor carriers may make planned stops.

Date ____________________

Signature ____________________

§ 350.217 [Removed]

■ 6. Remove § 350.217.

■ 7. Amend § 350.301 to revise paragraph (a) to read as follows:

§ 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

(a) The State must maintain the average aggregate expenditure of the State and its political subdivisions, exclusive of Federal funds and State matching funds, for CMV safety programs eligible for funding under this part at a level at least equal to the average level of expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.

* * * * *

■ 8. Amend § 350.309 to revise paragraph (c) and to add paragraph (d) to read as follows:

§ 350.309 What activities are eligible for reimbursement under the MCSAP?

* * * * *

(c) The following two activities, when accompanied by an appropriate North American Standard Inspection and inspection report:

(1) Enforcement of CMV size and weight limitations at locations other than fixed weight facilities; at specific locations such as steep grades or mountainous terrains where the weight of a CMV can significantly affect the safe operation of the vehicle; or at ports where intermodal shipping containers enter and leave the United States.

(2) Detection of the unlawful presence of a controlled substance in a CMV or on the person of any occupant (including the operator) of the vehicle.

(d) Documented enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs, including documented enforcement of such laws and regulations relating to non-CMVs when necessary to promote the safe operation of CMVs, if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005. The State may not use more than 5 percent of its MCSAP Basic Program funds for enforcement activities relating to non-CMVs unless the Administrator determines that a higher percentage will result in significant increases in CMV safety.

■ 9. Amend § 350.313 to revise paragraphs (a)(1), (a)(2), and (c) and to add paragraph (d) to read as follows:

§ 350.313 How are MCSAP funds allocated?

(a) * * *

(1) An amount of the MCSAP funds appropriated for each fiscal year up to the maximum allowed by law may be distributed for High Priority Activities and Projects at the discretion of the Administrator.

(2) An amount of the MCSAP funds appropriated for each fiscal year up to the maximum allowed by law may be distributed for safety audits of New Entrant motor carriers under the New Entrant Safety Assurance Program at the discretion of the Administrator.

* * * * *

(c) The funding provided under paragraph (a)(1) of this section may be made available to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. At least 90 percent of the amount set aside in a fiscal year shall be awarded in grants to State agencies and local government agencies.

(d) The funding provided under paragraph (a)(2) of this section may be made available to State and local governments. If the Administrator determines that a State or local government is not able to use government employees to conduct New Entrant motor carrier audits, the Administrator may use the funds under paragraph (a)(2) to conduct audits for such State or local governments.

■ 10. Amend § 350.319 to revise paragraph (d) and to add paragraph (e) to read as follows:

§ 350.319 What are permissible uses of High Priority Activity Funds?

* * * * *

(d) The Administrator may set aside an amount of MCSAP funding up to the maximum allowed by law for these projects and activities in each fiscal year.

(e) FMCSA will reimburse up to 80 percent of the eligible costs in the administration of an approved project plan, except that approved public information and education activities may be reimbursed up to 100 percent of the eligible costs.

■ 11. Revise § 350.321 to read as follows:

§ 350.321 What are permissible uses of New Entrant Funds?

(a) These funds may be used to conduct safety audits on New Entrant motor carriers under the New Entrant Safety Assurance Program.

(b) New Entrant funds will be allocated, at the discretion of FMCSA, to State and local governments.

(c) FMCSA will notify States when such funds are available.

(d) The Administrator may designate up to the maximum amount allowed by law of MCSAP funding for these projects in each fiscal year. FMCSA will reimburse up to 100 percent of the eligible costs in the administration of an approved project plan.

■ 12. Amend § 350.329 to revise the heading and republish paragraphs (a) and (b) to read as follows:

§ 350.329 How may a State or local agency qualify for High Priority or New Entrant Funds?

(a) States must meet the requirements of § 350.201, as applicable.

(b) Local agencies must meet the following nine conditions:

(1) Prepare a proposal in accordance with § 350.213, as applicable.

(2) Coordinate the proposal with the State lead MCSAP agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(3) Certify that your local jurisdiction has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal.

(4) Designate a person who will be responsible for implementation, reporting, and administering the approved proposal and will be the primary contact for the project.

(5) Agree to fund up to 20 percent of the proposed request.

(6) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant.

(7) Agree to use the forms and reporting criteria required by the State lead MCSAP agency and/or the FMCSA to record work activities to be performed under the proposal.

(8) Certify that the local agency will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

(9) Certify participation in national data bases appropriate to the project.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 13. The authority citation for part 375 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 13102, 13301, 13704, 13707, 14104, 14706, 14708; and 49 CFR 1.73.

■ 14. Revise § 375.101 to read as follows:

§ 375.101 Who must follow the regulations in this part?

You, a household goods motor carrier engaged in the interstate transportation of household goods, must follow the regulations in this part when offering your services to individual shippers. You are subject to this part only when you transport household goods for individual shippers by motor vehicle in interstate commerce. Interstate commerce is defined in § 390.5 of this subchapter.

■ 15. Amend § 375.103 to revise the definitions of ''individual shipper'' and ''you and your'' and to add, in correct alphabetical placement, the definition for ''household goods motor carrier'' to read as follows:

§ 375.103 What are the definitions of terms used in this part?

* * * * *

Household goods motor carrier means—

(1) In general, a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

(i) Binding and nonbinding estimates;

(ii) Inventorying;

(iii) Protective packing and unpacking of individual items at personal residences;

(iv) Loading and unloading at personal residences.

(2) The term includes any person considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005 (August 10, 2005).

(3) The term does not include any motor carrier providing transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

Individual shipper means any person who—

(1) Is the shipper, consignor, or consignee of a household goods shipment;

(2) Is identified as the shipper, consignor, or consignee on the face of the bill of lading;

(3) Owns the goods being transported; and

(4) Pays his or her own tariff transportation charges.

* * * * *

You and *your* means a household goods motor carrier engaged in the interstate transportation of household goods and its household goods agents.

■ 16. Amend § 375.201 to revise paragraph (b), to add paragraph (c), to redesignate paragraphs (c) and (d) as paragraphs (d) and (e), and to revise newly designated paragraph (d), to read as follows:

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

* * * * *

(b) Full Value Protection Obligation—In general, your liability is for the household goods that are lost, damaged, destroyed, or otherwise not delivered to

the final destination in an amount equal to the replacement value of the household goods. The maximum amount is the declared value of the shipment. The declared value is subject to rules issued by the Surface Transportation Board (STB) and applicable tariffs.

(c) If the shipper waives, in writing, your liability for the full value of the household goods, then you are liable for loss of, or damage to, any household goods to the extent provided in the STB released rates order. Contact the STB for a current copy of the Released Rates of Motor Carrier Shipments of Household Goods. The rate may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment.

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

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

■ 17. Amend § 375.211 to revise the introductory text to paragraph (a), paragraph (a)(7), and paragraph (a)(8) to read as follows:

§ 375.211 Must I have an arbitration program?

(a) You must have an arbitration program for individual shippers to resolve disputes about property loss and damage and disputes about whether carrier charges in addition to those collected at delivery must be paid. You must establish and maintain an arbitration program with the following 11 minimum elements:

* * * * *

(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 agrees to it.

* * * * *

■ 18. Revise § 375.213 to read as follows:

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

(a) When you provide the written estimate to a prospective individual shipper, you must also provide the individual shipper with a copy of Department of Transportation publication FMCSA–ESA–03–005 (or its successor publication) entitled ''Ready to Move?''.

(b) 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:

(1) The contents of appendix A of this part, entitled ''Your Rights and Responsibilities When You Move'' (Department of Transportation publication FMCSA–ESA–03–006, or its successor publication).

(2) A concise, easy-to-read, accurate estimate of your charges.

(3) A notice of the availability of the applicable sections of your tariff for the estimate of charges, including an explanation that individual shippers may examine these tariff sections or have copies sent to them upon request.

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

(5) A concise, easy-to-read, accurate summary of your customer complaint and inquiry handling procedures. Included in this description must be both of the following two items:

(i) The main telephone number the individual shipper may use to communicate with you.

(ii) A clear and concise statement concerning who must pay for telephone calls.

(c) To comply with paragraph (b)(1) of this section, you must ensure that the text and general order of the document you produce and distribute to prospective individual shippers are consistent with the text and general order of appendix A to this part. The following three items also apply:

(1) If we, the Federal Motor Carrier Safety Administration, choose to modify the text or general order of appendix A, we will provide the public appropriate notice in the **Federal Register** and an opportunity for comment as required by part 389 of this chapter before making you change anything.

(2) If you publish the document, you may choose the dimensions of the publication as long as the type font size is 10 points or larger and the size of the booklet is at least as large as 36 square inches (232 square centimeters).

(3) If you publish the document, you may choose the color and design of the front and back covers of the publication. The following words must appear prominently on the front cover in 12-point or larger bold or full-faced type: ''Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Federal Law.'' You may substitute your name or trade name in place of ''Your Mover'' if you wish (for example, *Furnished by XYZ Van Lines, as Required by Federal Law*).

(d) Paragraphs (c)(2) and (c)(3) of this section do not apply to exact copies of appendix A published in the **Federal Register** or the Code of Federal Regulations.

■ 19. Amend § 375.401 by redesignating paragraphs (a) through (g) as paragraphs (b) through (h), adding paragraph (a), and revising redesignated paragraphs (b) and (e) to read as follows:

§ 375.401 Must I conduct a physical survey and provide an estimate of the charges?

(a) You must conduct a physical survey of the household goods to be transported and provide the prospective individual shipper with a written estimate, based on the physical survey, of the charges for the transportation and all related services. There are *two exceptions* to the requirement to conduct a physical survey:

(1) If the household goods are located beyond a 50-mile radius of the location of the household goods motor carrier's agent preparing the estimate, the requirement to base the estimate on a physical survey does not apply.

(2) An individual shipper may elect to waive the physical survey. The waiver agreement is subject to the following requirements:

(i) It must be in writing;

(ii) It must be signed by the shipper before the shipment is loaded; and

(iii) The household goods motor carrier must retain a copy of the waiver agreement as an addendum to the bill of lading with the understanding that the waiver agreement will be subject to the same record retention requirements that apply to bills of lading, as provided in § 375.505(d).

(b) Before you execute an order for service for a shipment of household goods for an individual shipper, you must provide a written estimate of the total charges and *indicate whether it is a binding or a non-binding estimate*, as follows:

(1) *A binding estimate* is an agreement made in advance with your individual shipper. It guarantees the total cost of the move based upon the quantities and services shown on your estimate, which shall be based on the physical survey of the household goods, if required. You may impose a charge for providing a written binding estimate. The binding estimate must indicate that you and the shipper are bound by the charges.

(2) *A non-binding estimate* is what you believe the total cost will be for the move, based upon both the estimated weight or volume of the shipment and the accessorial services requested and the physical survey of the household goods, if required. A non-binding estimate is not binding on you. You will base the final charges upon the actual weight of the individual shipper's shipment and the tariff provisions in

effect. You may not impose a charge for providing a non-binding estimate.

* * * * *

(e) You must determine charges for any accessorial services such as elevators, long carries, etc., before preparing the order for service and the bill of lading for binding or non-binding estimates. If you fail to ask the shipper about such charges and fail to determine such charges before preparing the order for service and the bill of lading, you must deliver the goods and bill the shipper after 30 days for the additional charges, except that you may collect at delivery charges for impracticable operations that do not exceed 15 percent of all other charges due at delivery.

* * * * *

■ 20. Amend § 375.403 to revise paragraphs (a) and (b) to read as follows:

§ 375.403 How must I provide a binding estimate?

(a) You may provide a guaranteed binding estimate of the total shipment charges to the individual shipper, so long as it is provided for in your tariff. The individual shipper must pay the amount for the services included in your estimate. You must comply with the following 11 requirements:

(1) You must base the binding estimate on the physical survey unless one of the exceptions provided in § 375.401(a)(1) and (2) applies.

(2) You must provide the binding estimate in writing to the individual shipper or other person responsible for payment of the freight charges.

(3) You must retain a copy of each binding estimate as an attachment to be made an integral part of the bill of lading contract.

(4) You must clearly indicate upon each binding estimate's face that the estimate is binding upon you and the individual shipper. Each binding estimate must also clearly indicate on its face that the charges shown apply only to those services specifically identified in the estimate.

(5) You must clearly describe binding-estimate shipments and all services you are providing.

(6) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the binding estimate, you are not required to honor the estimate. If an agreement cannot be reached as to the price or service requirements for the additional goods or services, you are not required to service the shipment. However, if you do service the shipment, before loading the shipment you must do one of the following three things:

(i) Reaffirm your binding estimate.

(ii) Negotiate a revised written binding estimate listing the additional household goods or services.

(iii) Agree with the individual shipper, in writing, that both of you will consider the original binding estimate as a non-binding estimate subject to § 375.405.

(7) Once you load a shipment, failure to execute a new binding estimate or a non-binding estimate signifies you have reaffirmed the original binding estimate. You may not collect more than the amount of the original binding estimate, except as provided in paragraphs (a)(8) and (9) of this section.

(8) If you believe additional services are necessary to properly service a shipment after the bill of lading has been issued, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he or she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested. You must bill the individual shipper for the additional services after 30 days from delivery. If the individual shipper does not agree to pay the additional services, the carrier should perform only those additional services as are required to complete the delivery, and bill the individual shipper for the additional services after 30 days from delivery, except that you may collect at delivery charges for impracticable operations that do not exceed 15 percent of all other charges due at delivery.

(9) If the individual shipper requests additional services after the bill of lading has been issued, you must inform the individual shipper of the additional charges involved. You may require full payment at destination for these additional services and for 100 percent of the original binding estimate. If applicable, you also may require payment at delivery of charges for impracticable operations (as defined in your carrier tariff) not to exceed 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper any applicable charges not collected at delivery in accordance with subpart H of this part.

(10) Failure to relinquish possession of a shipment upon the individual shipper's offer to pay the binding estimate amount (or, in the case of a partial delivery, a prorated percentage of the binding estimate as set forth in paragraph (a)(11) of this section) plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for impracticable operations (subject to a maximum amount as set forth in paragraph 9 of this section), constitutes a failure to transport a shipment with "reasonable dispatch" and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(11) If you make only a partial delivery of the shipment, you may not demand upon delivery full payment of the binding estimate. You may demand only a prorated percentage of the binding estimate. The prorated percentage must be the percentage of the weight of that portion of the shipment delivered relative to the total weight of the shipment. For example, if you deliver only 2,500 pounds of a shipment weighing 5,000 pounds, you may demand payment at destination for only 50 percent of the binding estimate.

(b) In accordance with § 375.401(a), you may impose a charge for providing a written binding estimate. If you do not provide a binding estimate to an individual shipper, you must provide a non-binding estimate in accordance with § 375.405.

* * * * *

■ 21. Amend § 375.405 to revise paragraphs (b)(1), (b)(2), (b)(5), (b)(8), (b)(9) and (b)(10) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

* * * * *

(b) * * *

(1) You must provide reasonably accurate non-binding estimates based upon both the estimated weight or volume of the shipment and services required and the physical survey of the household goods, if required. If you provide a shipper with an estimate based on volume that will later be converted to a weight-based rate, you must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight.

(2) You must explain to the individual shipper that final charges calculated for shipments moved on non-binding estimates will be those appearing in your tariffs applicable to the transportation. You must explain that these final charges may exceed the approximate costs appearing in your estimate.

* * * * *

(5) You must clearly indicate on the face of a non-binding estimate that the

estimate is not binding upon you and the charges shown are the approximate charges to be assessed for the service identified in the estimate. The estimate must clearly state that the shipper will not be required to pay more than 110 percent of the non-binding estimate at the time of delivery.

* * * * *

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect more than 110 percent of the amount of the original non-binding estimate at destination, except as provided in paragraphs (b)(9) and (10) of this section.

(9) If you believe additional services are necessary to properly service a shipment after the bill of lading has been issued, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he or she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested. You must bill the individual shipper for the additional services after 30 days from delivery. If the individual shipper does not agree to pay the additional services, the carrier should perform only those additional services as are required to complete the delivery, and bill the individual shipper for the additional services after 30 days from delivery, except that you may collect at delivery charges for impracticable operations that do not exceed 15 percent of all other charges due at delivery.

(10) If the individual shipper requests additional services after the bill of lading has been issued, you must inform the individual shipper of the additional charges involved. You may require full payment at destination for these additional services and (unless you make only a partial delivery, in which case you must collect a prorated percentage of the original non-binding estimate as set forth in § 375.407(c) of this part) for up to 110 percent of the original non-binding estimate. If applicable, you also may require payment at delivery of charges for impracticable operations (as defined in your carrier tariff) not to exceed 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper any applicable charges not collected at delivery in accordance with subpart H of this part.

* * * * *

■ 22. Revise § 375.407 to read as follows:

§ 375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

(a) If an individual shipper pays you up to 110 percent of the non-binding estimate on a collect-on-delivery shipment (or, in the case of a partial delivery, a prorated percentage of the non-binding estimate as set forth in paragraph (c) of this section), you must relinquish possession of the shipment at the time of delivery. If there are either charges for any additional services requested by the shipper after the bill of lading has been issued and/or charges, if applicable, for impracticable operations (subject to a maximum amount as set forth in paragraph (d) of this section), and the shipper also pays you for such charges, you must relinquish possession of the shipment at the time of delivery. You must accept the form of payment agreed to at the time of estimate, unless the shipper agrees in writing to a change in the form of payment.

(b) Failure to relinquish possession of a shipment after the individual shipper offers to pay you up to 110 percent of the approximate costs of a non-binding estimate plus any additional charges described in paragraph (a) of this section constitutes a failure to transport a shipment with ''reasonable dispatch'' and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(c) If you make only a partial delivery of the shipment, you may not demand full payment of the non-binding estimate. You may demand at delivery only a prorated percentage of the non-binding estimate (or a prorated percentage of an amount up to 110 percent of the non-binding estimate). The prorated percentage must be the percentage of the weight of that portion of the shipment delivered relative to the total weight of the shipment. For example, if you deliver only 2,500 pounds of a shipment weighing 5,000 pounds, you may demand payment of 50 percent of not more than 110 percent of the non-binding estimate.

(d) You may not demand payment of charges for impracticable operations, as defined in your tariff, of more than 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper charges for impracticable operations not collected at delivery in accordance with subpart H of this part.

■ 23. Amend § 375.501 to revise paragraph (a)(10) to read as follows:

§ 375.501 Must I write up an order for service?

(a) * * *

(10) A statement of the declared value of the shipment, which is the maximum amount of your liability to the individual shipper under your Full Value Protection for the replacement value of any household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination. If the individual shipper waives, in writing, your Full Value Protection liability, you must include a copy of the waiver; the Surface Transportation Board's required released rates valuation statement; and the charges, if any, for optional valuation coverage (other than Full Value Protection). The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment.

* * * * *

■ 24. Amend § 375.505 to revise paragraph (b)(12) to read as follows:

§ 375.505 Must I write up a bill of lading?

* * * * *

(b) * * *

(12) A statement of the declared value of the shipment, which is the maximum amount of your liability to the individual shipper under your Full Value Protection for the replacement value of any household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination. If the individual shipper waives, in writing, your Full Value Protection liability for the declared value of the household goods, you must include a copy of the waiver; the Surface Transportation Board's required released rates valuation statement; and the charges, if any, for optional valuation coverage (other than Full Value Protection). The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment.

* * * * *

■ 25. Revise § 375.703 to read as follows:

§ 375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?

(a) On a binding estimate, the maximum amount is the exact estimate of the charges, plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for

impracticable operations as defined in your carrier tariff. The maximum amount of charges for impracticable operations you may collect on delivery is an amount equal to 15 percent of all other charges due at delivery.

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of the charges, plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for impracticable operations as defined in your carrier tariff. The maximum amount of charges for impracticable operations you may collect on delivery is an amount equal to 15 percent of all other charges due at delivery.

■ 26. Revise § 375.707 to read as follows:

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

(a) (1) If a shipment is partially lost or destroyed, you may collect at delivery:

(i) A prorated percentage of the binding estimate or a prorated percentage of up to 110 percent of the non-binding estimate. The prorated percentage is equal to the percentage of the weight of that portion of the shipment delivered relative to the total weight of the shipment. For example, if you deliver only 2,500 pounds of a shipment weighing 5,000 pounds, you may demand at destination, as applicable, only 50 percent of a binding estimate or 50 percent of not more than 110 percent of a non-binding estimate;

(ii) Charges for any additional services requested by the shipper after the bill of lading has been issued; and

(iii) Charges for impracticable operations, if applicable, except that such charges must not exceed 15 percent of all other charges due at delivery.

(iv) Any specific valuation charge due.

(2) You must bill and collect from the individual shipper any remaining charges not collected at delivery in accordance with subpart H of this part.

(b) 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) You may disregard paragraph (a)(1) of this section if loss or destruction was due to an act or omission of the individual shipper.

(d) 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 any rights to obtain a refund of 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 articles in the shipment under part 370 of this chapter.

■ 27. Amend § 375.807 to revise paragraph (c)(1) to read as follows:

§ 375.807 What actions may I take to collect the charges upon my freight bill?

* * * * *

(c) * * *

(1) You must automatically extend the credit period to a total of 30 calendar days for any shipper who has not paid your freight bill within the 7-day period. However, for charges for impracticable operations that are not collected at delivery, you may not extend the credit period beyond 30 days after you present your freight bill.

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■ 28. Revise Appendix A to part 375 to read as follows:

Appendix A to Part 375—Your Rights and Responsibilities When You Move

OMB No. 2126–0025

Furnished by Your Mover, as Required by Federal Law

Authority: 49 U.S.C. 13301, 13704, 13707, and 14104; 49 CFR 1.73.

What Is Included in This Pamphlet?

In this pamphlet, you will find a discussion of each of these topics:

Why Was I Given This Pamphlet?
What Are the Most Important Points I Should Remember From This Pamphlet?
What If I Have More Questions?

Subpart A—General Requirements

Who must follow the regulations?
What definitions are used in this Pamphlet?

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?
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?
May my mover have agents?
What items must be in my mover's advertisements?
How must my mover handle complaints and inquiries?
Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?
Must my mover have an arbitration program?
Must my mover inform me about my rights and responsibilities under Federal Law?
What other information must my mover provide to me?
How must my mover collect charges?
May my mover collect charges upon delivery?
May my mover extend credit to me?
May my mover accept charge or credit cards for my payments?

Subpart C—Service Options Provided

What service options may my mover provide?
If my mover sells liability insurance coverage, what must my mover do?

Subpart D—estimating charges

Must my mover estimate the transportation and accessorial charges for my move?
How must my mover estimate charges under the regulations?
What payment arrangements must my mover have in place to secure delivery of my household goods shipment?

Subpart E—Pickup of My Shipment of Household Goods

Must my mover write up an order for service?
Must my mover write up an inventory of the shipment?
Must my mover write up a bill of lading?
Should I reach an agreement with my mover about pickup and delivery times?
Must my mover determine the weight of my shipment?
How must my mover determine the weight of my shipment?
What must my mover do if I want to know the actual weight or charges for my shipment before delivery?

Subpart F—Transportation of My Shipment

Must my mover transport the shipment in a timely manner?
What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?
What must my mover do for me when I store household goods in transit?

Subpart G—Delivery of My Shipment

May my mover ask me to sign a delivery receipt releasing it from liability?
What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?
If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?
If my shipment is partially or totally lost or destroyed, what charges may my mover collect at delivery?
How must my mover calculate the charges applicable to the shipment as delivered?

Subpart H—Collection of Charges

Does this subpart apply to most shipments?
How must my mover present its freight or expense bill to me?

If I forced my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?
What actions may my mover take to collect from me the charges in its freight bill?
Do I have a right to file a claim to recover money for property my mover lost or damaged?

Subpart I—Resolving Disputes With My Mover

What may I do to resolve disputes with my mover?

Why Was I Given This Pamphlet?

The Federal Motor Carrier Safety Administration's (FMCSA) regulations protect consumers on interstate moves and define the rights and responsibilities of consumers and household goods carriers.

The household goods carrier (mover) gave you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. Your primary responsibility is to select a reputable household goods carrier, ensure that you understand the terms and conditions of the contract, and understand and pursue the remedies that are available to you in case problems arise. You should talk to your mover if you have further questions. The mover will also furnish you with additional written information describing its procedure for handling your questions and complaints. The additional written information will include a telephone number you can call to obtain additional information about your move.

What Are the Most Important Points I Should Remember From This Pamphlet?

1. Movers must give written estimates.
2. Movers may give binding estimates.
3. Non-binding estimates are not always accurate; actual charges may exceed the estimate.
4. If your mover provides you (or someone representing you) with any partially complete document for your signature, you should verify the document is as complete as possible before signing it. Make sure the document contains all relevant shipping information, except the actual shipment weight and any other information necessary to determine the final charges for all services performed.
5. You may request from your mover the availability of guaranteed pickup and delivery dates.
6. Be sure you understand the mover's responsibility for loss or damage, and request an explanation of the difference between valuation and actual insurance.
7. You have the right to be present each time your shipment is weighed.
8. You may request a reweigh of your shipment.
9. If you agree to move under a non-binding estimate, you should confirm with your mover—in writing—the method of payment at delivery as cash, certified check, cashier's check, money order, or credit card.
10. Movers must offer a dispute settlement program as an alternative means of settling loss or damage claims. Ask your mover for details.
11. You should ask the person you speak to whether he or she works for the actual mover or a household goods broker. A household goods broker must not represent itself as a mover. The broker is responsible only for arranging the transportation. It does not own the trucks used to transport the shipment and is required to find an authorized mover to provide the transportation. You should know that a household goods broker generally has no authority to provide you with an estimate for the move, unless the broker has a written agreement with the household goods carrier. If a household goods broker provides you with an estimate without a written agreement with the carrier, the estimate may not be binding and you may instead be required to pay the actual charges assessed by the mover. A household goods broker is not responsible for loss or damage.
12. You may request complaint information about movers from the Federal Motor Carrier Safety Administration under the Freedom of Information Act. You may be assessed a fee to obtain this information. See 49 CFR part 7 for the schedule of fees.
13. You should seek estimates from at least three different movers. You should not disclose any information to the different movers about their competitors, as it may affect the accuracy of their estimates.

What if I Have More Questions?

If this pamphlet does not answer all of your questions about your move, do not hesitate to ask for additional information from your mover's representative who handled the arrangements for your move, the driver who transports your shipment, or the mover's main office.

Subpart A—General Requirements

The primary responsibility for your protection lies with you in selecting a reputable household goods carrier, ensuring you understand the terms and conditions of your contract with your mover, and understanding and pursuing the remedies that are available to you in case problems arise.

Who Must Follow the Regulations?

The regulations inform motor carriers engaged in the interstate transportation of household goods (household goods motor carriers or movers) what standards they must follow when offering services to you. You, an individual shipper, are not directly subject to the regulations. However, your mover may be required by the regulations to demand that you pay on time. The regulations apply only to a mover that both transports your household goods by motor vehicle in interstate commerce—that is, when you are moving from one State to another—and provides certain types of additional services. The regulations do not apply when your interstate move takes place within a single commercial zone. A commercial zone is roughly equivalent to the local metropolitan area of a city or town. For example, a move between Brooklyn, NY, and Hackensack, NJ, would be considered within the New York City commercial zone and would not be subject to these regulations. Commercial zones are defined in 49 CFR part 372.

What Definitions Are Used in This Pamphlet?

Accessorial (Additional) Services—These are services such as packing, appliance servicing, unpacking, or piano stair carries that you request be performed (or that are necessary because of landlord requirements or other special circumstances). Charges for these services may be in addition to the line-haul charges.

Advanced Charges—These are charges for services performed by someone other than the mover. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading charges.

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an online database. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

Agent—A local moving company authorized to act on behalf of a larger, national company.

Appliance Service by Third Party—The preparation of major electrical appliances to make them safe for shipment. Charges for these services may be in addition to the line-haul charges.

Bill of Lading—The receipt for your goods and the contract for their transportation.

Carrier—The mover transporting your household goods.

Collect on Delivery (COD)—This means payment is required at the time of delivery at the destination residence (or warehouse).

Certified Scale—Any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale that is properly inspected and certified.

Estimate, Binding—This is a written agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Estimate, Non-Binding—This is what your mover believes the cost will be, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment, the services provided, and the tariff provisions in effect.

Expedited Service—This is an agreement with the mover to perform transportation by a set date in exchange for charges based upon a higher minimum weight.

Flight Charge—A charge for carrying items up or down flights of stairs. Charges for these services may be in addition to the line-haul charges.

Guaranteed Pickup and Delivery Service—An additional level of service featuring guaranteed dates of service. Your mover will provide reimbursement to you for delays. This premium service is often subject to minimum weight requirements.

High-Value Article—These are items included in a shipment valued at more than $100 per pound ($220 per kilogram).

Household Goods, as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by you or by another individual on your behalf. This may include items moving from a factory or store when you purchase them to use in your dwelling. You must request that these items be transported, and you (or another individual on your behalf) must pay the transportation charges to the mover.

Household Goods Motor Carrier means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services: (1) Binding and non-binding estimates, (2) Inventory, (3) Protective packing and unpacking of individual items at personal residences, and (4) Loading and unloading at personal residences. The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

Individual Shipper—Any person who—

1. Is the shipper, consignor, or consignee of a household goods shipment;
2. Is identified as the shipper, consignor, or consignee on the face of the bill of lading;
3. Owns the goods being transported; and
4. Pays his or her own tariff transportation charges.

Impracticable Operations generally refer to services required when operating conditions make it physically impossible for the motor carrier to perform pickup or delivery with its normally assigned road-haul equipment, so that the carrier must use smaller equipment and/or additional labor to complete pickup or delivery of the shipment. A mover may require *payment of additional charges for impracticable operations* even if you do not request these services. The specific services considered to be impracticable operations by your mover are defined in your mover's tariff.

Inventory—The detailed descriptive list of your household goods showing the number and condition of each item.

Line-Haul Charges—The charges for the vehicle transportation portion of your move. These charges, if separately stated, apply in addition to the accessorial service charges.

Long Carry—A charge for carrying articles excessive distances between the mover's vehicle and your residence. Charges for these services may be in addition to the line-haul charges.

May—An option. You or your mover may do something, but it is not a requirement.

Mover—A household goods motor carrier and its household goods agents.

Must—A legal obligation. You or your mover must do something.

Order for Service—The document authorizing the mover to transport your household goods.

Order (Bill of Lading) Number—The number used to identify and track your shipment.

Peak Season Rates—Higher line-haul charges applicable during the summer months.

Pickup and Delivery Charges—Separate transportation charges applicable to transporting your shipment between the storage-in-transit warehouse and your residence.

Reasonable Dispatch—The performance of transportation on the dates, or during the period of time, agreed upon by you and your mover and shown on the Order for Service/Bill of Lading. For example, if your mover deliberately withholds any shipment from delivery after you offer to pay the binding estimate or up to 110 percent of a non-binding estimate, plus any charges for additional services you requested that were not included in the estimate and/or permissible charges for impracticable operations, your mover has not transported the goods with reasonable dispatch. The term ''reasonable dispatch'' excludes transportation provided under your mover's tariff provisions requiring guaranteed service dates. Your mover will have the defense of force majeure, i.e., that the contract cannot be performed owing to causes that are outside the control of the parties and could not be avoided by exercise of due care.

Should—A recommendation. We recommend you or your mover do something, but it is not a requirement.

Shuttle Service—The use of a smaller vehicle to provide service to residences not accessible to the mover's normal line-haul vehicles.

Storage-In-Transit (SIT)—The temporary warehouse storage of your shipment pending further transportation, with or without notification to you. If you (or someone representing you) cannot accept delivery on the agreed-upon date or within the agreed-upon time period (for example, because your home is not quite ready to occupy), your mover may place your shipment into SIT without notifying you. In those circumstances, you will be responsible for the added charges for SIT service, as well as the warehouse handling and final delivery charges. However, your mover also may place your shipment into SIT if your mover was able to make delivery before the agreed-upon date (or before the first day of the agreed-upon delivery period) but you did not concur with early delivery. In those circumstances, your mover must notify you immediately of the SIT, and your mover is fully responsible for redelivery charges, handling charges, and storage charges.

Surface Transportation Board—An agency within the U.S. Department of Transportation that regulates household goods carrier tariffs, among other responsibilities. The Surface Transportation Board's address is 395 E Street, SW., Washington, DC 20423–0001. Tele. 202–245–0245.

Tariff—An issuance (in whole or in part) containing rates, rules, regulations, classifications, or other provisions. The Surface Transportation Board requires that a tariff contain three specific items. First, an accurate description of the services the mover offers to the public. Second, the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms for services offered to the public. Third, the mover's tariff must be arranged in a way that allows you to determine the exact rate(s) and service terms applicable to your shipment.

Valuation—The degree of worth of the shipment. The valuation charge compensates the mover for assuming a greater degree of liability than is provided for in its base transportation charges.

Warehouse Handling—A charge may be applicable each time SIT service is provided. Charges for these services may be in addition to the line-haul charges. This charge compensates the mover for the physical placement and removal of items within the warehouse.

We, Us, and *Our*—The Federal Motor Carrier Safety Administration (FMCSA).

You and *Your*—You are an individual shipper of household goods. You are a consignor or consignee of a household goods shipment and your mover identifies you as such in the bill of lading contract. You own the goods being transported and pay the transportation charges to the mover.

Where may other terms used in this pamphlet be defined? You may find other terms used in this pamphlet defined in 49 U.S.C. 13102. The statute controls the definitions in this pamphlet. If terms are used in this pamphlet and the terms are defined neither here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

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. The levels of liability are as follows:

(1) 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 Release 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: 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; replace the article with an article of like kind; or 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 could 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 of, or damage to, articles of extraordinary value, unless you specifically list on the shipping documents such articles for which you want liability coverage. 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.

(2) 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 $1,000 were lost or destroyed, the mover would be liable for no more than $6.00 (10 pounds × 60 cents 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 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 (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 5 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.

May My Mover Have Agents?

Yes, your mover may have agents. If your mover has agents, your mover must have written agreements with its prime agents. Your mover and its retained prime agent must sign their agreements. Copies of your mover's prime agent agreements must be in your mover's files for a period of at least 24 months following the date of termination of each agreement.

What Items Must Be in My Mover's Advertisements?

Your mover must publish and use only truthful, straightforward, and honest advertisements. Your mover must include certain information in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation). Your mover must require each of its agents to include the same information in its advertisements. The information must include the following two pieces of information about your mover:

(1) Name or trade name of the mover under whose U.S. DOT number the advertised service will originate.

(2) U.S. DOT number assigned by FMCSA authorizing your mover to operate. Your mover must display the information as: U.S. DOT No. (assigned number).

You should compare the name or trade name of the mover and its U.S. DOT number to the name and U.S. DOT number on the sides of the truck(s) that arrive at your residence. The names and numbers should be identical. If the names and numbers are not identical, you should ask your mover immediately why they are not. You should not allow the mover to load your household goods on its truck(s) until you obtain a satisfactory response from the mover's local agent. The discrepancies may warn of problems you will have later in your business dealings with this mover.

How Must My Mover Handle Complaints and Inquiries?

All movers are expected to respond promptly to complaints or inquiries from you, the customer. Should you have a complaint or question about your move, you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of these persons, you should then contact the mover's principal office. When you make such a call, be sure to have available your copies of all documents relating to your move.

Particularly important is the number assigned to your shipment by your mover.

Interstate movers are also required to offer neutral arbitration as a means of resolving consumer disputes involving loss of or damage to your household goods shipment and disputes regarding charges that your mover billed in addition to those collected at delivery. Your mover is required to provide you with information regarding its arbitration program. You have the right to pursue court action under 49 U.S.C. 14706 to seek judicial redress directly rather than participate in your mover's arbitration program.

All interstate moving companies are required to maintain a complaint and inquiry procedure to assist their customers. At the time you make the arrangements for your move, you should ask the mover's representative for a description of the mover's procedure, the telephone number to be used to contact the mover, and whether the mover will pay for such telephone calls. Your mover's procedure must include the following four things:

(1) A communications system allowing you to communicate with your mover's principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from you by any means of communication.

Your mover must give you a clear and concise written description of its procedure. You may want to be certain that the system is in place.

Do I Have the Right to Inspect My Mover's Tariffs (Schedules of Charges) Applicable to My Move?

Federal law requires your mover to advise you of your right to inspect your mover's tariffs (its schedules of rates or charges) governing your shipment. Movers' tariffs are made a part of the contract of carriage (bill of lading) between you and the mover. You may inspect the tariff at the mover's facility, or, upon request, the mover will furnish you a free copy of any tariff provision containing the mover's rates, rules, or charges governing your shipment.

Tariffs may include provisions limiting the mover's liability. This is generally described in a section on declaring value on the bill of lading. A second tariff provision may set the periods for filing claims. This is generally described in Section 6 on the reverse side of a bill of lading. A third tariff provision may reserve your mover's right to assess additional charges for additional services performed. For non-binding estimates, another tariff provision may base charges upon the exact weight of the goods transported. Your mover's tariff may contain other provisions that apply to your move. Ask your mover what they might be, and request a copy.

Must My Mover Have an Arbitration Program?

Your mover must have an arbitration program for your use in resolving disputes concerning loss of 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 and your mover 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 either you 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.

Must My Mover Inform Me About My Rights and Responsibilities Under Federal Law?

Yes, your mover must inform you about your rights and responsibilities under Federal law. Your mover must produce and distribute this document. It should follow the general order and contain the text of appendix A to 49 CFR part 375.

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 U.S. Department of Transportation publication FMCSA–ESA–03–005 entitled ''Ready to Move?'' (or its successor publication). 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 booklet.

2. A concise, easy-to-read, and 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.

How Must My Mover Collect Charges?

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. Your mover's freight or expense bill must contain the following 17 items:

(1) Name of the consignor.

(2) Name of the consignees.

(3) Date of the shipment.

(4) Origin point.

(5) Destination points.

(6) Number of packages.

(7) Description of the freight.

(8) Weight of the freight (if your shipment is moved under a non-binding estimate).

(9) Exact rate(s) assessed.

(10) Disclosure of the actual rates, charges, and allowances for the transportation service, when your mover electronically presents or transmits freight or expense bills to you. These rates must be in accordance with the mover's applicable tariff.

(11) An indication of whether adjustments may apply to the bill.

(12) Total charges due and acceptable methods of payment.

(13) The nature and amount of any special service charges.

(14) The points where special services were rendered.

(15) Route of movement and name of each mover participating in the transportation.

(16) Transfer points where shipments moved.

(17) Address where you must pay or address of bill issuer's principal place of business.

Your mover must present its freight or expense bill to you within 15 days of the date

of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays. If your mover lacks sufficient information to compute its charges, your mover must present its freight bill for payment within 15 days of the date when sufficient information does become available.

May My Mover Collect Charges Upon Delivery?

Yes. Your mover must specify the form of payment acceptable at delivery when the mover prepares an estimate and order for service. The mover and its agents must honor the form of payment at delivery, except when you mutually agree to a change in writing. The mover must also specify the same form of payment when it prepares your bill of lading, unless you agree to a change. See also ''May my mover accept charge or credit cards for my payments?''

You must be prepared to pay 10 percent more than the estimated amount, if your goods are moving under a non-binding estimate. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. In addition, your mover may also collect at the time of delivery the charges for any additional services you requested after the contract with your mover was executed (charges therefore not included in the estimate) and any charges for impracticable operations needed to accomplish delivery, as defined by the carrier's tariff. Charges collected at the time of delivery for impracticable operations must not exceed 15 percent of all other charges due at the time of delivery. You must pay all remaining charges for impracticable operations within 30 days after you receive the mover's freight bill.

May My Mover Extend Credit to Me?

Extending credit to you is not the same as accepting your charge or credit card(s) as payment. Your mover may extend credit to you in the amount of the tariff charges. If your mover extends credit to you, your mover becomes like a bank offering you a line of credit, whose size and interest rate are determined by your ability to pay its tariff charges within the credit period. Your mover must ensure you will pay its tariff charges within the credit period. Your mover may relinquish possession of freight before you pay its tariff charges, at its discretion.

The credit period must begin on the day following presentation of your mover's freight bill to you. Under Federal regulation, the standard credit period is 7 days, excluding Saturdays, Sundays, and Federal holidays. Your mover must also extend the credit period to a total of 30 calendar days if the freight bill is not paid within the 7-day period. A service charge equal to one percent of the amount of the freight bill, subject to a $20 minimum, will be assessed for this extension and for each additional 30-day period the charges go unpaid.

Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal household goods transportation credit regulations in good faith in the future before extending credit again.

May My Mover Accept Charge or Credit Cards for My Payments?

Your mover may allow you to use a charge or credit card for payment of the freight charges. Your mover may accept charge or credit cards whenever you ship with it under an agreement and tariff requiring payment by cash or cash equivalents. Cash equivalents are a certified check, money order, or cashier's check (a check that a financial institution—bank, credit union, savings and loan—draws upon itself and that is signed by an officer of the financial institution).

If your mover allows you to pay for a freight or expense bill by charge or credit card, your mover deems such a payment to be equivalent to payment by cash, certified check, or cashier's check. It must note in writing on the order for service and the bill of lading whether you may pay for the transportation and related services using a charge or credit card. You should ask your mover at the time the estimate is written whether it will accept charge or credit cards at delivery.

The mover must specify what charge or credit cards it will accept, such as American Express™, Discover™, MasterCard™, or Visa™. If your mover agrees to accept payment by charge or credit card, you must arrange with your mover for the delivery only at a time when your mover can obtain authorization for your credit card transaction. If you cause a charge or credit card issuer to reverse a transaction, your mover may consider your action tantamount to forcing your mover to provide an involuntary extension of its credit.

Subpart C—Service Options Provided

What Service Options May My Mover Provide?

Your mover may provide any service options it chooses. It is customary for movers to offer several price and service options.

The total cost of your move may increase if you want additional or special services. Before you agree to have your shipment moved under a bill of lading providing special service, you should have a clear understanding with your mover of what the additional cost will be. You should always consider whether other movers might provide the services you need without requiring you to pay the additional charges.

One service option is a *space reservation.* If you agree to have your shipment transported under a space reservation agreement, you will pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van your shipment actually occupies.

A second option is *expedited service.* This aids you if you must have your shipments transported on or between specific dates when the mover could not ordinarily agree to do so in its normal operations.

A third customary service option is exclusive use of a vehicle. If for any reason you desire or require that your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service.

Another service option is *guaranteed service on or between agreed dates.* You enter into an agreement with the mover where the mover provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined amount or a daily rate (per diem) regardless of the expense you might actually have incurred as a result of the mover's failure to perform.

Before requesting or agreeing to any of these price and service options, be sure to ask the mover's representatives about the final costs you will pay.

Transport of Shipments on Two or More Vehicles

Although all movers try to move each shipment on one truck, it becomes necessary, at times, to divide a shipment among two or more trucks. This may occur if your mover has underestimated the cubic feet (meters) of space required for your shipment and it will not all fit on the first truck. Your mover will pick up the remainder, or ''leave behind,'' on a second truck at a later time, and this part of your shipment may arrive at the destination later than the first truck. When this occurs, your transportation charges will be determined as if the entire shipment had moved on one truck.

If it is important for you to avoid this inconvenience of a ''leave behind,'' be sure your estimate includes an accurate calculation of the cubic feet (meters) required for your shipment. Ask your estimator to use a ''Table of Measurements'' form in making this calculation. Consider asking for a binding estimate. A binding estimate is more likely to be conservative with regard to cubic feet (meters) than a non-binding estimate. If the mover offers space reservation service, consider purchasing this service for the necessary amount of space plus some margin for error. In any case, you would be prudent to ''prioritize'' your goods in advance of the move so the driver will load the more essential items on the first truck if some are left behind.

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 of 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.

Subpart D—Estimating Charges

Must My Mover Estimate the Transportation and Accessorial Charges for My Move?

We require your mover to prepare a written estimate on every shipment transported for you. You are entitled to a copy of the written estimate when your mover prepares it. Your mover must provide you a written estimate of all charges, including transportation, accessorial, and advance charges. Your mover's "rate quote" is not an estimate. You and your mover must sign the estimate of charges. Your mover must provide you with a dated copy of the estimate of charges at the time you sign the estimate.

If the location you are moving from is within a 50-mile radius of your mover's (or its agent's) place of business, the estimate that your mover provides you must be based on a physical survey of your goods. You have the right to waive the requirement for a physical survey if you choose, but your waiver must be in the form of a written agreement signed by you before your shipment is loaded.

You should be aware that if you receive an estimate from a household goods broker, the mover may not be required to accept the estimate. Be sure to obtain a written estimate from a mover who tells you orally that it will accept the broker's estimate.

Your mover must specify the form of payment the mover and its delivering agent will honor at delivery. Payment forms may include but are not limited to cash, certified check, money order, cashier's check, a specific charge card such as American Express™, a specific credit card such as Visa™, and your mover's own credit.

Before loading your household goods, and upon mutual agreement between you and your mover, your mover may amend an estimate of charges. Your mover may not amend the estimate after loading the shipment.

A binding estimate is a written agreement made in advance with your mover, indicating you and the mover are bound by the charges. It guarantees the total cost of the move based upon the quantities and services shown on your mover's estimate.

A *non-binding estimate* is what your mover believes the total cost will be for the move, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on your mover. Your mover will base the final charges upon the actual weight of your shipment, the services provided, and its tariff provisions in effect. You must be prepared to pay 10 percent more than the estimated amount at delivery.

You must also be prepared to pay at delivery the charges for any additional services you requested after the contract was executed (charges therefore not included in the estimate) and any charges for impracticable operations. Impracticable operations are defined in your mover's tariff. You should ask to see the mover's tariff to determine what services constitute impracticable operations. Charges for impracticable operations due at delivery must not exceed 15 percent of all other charges due at delivery.

How Must My Mover Estimate Charges Under the Regulations?

Binding Estimates

Your mover may charge you for providing a binding estimate. The binding estimate must clearly describe the shipment and all services provided.

When you receive a binding estimate, you cannot be required to pay any more than the estimated amount at delivery. If you have requested the mover provide more services than those included in the estimate, your mover will collect the charges for those services when your shipment is delivered. However, charges for impracticable operations due at delivery must not exceed 15 percent of all other charges due at delivery.

A binding estimate must be in writing, and a copy must be made available to you before you move.

If you agree to a binding estimate, you are responsible for paying the charges due by cash, certified check, money order, or cashier's check. The charges are due your mover at the time of delivery unless your mover agrees, before you move, to extend credit or to accept payment by a specific charge card such as American Express™ or a specific credit card such as Visa™. If you are unable to pay at the time the shipment is delivered, the mover may place your shipment in storage at your expense until you pay the charges.

Other requirements of binding estimates include the following eight elements:

(1) Your mover must retain a copy of each binding estimate as an attachment to the bill of lading.

(2) Your mover must clearly indicate upon each binding estimate's face that the estimate is binding upon you and your mover. Each binding estimate must also clearly indicate on its face that the charges shown are the charges to be assessed for only those services specifically identified in the estimate.

(3) Your mover must clearly describe binding estimate shipments and all services to be provided.

(4) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following three things:

(a) Reaffirm the binding estimate.

(b) Negotiate a revised written binding estimate listing the additional household goods or services.

(c) Add an attachment to the contract, in writing, stating you both will consider the original binding estimate as a non-binding estimate. Before you agree to this option, read the information about non-binding estimates in the next section of this pamphlet. Accepting a non-binding estimate may seriously affect how much you may pay for the entire move.

(5) Once your mover loads your shipment, your mover's failure to execute a new binding estimate or to agree with you to treat the original estimate as a non-binding estimate signifies it has reaffirmed the original binding estimate. Your mover may not collect more than the amount of the original binding estimate, except as provided in the next two paragraphs.

(6) If you request additional services after the bill of lading is executed, your mover will collect the charges for these additional services when your shipment is delivered.

(7) If your mover must perform impracticable operations, as defined in its tariff, to accomplish the delivery of your shipment, your mover will collect the charges for these services when your shipment is delivered. However, charges for impracticable operations collected at delivery must not exceed 15 percent of all other charges due at delivery. Any remaining impracticable operations charges must be paid within 30 days after you receive the mover's freight bill.

(8) Failure of your mover to relinquish possession of a shipment upon your offer to pay the binding estimate amount plus the cost of any additional services you requested after the bill of lading was executed and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery) constitutes your mover's failure to transport a shipment with "reasonable dispatch" and subjects your mover to cargo delay claims pursuant to 49 CFR part 370.

Non-Binding Estimates

Your mover is not permitted to charge you for giving a non-binding estimate.

A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. That is why it is important to ask for copies of the applicable portions of the mover's tariffs before deciding on a mover. The charges contained in movers' tariffs are essentially the same for shipments of equal weight moving equal distances. Even if you obtain different non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may differ substantially from the amount that you ultimately will pay.

You must be prepared to pay 10 percent more than the estimated amount at the time

of delivery. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. If you order additional services from your mover after the mover issues the bill of lading, the mover will collect the charges for those additional services when your shipment is delivered.

Non-binding estimates must be in writing and clearly describe the shipment and all services provided. Any time a mover provides such an estimate, the amount of the charges estimated must be on the order for service and bill of lading related to your shipment. When you are given a non-binding estimate, do not sign or accept the order for service or bill of lading unless the mover enters the amount estimated on each form it prepares.

Other requirements of non-binding estimates include the following 10 elements:

(1) Your mover must provide reasonably accurate non-binding estimates based upon the estimated weight of the shipment and services required.

(2) Your mover must explain to you that all charges on shipments moved under non-binding estimates will be those appearing in your mover's tariffs applicable to the transportation. If your mover provides a non-binding estimate of approximate costs, your mover is not bound by such an estimate.

(3) Your mover must furnish non-binding estimates without charge and in writing to you.

(4) Your mover must retain a copy of each non-binding estimate as an attachment to the bill of lading.

(5) Your mover must clearly indicate on the face of a non-binding estimate that the estimate is not binding upon your mover and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) Your mover must clearly describe on the face of a non-binding estimate the entire shipment and all services to be provided.

(7) If, before loading your shipment, your mover believes you are tendering additional household goods or requiring additional services not identified in the non-binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following two things:

(a) Reaffirm the non-binding estimate.

(b) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once your mover loads your shipment, your mover's failure to execute a new estimate signifies it has reaffirmed the original non-binding estimate. Your mover may not collect more than 110 percent of the amount of this estimate at destination for the services and quantities shown on the estimate.

(9) If you request additional services after the bill of lading is executed, your mover will collect the charges for these additional services when your shipment is delivered.

(10) If your mover must perform impracticable operations, as defined in its tariff, to accomplish the delivery of your shipment, your mover will collect the charges for these services when your shipment is delivered. However, charges for impracticable operations collected at delivery must not exceed 15 percent of all other charges due at delivery. Any remaining impracticable operations charges must be paid within 30 days after you receive the mover's freight bill.

If your mover furnishes a non-binding estimate, your mover must enter the estimated charges upon the order for service and the bill of lading. Your mover must retain a record of all estimates of charges for each move performed for at least one year from the date your mover made the estimate.

What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?

If your total bill is 110 percent or less of the non-binding estimate, the mover can require payment in full upon delivery. If the bill exceeds 110 percent of the non-binding estimate, your mover must relinquish possession of the shipment at the time of delivery upon payment of 110 percent of the estimated amount, and defer billing for the remaining charges for at least 30 days.

There are two exceptions to this requirement. Your mover may demand at the time of delivery payment of the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate). Your mover may also require you to pay charges for impracticable operations at the time of delivery, provided these do not exceed 15 percent of all other charges due at delivery. Impracticable operations charges that exceed 15 percent of all other charges due at delivery are due within 30 days after you receive the mover's freight bill. Your mover should have specified its acceptable form of payment on the estimate, order for service, and bill of lading.

Your mover's failure to relinquish possession of a shipment after you offer to pay 110 percent of the estimated charges, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery), constitutes its failure to transport the shipment with ''reasonable dispatch'' and subjects your mover to your cargo delay claims under 49 CFR part 370.

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 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:

(1) Your mover's name and address and the U.S. DOT number assigned to your mover.

(2) Your name, address and, if available, telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent at or nearest to the destination of your shipment.

(4) A telephone number where you may contact your mover or its designated agent.

(5) One of the following three dates and times:

(i) The agreed-upon pickup date and agreed delivery date of your move.

(ii) The agreed-upon period(s) of the entire move.

(iii) If your mover is transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Your mover must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, that will participate in interline transportation of the shipment.

(7) The form of payment your mover will honor at delivery. The payment information must be the same as was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount your mover will demand, based on the mover's estimate, for you to obtain possession of the shipment at the time of delivery, when the household goods are transported on a collect-on-delivery basis.

(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.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.

(12) Any identification or registration number your mover assigns to the shipment.

(13) For non-binding estimated charges, your mover's reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (110 percent of the non-binding estimate) your mover will demand at the time of delivery for you to obtain possession of the shipment.

(14) For binding estimated charges, the amount of charges your mover will demand based upon the binding estimate and the terms of payment under the estimate.

(15) An indication of whether you request notification of the charges before delivery. You must provide your mover with the telephone number(s) or address(es) where your mover will transmit such communications.

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 3-day period after you sign the order for service, if you scheduled the shipment to be loaded more than 3 days after you sign the order.

Your mover should provide you with documents that are as complete as possible, and with all charges clearly identified. However, as a practical matter, your mover usually cannot give you a complete bill of lading before transporting your goods. This is both because the shipment cannot be weighed until it is in transit and because other charges for service, such as unpacking, storage-in-transit, and various destination charges, cannot be determined until the shipment reaches its destination.

Therefore, your mover can require you to sign a partially complete bill of lading if it contains all relevant information except the actual shipment weight and any other information necessary to determine the final charges for all services provided. Signing the bill of lading allows you to choose the valuation option, request special services, and/or acknowledge the terms and conditions of released valuation.

Your mover also may provide you, strictly for informational purposes, with blank or incomplete documents pertaining to the move. Before loading your shipment, and upon mutual agreement between you and your mover, your mover may amend an order for service. Your mover must retain records of an order for service it transported for at least one year from the date your mover wrote the order.

Your mover must inform you, before or at the time of loading, if the mover reasonably expects a special or accessorial service is necessary to transport a shipment safely. Your mover must refuse to accept the shipment when your mover reasonably expects a special or accessorial service is necessary to transport a shipment safely but you refuse to purchase the special or accessorial service. Your mover must make a written note if you refuse any special or accessorial services that your mover reasonably expects to be necessary.

Must My Mover Write Up an Inventory of the Shipment?

Yes. Your mover must prepare an inventory of your shipment before or at the time of loading. If your mover's driver fails to prepare an inventory, you should write a detailed inventory of your shipment listing any damage or unusual wear to any items. The purpose is to make a record of the existence and condition of each item.

After completing the inventory, you should sign each page and ask the mover's driver to sign each page. Before you sign it, it is important you make sure that the inventory lists every item in the shipment and that the entries regarding the condition of each item are correct. You have the right to note any disagreement. If an item is missing or damaged when your mover delivers the shipment, your subsequent ability to dispute the items lost or damaged may depend upon your notations.

You should retain a copy of the inventory. Your mover may keep the original if the driver prepared it. If your mover's driver completed an inventory, the mover must attach the complete inventory to the bill of lading as an integral part of the bill of lading.

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:

(1) Your mover's name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in the transportation of the shipment.

(3) The name, address, and telephone number of the office of the motor carrier you must contact in relation to the transportation of the shipment.

(4) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When your mover transports your shipment under a collect-on-delivery basis, your name, address, and telephone number where the mover will notify you about the charges.

(6) *For non-guaranteed service,* the agreed-upon date or period of time for pickup of the shipment and the agreed-upon date or period of time for the delivery of the shipment. The agreed-upon dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed-upon dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) For *guaranteed service,* the dates for pickup and delivery and any penalty or per diem entitlements due you under the agreement.

(8) The actual date of pickup.

(9) The identification number(s) of the vehicle(s) in which your mover loads your shipment.

(10) The terms and conditions for payment of the total charges including notice of any minimum charges.

(11) The maximum amount your mover, based on the estimate, will demand from you at the time of delivery for you to obtain possession of your shipment, when your mover transports under a collect-on-delivery basis.

(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.

(13) Evidence of any insurance coverage sold to or procured for you from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. If not provided to you elsewhere by the mover, the following three items must be added as attachments:

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

A copy of the bill of lading must accompany your shipment at all times while it is 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.

Should I Reach an Agreement With My Mover About Pickup and Delivery Times?

You and your mover should reach an agreement for pickup and delivery times. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is your mover's responsibility to tell you if it can provide service on or between those dates, or, if not, on what other dates it can provide the service.

In the process of reaching an agreement with your mover, you may find it necessary to alter your moving and travel plans if no mover can provide service on the specific dates you desire.

Do not agree to have your shipment picked up or delivered ''as soon as possible.'' The dates or periods you and your mover agree upon should be definite.

Once an agreement is reached, your mover must enter those dates upon the order for service and the bill of lading.

Once your goods are loaded, your mover is contractually bound to provide the service described in the bill of lading. Your mover's only defense for not providing the service on the dates called for is the defense of force majeure. This is a legal term. It means that when circumstances change, were not foreseen, and are beyond the control of your mover, preventing your mover from performing the service agreed to in the bill of lading, your mover is not responsible for damages resulting from its nonperformance.

This may occur when you do not inform your mover of the exact delivery

requirements. For example, because of restrictions trucks must follow at your new location, the mover may not be able to take its truck down the street of your residence and may need to shuttle the shipment using another type of vehicle.

Must My Mover Determine the Weight of My Shipment?

Generally, yes. If your mover transports your household goods on a non-binding estimate, your mover must determine the actual weight of the shipment in order to calculate its lawful tariff charge. If your mover provided a binding estimate and has loaded your shipment without claiming you have added additional items or services, the weight of the shipment will not affect the charges you will pay.

Your mover must determine the weight of your shipment before requesting you to pay for any charges dependent upon your shipment's weight.

Most movers have a minimum weight charge for transporting a shipment. Generally, the minimum is the charge for transporting a shipment of at least 3,000 pounds (1,362 kilograms).

If your shipment appears to weigh less than the mover's minimum weight, your mover must advise you on the order for service of the minimum cost before transporting your shipment. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight, not upon the minimum weight.

How Must My Mover Determine the Weight of My Shipment?

Your mover must weigh your shipment upon a certified scale.

The weight of your shipment must be obtained by using one of two methods:

Origin Weighing—Your mover may weigh your shipment in the city or area where it loads your shipment. If it elects this option, the driver must weigh the truck before coming to your residence. This is called the *tare weight.* At the time of this first weighing, the truck may already be partially loaded with another shipment(s). This will not affect the weight of your shipment. The truck should also contain the pads, dollies, hand trucks, ramps, and other equipment normally used in the transportation of household goods shipments.

After loading, the driver will weigh the truck again to obtain the loaded weight, called the *gross weight.* The net weight of your shipment is then obtained by subtracting the *tare weight* before loading from the *gross weight.*

Gross Weight less the Tare Weight Before Loading = Net Weight.

Destination Weighing (Also called *Back Weighing*)—The mover is also permitted to determine the weight of your shipment at the destination after it delivers your load. Weighing your shipment at destination instead of at origin will not affect the accuracy of the shipment weight. *The most important difference is that your mover will not determine the exact charges on your shipment before it is unloaded.*

Destination weighing is done in reverse of origin weighing. After arriving in the city or area where you are moving, the driver will weigh the truck. Your shipment will still be on the truck. Your mover will determine the *gross weight* before coming to your new residence to unload. After unloading your shipment, the driver will again weigh the truck to obtain the *tare weight.* The net weight of your shipment will then be obtained by subtracting the *tare weight* after delivery from the *gross weight.*

Gross Weight less the Tare Weight After Delivery = Net Weight.

At the time of both weighings, your mover's truck must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of your shipment. The driver and other persons must be off the vehicle at the time of both weighings. The fuel tanks on the vehicle must be full at the time of each weighing; or, if the fuel tanks are not full, your mover must not add fuel between the two weighings when the tare weighing is the first weighing performed.

Your mover may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing, provided the length of the scale platform is adequate to accommodate and support the entire trailer.

Your mover may use an alternative method to weigh your shipment if it weighs 3,000 pounds (1,362 kilograms) or less. The only alternative method allowed is weighing the shipment upon a platform or warehouse certified scale before loading your shipment for transportation or after unloading.

Your mover must use the net weight of shipments transported in large containers, such as ocean or railroad containers. Your mover will calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of your shipment) and the gross weight of the container with your shipment loaded in the container.

You have the right, and your mover must inform you of your right, to observe all weighings of your shipment. Your mover must tell you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighings.

You may waive your right to observe any weighing or reweighing. This does not affect any of your other rights under Federal law.

Your mover may request that you waive your right to have a shipment weighed upon a certified scale. Your mover may want to weigh the shipment upon a trailer's on-board, non-certified scale. You should demand your right to have a certified scale used. The use of a non-certified scale may cause you to pay a higher final bill for your move, if the non-certified scale does not accurately weigh your shipment. Remember that certified scales are inspected and approved for accuracy by a government inspection or licensing agency. Non-certified scales are not inspected and approved for accuracy by a government inspection or licensing agency.

Your mover must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) Identification of the weight entries as being the tare, gross, or net weights.

(4) The company or mover identification of the vehicle.

(5) Your last name as it appears on the Bill of Lading.

(6) Your mover's shipment registration or Bill of Lading number.

Your mover must retain the original weight ticket or tickets relating to the determination of the weight of your shipment as part of its file on your shipment. When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

Your mover must present all freight bills with true copies of all weight tickets. If your mover does not present its freight bill with all weight tickets, your mover is in violation of Federal law.

Before the driver actually begins unloading your shipment weighed at origin and after your mover informs you of the billing weight and total charges, you have the right to demand a reweigh of your shipment. If you believe the weight is not accurate, you have the right to request your mover reweigh your shipment before unloading.

You have the right, and your mover must inform you of your right, to observe all reweighings of your shipment. Your mover must tell you where and when each reweighing will occur. Your mover must give you a reasonable opportunity to be present to observe the reweighing. You may waive your right to observe any reweighing; however, you must waive that right in writing. You may send the written waiver via fax or e-mail, as well as by overnight courier or certified mail, return receipt requested. This does not affect any of your other rights under Federal law.

Your mover is prohibited from charging you for the reweighing. If the weight of your shipment at the time of the reweigh is different from the weight determined at origin, your mover must recompute the charges based upon the reweigh weight.

Before requesting a reweigh, you may find it to your advantage to estimate the weight of your shipment using the following three-step method:

1. Count the number of items in your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory, do not include this item in the count of the total items.*

2. Subtract the weight of any automobile included in your shipment from the total weight of the shipment. If the automobile was not weighed separately, its weight can be found on its title or license receipt.

3. Divide the number of items in your shipment into the weight. If the average weight resulting from this exercise ranges between 35 and 45 pounds (16 and 20 kilograms) per article, it is unlikely a reweigh will prove beneficial to you. In fact, it could result in your paying higher charges.

Experience has shown that the average shipment of household goods will weigh about 40 pounds (18 kilograms) per item. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 45 pounds or more (20 kilograms or more).

What Must My Mover Do if I Want To Know the Actual Weight or Charges for My Shipment Before Delivery?

If you request notification of the actual weight and charges of your shipment, your mover must comply with your request if it is moving your goods on a collect-on-delivery basis. This requirement is conditioned upon your supplying your mover with an address or telephone number where you will receive the communication. Your mover must make its notification by telephone; fax transmissions; e-mail; overnight courier; certified mail, return receipt requested; or in person.

You must receive the mover's notification at least one full 24-hour day before its scheduled delivery, excluding Saturdays, Sundays, and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three things:

(1) Back weigh (when your mover weighs your shipment at its destination).

(2) Pickup and delivery encompassing two consecutive weekdays, if you agree.

(3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if you agree.

Subpart F—Transportation of My Shipment

Must My Mover Transport the Shipment in a Timely Manner?

Yes, your mover must transport your household goods in a timely manner. This is also known as ''reasonable dispatch service.'' Your mover must provide reasonable dispatch service to you, except for transportation on the basis of guaranteed delivery dates.

When your mover is unable to perform either the pickup or delivery of your shipment on the dates or during the periods of time specified in the order for service, your mover must notify you of the delay, at the mover's expense. As soon as the delay becomes apparent to your mover, it must give you notification it will be unable to provide the service specified in the terms of the order for service. Your mover may notify you of the delay in any of the following ways: By telephone; fax transmissions; e-mail; overnight courier; certified mail, return receipt requested; or in person.

When your mover notifies you of a delay, it also must advise you of the dates or periods of time it may be able to pick up and/or deliver the shipment. Your mover must consider your needs in its advisement. Your mover must prepare a written record of the date, time, and manner of its notification.

Your mover must prepare a written record of its amended date or period for delivery. Your mover must retain these records as a part of its file on your shipment. The retention period is one year from the date of notification. Your mover must furnish a copy of the notification to you either by first class mail or in person, if you request a copy of the notice.

Your mover must tender your shipment for delivery on the agreed-upon delivery date or within the period specified on the bill of lading. Upon your request or concurrence, your mover may deliver your shipment on another day.

The establishment of a delayed pickup or delivery date does not relieve your mover from liability for damages resulting from your mover's failure to provide service as agreed. However, when your mover notifies you of alternate delivery dates, it is your responsibility to be available to accept delivery on the dates specified. If you are not available and are not willing to accept delivery, your mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and assess additional charges.

If after the pickup of your shipment, *you* request your mover to change the delivery date, most movers will agree to do so provided your request will not result in unreasonable delay to its equipment or interfere with another customer's move. However, your mover is under no obligation to consent to amended delivery dates. Your mover has the right to place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the date agreed to in the bill of lading.

If your mover fails to pick up and deliver your shipment on the date entered on the bill of lading and you have expenses you otherwise would not have had, you may be able to recover those expenses from your mover. This is what is called an inconvenience or delay claim. Should your mover refuse to honor such a claim and you continue to believe you are entitled to be paid damages, you may take your mover to court under 49 U.S.C. 14706. *The Federal Motor Carrier Safety Administration (FMCSA) has no authority to order your mover to pay such claims.*

While we hope your mover delivers your shipment in a timely manner, you should consider the possibility your shipment may be delayed, and find out what payment you can expect if a mover delays service through its own fault, before you agree with the mover to transport your shipment.

What Must My Mover Do if It Is Able To Deliver My Shipment More Than 24 Hours Before I Am Able To Accept Delivery?

At your mover's discretion, it may place your shipment in storage. This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment. Your mover may do this if you fail to request or concur with an early delivery date, and your mover is able to deliver your shipment more than 24 hours before your specified date or the first day of your specified period.

If your mover exercises this option, your mover must immediately notify you of the name and address of the warehouse where your mover places your shipment. Your mover must make and keep a record of its notification as a part of its shipment records. Your mover has full responsibility for the shipment under the terms and conditions of the bill of lading. Your mover is responsible for the charges for redelivery, handling, and storage until it makes final delivery. Your mover may limit its responsibility to the agreed-upon delivery date or the first day of the period of delivery as specified in the bill of lading.

What Must My Mover Do for Me When I Store Household Goods in Transit?

If you request your mover to hold your household goods in storage-in-transit and the storage period is about to expire, your mover must notify you, in writing, about the four following items:

(1) The date when storage-in-transit will convert to permanent storage.

(2) The existence of a 9-month period after the date of conversion to permanent storage, during which you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.

(3) The date your mover's liability will end.

(4) Your property will be subject to the rules, regulations, and charges of the warehouseman.

Your mover must make this notification at least 10 days before the expiration date of one of the following two periods of time:

(1) The specified period of time when your mover is to hold your goods in storage.

(2) The maximum period of time provided in its tariff for storage-in-transit.

Your mover must notify you by facsimile transmission; overnight courier; e-mail; or certified mail, return receipt requested.

If your mover holds your household goods in storage-in-transit for less than 10 days, your mover must notify you, one day before the storage-in-transit period expires, of the same information specified above.

Your mover must maintain a record of all notifications to you as part of the records of your shipment. Under the applicable tariff provisions regarding storage-in-transit, your mover's failure or refusal to notify you will automatically extend your mover's liability until the end of the day following the date when your mover actually gives you notice.

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.

What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?

On a binding estimate, the maximum amount is the exact estimate of the charges, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery). Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (for example, a certified check).

On a non-binding estimate, the maximum amount is 110 percent of the approximate costs, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery). Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (for example, cash).

If My Shipment Is Transported on More Than One Vehicle, What Charges May My Mover Collect at Delivery?

Although all movers try to move each shipment on one truck, it becomes necessary at times to divide a shipment among two or more trucks. This frequently occurs when an automobile is included in the shipment and transported on a specially designed vehicle. When this occurs, your transportation charges are the same as if the entire shipment moved on one truck.

If your shipment is divided for transportation on two or more trucks, the mover may require payment for each portion as it is delivered.

Your mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion, not yours. When you order your move, you should ask the mover about its policies in this regard.

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 also may recover the transportation charges represented by the portion of the shipment lost or destroyed. Your mover may apply this paragraph only 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.

If your shipment is partially lost or destroyed, your mover is permitted to collect at delivery only a prorated percentage based on the freight charges for the goods actually delivered, plus the charges for any additional services you requested after the bill of lading was executed and any charges for impracticable operations. Charges for impracticable operations collected at delivery must not exceed 15 percent of the total charges your mover collects at delivery.

Your mover is forbidden from collecting, or requiring you to pay, any freight charges (including any charges for accessorial or terminal services) when your household goods shipment is *totally lost or destroyed* in transit, unless the loss or destruction was due to an act or omission by you.

How Must My Mover Calculate the Charges Applicable to the Shipment as Delivered?

Your mover must multiply the percentage equal to the weight of the portion of the shipment delivered to the total weight of the shipment times the total charges applicable to the shipment tendered by you to obtain the total charges it must collect from you.

If your mover's computed charges 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 your household goods.

Your mover must require you to pay any specific valuation charge due.

Your mover may not refund the freight charges if the loss or destruction was due to an act or omission by you. For example, you fail to disclose to your mover that your shipment contains perishable live plants. Your mover may disregard its loss or destruction of your plants because you failed to inform your mover you were transporting live plants.

Your mover must determine, at its own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

Your rights are in addition to, and not in lieu of, any other rights you may have with respect to your shipment of household goods your mover lost or destroyed, or partially lost or destroyed, in transit. This applies whether or not you have exercised your rights provided above.

Subpart H—Collection of Charges

Does This Subpart Apply to Most Shipments?

It applies to all shipments of household goods that involve a balance due freight or expense bill or are shipped on credit.

How Must My Mover Present Its Freight or Expense Bill to Me?

At the time of payment of transportation charges, your mover must give you a freight bill identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as a freight bill; however, some movers use an entirely separate document for this purpose.

Except in those instances where a shipment is moving on a binding estimate, the freight bill must specifically identify each service performed, the rate or charge per service performed, and the total charges for each service. *If this information is not on the freight bill, do not accept or pay the freight bill.*

Movers' tariffs customarily specify that freight charges must be paid in cash, by certified check, or by cashier's check. When this requirement exists, the mover will not accept personal checks. At the time you order your move, you should ask your mover about the form of payment your mover requires.

Some movers permit payment of freight charges by use of a charge or credit card. However, do not assume your nationally recognized charge, credit, or debit card will be acceptable for payment. Ask your mover at the time you request an estimate. Your mover must specify the form of payment it will accept at delivery.

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery).

If, before payment of the transportation charges, you discover an error in the charges, you should attempt to correct the error with the driver or the mover's local agent, or by contacting the mover's main office. If an error is discovered after payment, you should write the mover (the address will be on the freight bill) explaining the error, and request a refund.

Movers customarily check all shipment files and freight bills after a move has been completed to make sure the charges were accurate. If an overcharge is found, you should be notified and a refund should be made. If an undercharge occurred, you may be billed for the additional charges due.

On ''to be prepaid'' shipments, your mover must present its freight bill for all transportation charges within 15 days of the date your mover received the shipment. This period excludes Saturdays, Sundays, and Federal holidays.

On ''collect'' shipments, your mover must present its freight bill for all transportation charges on the date of delivery, or, at its discretion, within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for additional charges based on the weight of the shipment will be presented 30 days after delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.) Your mover's freight bills and accompanying written notices must state the following five items:

(1) Penalties for late payment.

(2) Credit time limits.

(3) Service or finance charges.

(4) Collection expense charges.

(5) Discount terms.

If your mover extends credit to you, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time must state, ''You may be subject to tariff penalties for failure to timely pay freight charges,'' or a similar statement. Your mover must state on its freight bills or other notices when it expects payment and any applicable service charges, collection expense charges, and discount terms.

When your mover lacks sufficient information to compute its tariff charges at the time of billing, your mover must present its freight bill for payment within 15 days following the day when sufficient information becomes available. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover must not extend additional credit to you if you fail to furnish sufficient information to your mover. Your mover must have sufficient information to render a freight bill within a reasonable time after shipment.

When your mover presents freight bills by mail, it must deem the time of mailing to be the time of presentation of the bills. The term ''freight bills,'' as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes, disks, or the Internet (e-mail).

When you mail acceptable checks or drafts in payment of freight charges, your mover must deem the act of mailing the payment within the credit period to be the proper collection of the tariff charges within the credit period for the purposes of Federal law. In case of a dispute as to the date of mailing, your mover must accept the postmark as the date of mailing.

If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?

On ''collect-on-delivery'' shipments, your mover must present its freight bill for transportation charges within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for additional charges based on the weight of the shipment will be presented 30 days after delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.)

What Actions May My Mover Take To Collect From Me the Charges in Its Freight Bill?

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination. (Bills for additional charges based on the weight of the shipment will be presented 30 days after delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.)

Your mover must provide in its tariffs the following three things:

(1) A provision indicating its credit period is a total of 30 calendar days.

(2) A provision indicating you will be assessed a service charge by your mover equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for the extension of the credit period. The mover will assess the service charge for each 30-day extension that the charges go unpaid.

(3) A provision that your mover must deny credit to you if you fail to pay a duly presented freight bill within the 30-day period. Your mover may grant credit to you, at its discretion, when you satisfy your mover's condition that you will pay all future freight bills duly presented. Your mover must ensure all your payments of freight bills are strictly in accordance with Federal rules and regulations for the settlement of its rates and charges.

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 carrier within 120 days after delivery or the scheduled date of delivery (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, through a neutral arbitrator, 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. 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.

Subpart I—Resolving Disputes With My Mover

What May I Do To Resolve Disputes With My Mover?

The Federal Motor Carrier Safety Administration Does Not Help You Settle Your Dispute With Your Mover

Generally, you must resolve your own loss and damage disputes with your mover. You enter a contractual arrangement with your mover. You are bound by each of the following three things:

(1) The terms and conditions you negotiated before your move.

(2) The terms and conditions you accepted when you signed the bill of lading.

(3) The terms and conditions you accepted when you signed for delivery of your goods.

You have the right to take your mover to court. We require your mover to offer you arbitration to settle your disputes with it.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 29. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; Sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; and 49 CFR 1.73.

■ 30. Amend § 383.51 to revise table 4 of paragraph (e) to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(e) * * *

TABLE 4 TO § 383.51

If a driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 180 days or more than 1 year.	No less than 2 years or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

■ 31. Amend § 383.53 to revise paragraph (b) to read as follows:

§ 383.53 Penalties.

* * * * *

(b) *Special penalties pertaining to violation of out-of-service orders*—(1) *Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $2,500 for a first conviction and not less than $5,000 for a second or subsequent conviction, in addition to disqualification under § 383.51(e).

(2) *Employer violations.* An employer who is convicted of a violation of § 383.37(c) shall be subject to a civil penalty of not less than $2,750 nor more than $25,000.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 32. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 et seq., 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753, 1767; Sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

■ 33. Amend § 384.301 to add paragraph (c) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(c) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 4, 2007 as soon as practical but, unless otherwise specifically provided in this part, not later than September 4, 2010.

■ 34. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

PART 385—SAFETY FITNESS PROCEDURES [AMENDED]

■ 35. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 36. Amend § 385.3 to add, in correct alphabetical placement, a definition for ''motor carrier operations in commerce'' to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Motor carrier operations in commerce means commercial motor vehicle transportation operations either—

(1) In interstate commerce, or

(2) Affecting interstate commerce.

* * * * *

■ 37. Amend § 385.7 to revise paragraphs (c), (d), (f), and (g) to read as follows:

§ 385.7 Factors to be considered in determining a safety rating.

* * * * *

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

* * * * *

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.

(g) Number and severity of violations of CMV and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

■ 38. Amend § 385.13 to revise paragraphs (a)(1), (a)(2), and (d) to read as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) * * *

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 46th day after the date

of the FMCSA notice of proposed ''unsatisfactory'' rating.

(2) All other motor carriers rated as a result of reviews completed on or after November 20, 2000, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 61st day after the date of the FMCSA notice of proposed ''unsatisfactory'' rating. If FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

* * * * *

(d) *Penalties.* (1) If a proposed ''unsatisfactory'' safety rating becomes final, FMCSA will issue an order placing out of service the company's motor carrier operations in commerce. The out-of-service order shall apply both to the motor carrier's operations in interstate commerce *and to its operations affecting interstate commerce.*

(2) If a motor carrier's intrastate operations are declared out of service by a State, FMCSA must issue an order placing out of service the carrier's operations in interstate commerce, provided the following two conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program *and* uses the FMCSA safety rating methodology provided in this part; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(3) FMCSA shall prohibit the owner or operator from operating such vehicle in interstate commerce until the State determines that the owner or operator is fit.

(4) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of this chapter.

■ 39. Amend § 385.17 to revise paragraph (g) to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

* * * * *

(g) FMCSA may allow a motor carrier (except a motor carrier transporting passengers or a motor carrier transporting hazardous materials in quantities requiring placarding) with a proposed rating of ''unsatisfactory'' to continue its motor carrier operations in commerce for up to 60 days beyond the 60 days specified in the proposed rating, if FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of proposed ''unsatisfactory'' rating.

* * * * *

■ 40. Amend appendix B to part 385 to add paragraph (f) preceding section I and to amend section II(B) by republishing its heading and revising paragraph (a), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

(f) The safety rating will be determined by applying the SFRM equally to all of a company's motor carrier operations in commerce, including if applicable its operations in Canada and/or Mexico.

* * * * *

II. * * *

B. *Accident Factor*

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate for the past 12 months. A recordable accident, consistent with the definition for ''accident'' in 49 CFR 390.5, means an occurrence involving a commercial motor vehicle on a highway in motor carrier operations in commerce or within Canada or Mexico (if the motor carrier also operates in the United States) that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 41. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 42. Amend Appendix B to part 386 by revising paragraphs (e)(1) through (3), adding paragraphs (e)(4) and (5), revising paragraph (f), and adding paragraphs (g)(21) and (h), to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Maximum Civil Penalties

* * * * *

(e) * * *

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 and not more than $50,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $450 and not more than $50,000 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 and not more than $50,000 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than $250 and not more than $50,000.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $100,000 for each offense.

(f) *Operating after being declared unfit by assignment of a final ''unsatisfactory'' safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final ''unsatisfactory'' safety rating, to a civil penalty of not more than $11,000 (49 CFR 385.13). Each day the transportation continues in violation of a final ''unsatisfactory'' safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final ''unsatisfactory'' safety rating, to a civil penalty of not less than $250 and not more than $50,000 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $100,000 for each offense. Each day the transportation continues in violation of a final ''unsatisfactory'' safety rating constitutes a separate offense.

(g) * * *

(21) A person—

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than $10,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand, the Federal Motor Carrier Safety Administration or an employee designated by the Federal Motor Carrier Safety Administration to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than $1,000 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 43. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; Sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 44. Amend § 390.3 to add paragraph (f)(7) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5.

■ 45. Amend § 390.5 to add, in correct alphabetical placement, a definition for ''Emergency condition requiring immediate response'' to read as follows:

§ 390.5 Definitions.

* * * * *

Emergency condition requiring immediate response means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An ''emergency condition requiring immediate response'' does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 46. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, 31502; Sec. 229, Pub. L. 106–159, 113 Stat. 1748; Sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

■ 47. Amend § 395.1 to revise paragraphs (a), (k)(2), and (n) and to add paragraphs (p) and (q), to read as follows:

§ 395.1 Scope of rules in this part.

(a) *General.* (1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (q) of this section.

(2) The exceptions from Federal requirements contained in paragraphs (l) and (m) of this section do not preempt State laws and regulations governing the safe operation of commercial motor vehicles.

* * * * *

(k) * * *

(2) Is conducted (except in the case of livestock feed transporters) during the planting and harvesting seasons within such State, as determined by the State.

* * * * *

(n) *Utility service vehicles.* The provisions of this part shall not apply to a driver of a utility service vehicle as defined in § 395.2.

* * * * *

(p) *Commercial motor vehicle transportation to or from a motion picture production site.* A driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site is exempt from the requirements of § 395.3(a) if the driver operates within a 100 air-mile radius of the location where the driver reports to and is released from work, i.e., the normal work-reporting location. With respect to the maximum daily hours of service, such a driver may not drive—

(1) More than 10 hours following 8 consecutive hours off duty;

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(3) If a driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site operates beyond a 100 air-mile radius of the normal work-reporting location, the driver is subject to § 395.3(a), and paragraphs (p)(1) and (2) of this section do not apply.

(q) *Transporters of grapes during harvest period in the State of New York.* The provisions of this part shall not apply to drivers transporting grapes if such transportation:

(1) Is within the State of New York;

(2) Is west of Interstate 81;

(3) Is within a 150 air-mile radius of where the grapes were picked or distributed; and

(4) Is during the harvest period as defined by the State of New York. This provision expires September 30, 2009.

■ 48. Amend § 395.2 to add, in correct alphabetical placement, the definitions for ''agricultural commodity'' and ''farm supplies for agricultural purposes'' to read as follows:

§ 395.2 Definitions.

* * * * *

Agricultural commodity means any agricultural commodity, nonprocessed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects).

* * * * *

Farm supplies for agricultural purposes means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed *at any time of the year*.

* * * * *

Issued on: June 11, 2007.

John H. Hill,

Administrator.

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