

### Subpart E—Incidental Charter Rights

AUTHORITY: 5 U.S.C. 553 and 559 and 49 U.S.C. 10321, 10922, and 10932.

SOURCE: 54 FR 46619, Nov. 6, 1989, unless otherwise noted. Redesignated at 61 FR 54709, Oct. 21, 1996.

#### § 374.501 Applicability.

The regulations in this part apply to incidental charter rights authorized under 49 U.S.C. 13506 [49 U.S.C. 10932(c)]. These regulations do not apply to interpreting authority contained in a certificate to transport passengers in special and/or charter operations.

[54 FR 46619, Nov. 6, 1989. Redesignated at 61 FR 54709, Oct. 21, 1996, as amended at 62 FR 15423, Apr. 1, 1997]

#### § 374.503 Authority.

Motor carriers transporting passengers, in interstate or foreign commerce, over regular routes authorized in a certificate issued as a result of an application filed before January 2, 1967, may transport special or chartered parties, in interstate or foreign commerce, between any points and places in the United States (including Alaska and Hawaii). The term "special or chartered party" means a group of passengers who, with a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary.

#### § 374.505 Exceptions.

(a) Incidental charter rights do not authorize the transportation of passengers to whom the carrier has sold individual tickets or with whom the carrier has made separate and individual transportation arrangements.

(b) Service provided under incidental charter rights may not be operated between the same points or over the same route so frequently as to constitute a regular-route service.

(c) Passenger transportation within the Washington Metropolitan Area Transit District (as defined in the

Washington Metropolitan Area Transportation Regulation Compact, Pub. L. No. 86-794, 74 Stat. 1031 (1960), as amended by Pub. L. No. 87-767, 76 Stat. (1962) is not authorized by these regulations, but is subject to the jurisdiction and regulations of the Washington Metropolitan Area Transportation Commission.

(d) A private or public recipient of governmental assistance (within the meaning of 49 U.S.C. 13902(b)(8)) may provide service under incidental charter rights only for special or chartered parties originating in the area in which the private or public recipient provides regularly scheduled mass transportation services under the specific qualifying certificate that confers its incidental charter rights.

[54 FR 46619, Nov. 6, 1989. Redesignated at 61 FR 54709, Oct. 21, 1996, as amended at 62 FR 15423, Apr. 1, 1997]

## PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

### Sec.

- 375.1 Applicability and definitions.
- 375.2 Information for shippers.
- 375.3 Estimates of charges.
- 375.4 Final charges on shipments subject to minimum weight or volume provisions.
- 375.5 Order for service.
- 375.6 Receipt or bill of lading.
- 375.7 Determination of weights.
- 375.8 Reasonable dispatch.
- 375.9 Notification of charges.
- 375.10 Signed receipt for shipment-release prohibited.
- 375.11 Selling of insurance to shippers.
- 375.12 Liability of carriers.
- 375.13 Complaint and inquiry handling.
- 375.14 Agency agreements.
- 375.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.
- 375.16 Collection of freight charges on shipments transported on more than one vehicle.
- 375.17 Advertising by motor common carriers of household goods.
- 375.18 Preparation and filing of annual performance report.
- 375.19 Use of charge card plans.

AUTHORITY: 5 U.S.C. 553; 49 U.S.C. 13301 and 14104; and 49 CFR 1.73.

SOURCE: 46 FR 16218, Mar. 11, 1981, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

## § 375.1

## 49 CFR Ch. III (10–1–01 Edition)

EDITORIAL NOTE: Nomenclature changes to part 375 appear at 66 FR 49871, Oct. 1, 2001.

### § 375.1 Applicability and definitions.

(a) The regulations in this part are applicable to the operations of motor carriers engaged in the transportation of household goods as defined in paragraph (b)(1) of this section in interstate or foreign commerce.

(b) *Definitions.* As used in this part:

(1) *Household goods.* The term “household goods” means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the FMCSA may provide by regulation; except that this definition shall not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by the householder.

(2) *Reasonable dispatch.* The term “reasonable dispatch” means the performance of transportation, excluding transportation provided under tariff provisions requiring guaranteed service dates, on the dates or during the period of time agreed upon by the carrier and the shipper and shown on the Order For Service/Bill of Lading, *Provided*, That the defenses of force majeure as construed by the courts shall not be denied the carrier.

(3) *Advertisement.* The term “advertisement” means any communication to the public in connection with an offer or sale of any interstate or foreign transportation service, but shall not be construed to include a listing of a carrier name, address, and telephone number in a telephone directory or similar publication.

(4) *Certified Scales.* As used in this part, a certified scale is 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 properly inspected and certified.

(5) *Individual Shipper.* As used in this part, “individual shipper” refers to any person who is the consignor or con-

signee of a household goods shipment and is identified as such in the bill of lading contract and owns the goods being transported.

(6) *Commercial Shipper.* As used in this part, “commercial shipper” refers to (a) any person, excluding the federal government, who is named as the consignor and/or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods, normally an employee of the consignor and/or consignee; or, (b) a freight forwarder which tenders a shipment to a carrier in furtherance of authorized or exempt freight forwarder operations.

(7) *Government Bill of Lading Shipper.* As used in this part, “government bill of lading shipper” refers to any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the federal government to the carrier responsible for the transportation of the shipment.

(8) *Other terms.* Where any other terms used in the regulations in this part are defined in 49 U.S.C. 13102, such definitions shall be controlling. Where terms are used in this part which are neither defined herein nor in 49 U.S.C. 13102, they shall have the ordinary practical meaning of such terms.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981, as amended at 65 FR 58664, Oct. 2, 2000]

### § 375.2 Information for shippers.

(a) Prior to the execution of an order for service of a shipment of household goods, as defined in § 375.1(b)(1), every motor common carrier holding out to perform the service shall cause to be furnished to the prospective individual shipper the following publications.

(1) Publication OCE-100, *Your Rights and Responsibilities When You Move*.

(2) A concise, easy-to-read, accurate summary of any dispute settlement program in which the carrier participates, as provided in 49 U.S.C. 14708 and approved by the FMCSA.

(3) A copy of Form OCE-101, *Annual Performance Report*, most recently filed with the FMCSA, as prescribed in

§375.18, if the carrier is required to complete part B of that form.

(4) A written description of the customer complaint and inquiry handling procedures established and maintained by the carrier. Included in this description shall be a telephone number which the shipper may use to communicate with the carrier, accompanied by a clear and concise statement concerning who shall pay for such calls.

(b) *General Requirements:* (1) The text and format of the publication shall not be changed without the written approval of the Director, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

(2) The Director, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, shall, within 30 days following the effective date of a decision of the Federal Motor Carrier Safety Administration changing any rule or regulation published at 49 CFR part 375, cause to be published in the FEDERAL REGISTER a notice of amendment to Publication OCE-100 reflecting such change or changes.

(3) The dimensions of the publication shall be optional. *Provided, however,* The product of multiplying the length by the width shall be not less than 36 square inches.

(4) The color and design of the front and back cover of the publication shall be optional. *Provided,* the only words printed or appearing on the front cover shall be “*Your Rights and Responsibilities When You Move.*”

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981, as amended at 59 FR 2305, Jan. 14, 1994; 59 FR 34392, July 5, 1994; 62 FR 49940, 49941, Sept. 24, 1997]

### § 375.3 Estimates of charges.

(a) *Binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in §375.1(b)(1) may provide in their tariffs for the preparation and furnishing to shippers of binding estimates of the costs which the shippers will be required to pay for the services included in the estimates. Binding estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum

to the bill of lading. All such estimates shall have clearly indicated on its face that the estimate is binding on the carrier and that the charges shown are the charges which will be assessed for the services identified in the estimate. Binding estimates must clearly describe the shipment and all services to be provided.

(b) *Non-binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in §375.1(b)(1) may provide estimates of the approximate costs which will be assessed for the transportation of such shipments. Non-binding estimates shall be reasonably accurate. Estimates of approximate costs shall not be binding on the carriers providing such estimates. The final charges on shipments moved on non-binding estimates shall be those appearing in the carriers' tariffs applicable to the transportation. Non-binding estimates must be furnished without charge and in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is not binding on the carrier and that the charges shown are the approximate charges which will be assessed for the services identified in the estimate. Non-binding estimates must clearly describe the shipment and all services to be provided.

(c) *Estimated charges required to be entered on the order for service and bill of lading.* Motor common carriers furnishing non-binding estimates shall enter the estimated charges on the order for service, if an order for service is required, and on the bill of lading.

(d) *Maximum charges required to be paid at time of delivery on collect on delivery shipments subject to non-binding estimates of approximate costs.* At time of delivery of a collect on delivery shipment, except when such shipment is delivered to a warehouse for storage at the request of the shipper, on which a non-binding estimate of the approximate costs has been furnished by the carrier under the provisions of paragraph (b), the shipper may request delivery of the shipment upon payment,

#### § 375.4

#### 49 CFR Ch. III (10–1–01 Edition)

in a form acceptable to the carrier, of an amount not exceeding 110 percent of the estimated charges. The carrier shall, upon request of the shipper, relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges and shall defer demand for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

#### § 375.4 Final charges on shipments subject to minimum weight or volume provisions.

(a) Motor common carriers engaged in the transportation of household goods, as defined in § 375.1(b)(1), providing service for individual shippers on rates based on the transportation of a minimum weight or volume, must indicate on the order for service the minimum weight or volume-based rates, and the the minimum charges applicable to the shipment.

(b) Failure to comply with the requirements of paragraph (a) shall require, and the governing tariff shall contain, a rule providing that the final charges relating to such a shipment be computed based on the actual weight or volume of the shipment.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

#### § 375.5 Order for service.

(a) *Order for service required.* Every motor common carrier shall, prior to the receipt of a shipment of household goods as defined in § 375.1(b)(1) to be moved for an individual shipper, prepare an order for service which contains the following minimum information:

(1) Name and address and FMCSA docket number of carrier who is responsible for performing the service.

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

(3) Name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

(4) A telephone number at which the shipper/consignee may contact the carrier or its designated agent.

(5) Agreed pickup date and agreed delivery date, or the agreed period or periods of time within which pickup, delivery, or the entire move, will be accomplished. If the shipment is to be transported on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation and delivery and any penalty or per diem requirements of the agreement shall be entered under this item.

(6) Complete description of any special or accessorial services ordered; and minimum weight or volume charges applicable to the shipment.

(7) Any identification or registration number assigned the shipment by the carrier.

(8) Amount of estimated non-binding charges; method of payment of total charges; and, maximum amount required to be paid at time of delivery to obtain possession of the shipment or, the amount of charges required to be paid based on a binding estimate and the terms of payment under that estimate.

(9) Whether the shipper requests notification of the charges prior to delivery and the telephone number or address at which such communications will be received.

(10) *Signatures required.* The order for service shall be signed by the shipper who is ordering the service, and by the carrier or its agent. A copy of the order for service shall be dated and furnished the shipper at the time it is executed.

(b) *Amendments to an order for service.* Prior to loading an order for service may be amended by agreement of both parties.

[46 FR 16219, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981, as amended at 62 FR 49941, Sept. 24, 1997]

#### § 375.6 Receipt or bill of lading.

(a) *Issuance of a receipt or bill of lading.* Every motor common carrier engaged in the transportation of household goods as defined in § 375.1(b)(1) shall issue a receipt or bill of lading. The bill of lading shall contain the minimum information required by § 375.6(b) and the terms and conditions

of the contract. The carrier shall furnish a complete copy of the bill of lading to the shipper prior to the commencement of the loading of a shipment.

(b) *Minimum information required on a receipt or bill of lading.* Whenever a receipt or bill of lading is issued in compliance with paragraph (a), the carrier shall cause to be included therein the following minimum information:

(1) The name and address of the motor carrier issuing the receipt or bill of lading.

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

(3) The name, address and telephone number of the office of the carrier that should be contacted in relation to the transportation of shipments.

(4) When the transportation is to be performed on a collect on delivery basis, the name, address and, if furnished, the telephone number of a person to whom notification provided for in § 375.9(b) shall be given.

(5) When the transportation is to be performed for an individual shipper, and except when the transportation is to be performed subject to tariff provisions providing for guaranteed service dates, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered on the receipt or bill of lading shall conform to the agreed dates or periods of time for pickup and delivery entered on the order for service or a proper amendment to the order for service.

(6) When the transportation is to be performed subject to tariff provisions providing for guaranteed pickup, transportation and delivery service, the dates for pickup and delivery and any penalty or per diem entitlements due the shipper under the agreement.

(7) The actual date of pickup.

(8) The company or carrier identification number of the vehicle on which the shipment is loaded.

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

(10) When the transportation is to be performed on a collect on delivery basis and if a pre-move estimate of the charges is provided to the shipper, the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment.

(11) The required released rates valuation statement.

(12) Evidence of any insurance coverage sold to or procured for the shipper, including the amount of the premium for such insurance.

(c) *Copy of receipt or bill of lading to accompany shipment.* A copy of the receipt or bill of lading shall accompany a shipment at all times while in the possession of a carrier. When the shipment is loaded on a vehicle for transportation the receipt or bill of lading shall be in possession of the driver responsible for the shipment.

[46 FR 16219, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981, as amended at 50 FR 37534, Sept. 16, 1985; 62 FR 49941, Sept. 24, 1997]

#### § 375.7 Determination of weights.

(a) Every motor common carrier transporting household goods on a non-binding estimate shall determine the weight of each shipment transported prior to the assessment of any charges dependent on the shipment weight. Except as otherwise provided herein the weight shall be obtained on a scale meeting the definition of a certified scale as provided in § 375.1(b)(4).

(1) *Weighing procedure.* Except as otherwise provided herein the weight of each shipment shall be obtained by determining the difference between the tare weight of the vehicle on which the shipment is to be loaded prior to the loading and the gross weight of the same vehicle after the shipment is loaded; or, the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after the shipment is unloaded.

(2) At the time of both weighings the vehicle shall have installed or loaded all pads, dollies, handtrucks, ramps and other equipment required in the transportation of such shipments. Neither the driver nor any other persons shall be on the vehicle at the time of either weighing.

(3) The fuel tanks on the vehicle shall be full at the time of each weighing or,

### § 375.8

in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(4) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and the trailer weighed separately at each weighing providing the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(5) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(6) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment and the gross weight of the container with the shipment loaded therein.

(7) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under these regulations or otherwise.

(b) *Weight tickets.* The carrier shall obtain a separate weight ticket for each weighing required under this section except when both weighings are performed on the same scale, one weight ticket may be used to record both weighings. Every weight ticket must be signed by the person performing the weighing and must contain the following minimum information:

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

(2) The date of each weighing.

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

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

### 49 CFR Ch. III (10-1-01 Edition)

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

(6) The carrier's shipment registration or Bill of Lading number.

(7) The original weight ticket or tickets relating to the determination of the weight of a shipment must be retained by the carrier as part of the file on the shipment. All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(c) *Reweighing of shipments.* Before the actual commencement of the unloading of a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

### § 375.8 Reasonable dispatch.

(a) Unless accepted for transportation on the basis of guaranteed pickup and delivery dates:

(1) *Reasonable dispatch required.* Each motor common carrier accepting shipments of household goods as defined in § 375.1(b)(1) for transportation for the account of individual shippers shall cause such shipments to be transported with reasonable dispatch as defined in § 375.1(b)(2).

(2) *Notification of delay in providing service with reasonable dispatch.* Whenever a carrier is unable to perform either or both the pickup and delivery of a shipment on the dates or during the periods of time specified in the order for service, the carrier shall notify the shipper by telephone, telegram or in person, at the carrier's expense, of the delay. Such notification shall be given as soon as it becomes apparent to the carrier that it will be unable to provide the service in compliance with the terms of the order for service.

(3) *Carrier notification of delay.* At the time of notification of delay the carrier shall advise the shipper of the dates or periods of time that pickup and/or delivery can be made, which considers the needs of the shipper. If the notification of delay occurs prior

to the pickup of the shipment, the amendment shall be in writing as required by §375.5(b). If the notification of delay occurs subsequent to the pickup of the shipment, the carrier representative notifying the shipper of the delay shall prepare a written record of the date, time and manner of notification and the amended date or period of time for delivery by the carrier which record shall be retained by the carrier as part of its file on the shipment and a true copy thereof shall be furnished, by first class mail or in person, to the shipper.

(b) *Tendering for delivery.* Except upon the request or concurrence of the shipper, a shipment being transported for an individual shipper shall not be tendered for delivery prior to the agreed delivery date or period of time specified on the bill of lading: *Provided*, That whenever a carrier is able to tender such a shipment for final delivery more than 24 hours prior to such specified date or the first day of such specified period of time, and the shipper has not requested or concurred in such early delivery, the carrier may, at its option, place the shipment in storage for its own account and at its own expense in a warehouse located in proximity to the destination of the shipment. Whenever a carrier shall exercise such option it shall immediately notify the shipper of the name and address of the warehouse in which the shipment has been placed, and shall make and keep a record of such notification as a part of its record of shipment. The carrier's responsibility for the shipment under the terms and conditions of the bill of lading and its responsibility for the charges for redelivery, handling and storage thereof shall continue until final delivery: *Provided*, that the carrier's responsibility under the bill of lading shall not extend beyond the agreed delivery date or the first day of the period within which delivery was to have been accomplished as specified in the bill of lading.

[46 FR 16220, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981, as amended at 62 FR 49941, Sept. 24, 1997]

#### §375.9 Notification of charges.

(a) Whenever an individual shipper of a shipment being transported on a col-

lect on delivery basis specifically requests notification of the actual weight or volume and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such request upon determining the actual weight and charges. Such notification shall be made by telephone, telegram, or in person.

(b) Whenever a shipper requests notification of the weight or volume and charges on a shipment as provided in paragraph (a), the notification must be received by the shipper, at least one full 24-hour day, excluding Saturdays, Sundays and legal holidays, prior to any tender of the shipment for delivery. The 24-hour notification requirement shall not apply on a shipment to be backweighed or on a shipment which, with the agreement of the shipper, is to be picked up and delivered within a time period encompassing two consecutive week days, or on a shipment on which the charges have been estimated and the maximum amount required to be paid at time of delivery is 110 percent of the estimated charges.

#### §375.10 Signed receipt for shipment-release prohibited.

A shipping document to be signed by the consignee at time of delivery shall not contain any language which purports to release or discharge the carrier or its agents from liability, but may contain a statement that the property has been received in apparent good condition except as noted on the shipping documents.

#### §375.11 Selling of insurance to shippers.

(a) When a shipment is released for transportation at a value not exceeding 60 cents per pound per article, and the shipper does not declare a valuation of \$1.25 or more per pound and pay or agree to pay the carrier for assuming liability for the shipment equal to the declared value, any common carrier of household goods as defined in §375.1(b)(1), or any employee, agent, or representative thereof, may sell, or offer to sell or procure for any shipper, any kind of insurance, under any type of policy, covering loss or damage in

## § 375.12

## 49 CFR Ch. III (10–1–01 Edition)

excess of the specified carrier liability to a shipment or shipments of household goods to be transported in interstate or foreign commerce by such carrier; *Provided*, that the shipper is issued a policy or other appropriate evidence of the insurance purchased, and a copy thereof be furnished to the shipper at the time the insurance is sold or procured. Carrier issued policies shall be written in plain English and shall clearly specify the nature and extent of coverage. Failure to issue a policy or other appropriate evidence of insurance purchased shall subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

(b) Any carrier offering or selling or procuring insurance as provided in paragraph (a) of this section shall provide in its tariff for the provision of such service. The tariff shall also provide for the base transportation charge to include assumption by the carrier for full liability for the value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper is not issued to the shipper at the time of purchase.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996, as amended at 62 FR 49941, Sept. 24, 1997]

### § 375.12 Liability of carriers.

(a) *Liability restricted.* Except as provided in § 375.11(a), common carriers by motor vehicle of household goods as defined in § 375.1(b)(1) shall not assume any liability in excess of that for which they are legally liable under their lawful bills of lading and published tariffs.

(b) *Limitations of liability.* A common carrier by motor vehicle of household goods shall be liable for loss of or damage to any articles caused by it while being transported or while being held for storage-in-transit, including incidental pickup or delivery, and including liability for loss or damage to any article or appliance resulting from the servicing of such article or appliance by a third person engaged by the carrier to perform such service, to the extent provided in the outstanding released rates order; except that the carrier may exempt its liability in the following instances:

(1) No liability need be assumed for perishable articles included in the shipment without the knowledge of the carrier; and a carrier accepting for shipment perishable articles may impose reasonable conditions necessary to insure the safe transportation of such commodities.

(2) When a shipment is released to a value greater than sixty cents (60¢) per pound, per article, liability for loss or damage may be limited to \$100 per pound, per article (based upon the actual article weight), for any article included in the shipment that exceeds \$100 per pound, per article in value, unless the shipper specifically notifies the carrier in writing that an identified article or articles with a value greater than \$100 per pound will be included in the shipment. In such case, the shipper will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

(c) *Storage-in-transit.* A common carrier by motor vehicle of household goods holding goods for storage-in-transit (S.I.T.) shall, no less than 10 days prior to the expiration of either the specified period of time during which the goods are to be held in such storage or the maximum period of time provided in the carrier's tariff for storage-in-transit, notify the shipper in writing (1) of the date of conversion to permanent storage, (2) of the existence of a nine-month period subsequent to the date of conversion to permanent storage during which shipper may file claims against the carrier for loss and/or damage which occurred to the goods in transit or during the S.I.T. period, and, (3) of the fact that on the date of conversion, the liability of the carrier shall terminate and the property shall be subject to the rules, regulations, and charges of the warehouseman. Notification shall be by certified mail, return receipt requested. A common carrier by motor vehicle of household goods holding goods for storage-in-transit for a period of time less than 10 days shall, no less than one day prior to the expiration of the specified time during which the goods are to be held in such storage, give notification to the shipper of the information specified in paragraph (d) (1), (2), and (3) and



maintain a record thereof as part of its record of the shipment. Failure or refusal of a carrier to notify the shipper in accordance with the foregoing shall automatically effect a continuance of carrier liability pursuant to the applicable tariff provisions with respect to S.I.T., until the end of the day following the date upon which notice is given.

[46 FR 16218, Mar. 11, 1981, as amended at 55 FR 18729, May 9, 1990; 55 FR 30235, July 25, 1990; 62 FR 49941, Sept. 24, 1997]

#### § 375.13 Complaint and inquiry handling.

(a) Motor common carriers engaged in the transportation of household goods as defined in § 375.1(a) shall establish and maintain a procedure for responding to complaints and inquiries from shippers for which such transportation is provided. The procedure shall include a means whereby shippers may communicate with the principal office of the carrier by telephone.

(b) The carrier shall retain and make part of the file relating to a shipment a written record of all complaints and inquiries received from a shipper by any means of communication.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

#### § 375.14 Agency agreements.

(a) Household Goods Agents are defined as follows:

(1) Prime agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide any transportation service for or on behalf of the principal carrier, including the selling of or arranging for any transportation service, and who perform such services on other than an emergency or temporary basis.

(2) Military agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services only on shipments transported on Government bills of lading issued by the Department of Defense, and who perform such services on other than an emergency or temporary basis.

(3) Temporary agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services on behalf of the principal carrier, excluding the selling of or arranging for any transportation service, and who perform such services on an emergency or temporary basis.

(b) Agreements between principal carriers and their prime or military agents must be reduced to writing and signed by the principal and the retained agent, and copies of any such agreements must be in the files of the principal carrier for a period of not less than 24 months following the date of termination of each agreement.

[46 FR 16222, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

#### § 375.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.

(a) No motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, any published freight charges (including any charges for accessorial or terminal services) when that shipment is totally lost or destroyed in transit. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 375.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, any specific valuation charge that may be due. This subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper.

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall, at the time it disposes of claims for loss, damage, or injury to the articles in the shipment as provided in part 370 of this chapter, refund that portion of its published freight

## § 375.16

charges (including any charges for accessorial or terminal services) corresponding to that portion of the shipment which is lost or destroyed in transit. To calculate the charges applicable to the shipment as delivered, the carrier shall multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges shall apply. The provisions of this paragraph shall apply only to the transportation of household goods as defined in § 375.1(b)(1) of these rules. Notwithstanding any other provisions of this paragraph, a carrier shall collect, and the shipper shall be required to pay, that proportion of any charges for accessorial or terminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due. The provisions of this paragraph shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the proportion of the shipment not lost or destroyed in transit.

(c) The rights provided by this section are in addition to, and not in lieu of, any other rights which the shipper may have with respect to a shipment of household goods which is lost or destroyed, or partially lost or destroyed, in transit, whether or not that shipper has exercised the rights provided in paragraphs (a) and (b) of this section.

[46 FR 16218, Mar. 11, 1981, as amended at 54 FR 36981, Sept. 6, 1989; 62 FR 49941, Sept. 24, 1997]

### **§ 375.16 Collection of freight charges on shipments transported on more than one vehicle.**

(a) Whenever a collect on delivery shipment of household goods, as defined in § 375.1(b)(1), is transported on more than one vehicle the carrier delivering such split or divided shipment shall observe the requirements of para-

## 49 CFR Ch. III (10-1-01 Edition)

graphs (a)(1), (2) or (3) of this section in the collection of the charges.

(1) At the option of the carrier, the collection of the charges attributable to the transportation of the portion of the shipment transported on each vehicle may be deferred until all portions of the shipment are delivered; or,

(2) Providing that the charges for the entire shipment have been determined, the carrier may collect at the time of delivery of any portion of the shipment that percentage of the charges represented by the portion of the shipment tendered for delivery; or,

(3) In the event that the charges due the carrier for the transportation of the entire shipment cannot reasonably be determined at the time any portion of the shipment is tendered for delivery, the carrier shall determine and collect the charges for the portion of the shipment being delivered. The total charges assessed by the carrier for the transportation of the separate portions of the shipment shall not exceed the charges due for the entire shipment.

(b) In the event of the loss or destruction of any part of a shipment being transported on more than one vehicle, the collection of charges as provided in paragraph (a) of this section shall also be in conformity with the requirements of § 375.15.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

### **§ 375.17 Advertising by motor common carriers of household goods.**

(a) Every motor common carrier engaged in the transportation of household goods in interstate or foreign commerce, including any carriers providing any accessorial service incidental to or part of such interstate or foreign transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in § 375.1(b)(3), the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Federal Motor Carrier Safety Administration.

(b) Such certificate or docket number shall be in the following form in every advertisement: "FMCSA No. \_\_\_\_\_" but

Federal Motor Carrier Safety Administration, DOT

§ 375.18

shall not include any sub numbers which may have been assigned.

(c) No motor common carrier engaged in the transportation of household goods, as defined in §375.1(b)(1), or any agent or other representative of such a carrier, shall publish or cause to be published or use any advertisement as defined in §375.1(b)(3), which is false, misleading or deceptive.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

§ 375.18 Preparation and filing of annual performance report.

(a) Filing requirement. Each motor common carrier for household goods as defined in §375.1(b) that delivers interstate shipments to individual C.O.D. shippers, during any calendar year shall, on or before March 31 of the following year, file with the Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, Washington, DC 20590, a report of the service performed during the report year. The report shall be submitted on Form OCE-101, and its accuracy must be verified by an official of the carrier. All carriers must complete part A of Form OCE-101, and those carriers transporting 100 or more shipments also must complete part B.

(b) Prescribed Annual Performance Report Form OCE-101.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

OFFICE OF ENFORCEMENT AND COMPLIANCE

ANNUAL PERFORMANCE REPORT FOR YEAR ENDED DECEMBER 31, 20\_\_

Carrier's Name \_\_\_\_\_
Carrier's Address \_\_\_\_\_
USDOT or ICCMC Number \_\_\_\_\_

PART A

During the year, the total number of household goods shipments (1st proviso) delivered for each type of shipper was:

- 1. C.O.D. shipments delivered under your common carrier authority (excluding all Government, Freight Forwarder, and Interline shipments)
2. All other 1st proviso shipments (including all Government, Freight Forwarder, and Interline shipments)

- 3. Total of Lines 1 and 2 (NOTE: Total must agree with total 1st proviso shipments reported in your Annual Performance Report, Schedule 600, Line 7, Column d, if you are required to file that report)

PART B

Complete part B only if the C.O.D. delivered shipments reported in part A, Line 1, equals or exceeds 100 shipments. The questions and answers below deal only with the shipments reported in part A, Line 1.

- 4. Number of C.O.D. shipments where the order for service was based upon a written binding estimate
5. Number of C.O.D. shipments where the charges were based on a written non-binding estimate
6. Number of C.O.D. shipments where the charges were based on other than a written binding or non-binding estimate
7. Total of Lines 4, 5, and 6 (NOTE: Total should equal the shipment count reported in part A, Line 1)
8. Percentage of shipments delivered where the final charges exceeded the initial written binding estimate
9. Percentage of shipments delivered where the final charges exceeded the initial written non-binding estimate by 10% or more
10. Percentage of shipments that were picked up after the last date for pickup listed on the order for service or bill of lading
11. Percentage of shipments that were delivered after the last date of delivery specified on the order for service or bill of lading
12. Percentage of shipments delivered where there was a claim filed (in excess of \$200) for property damage or loss
13. Percentage of shipments delivered where there was a claim filed (in excess of \$200) for damages resulting from late pickup or delivery
14. Average number of days required to settle a claim (in excess of \$200)

§ 375.18

49 CFR Ch. III (10-1-01 Edition)

- 15. Percentage of claims (in excess of \$200) that were resolved through the use of an arbitration program .....
- 16. Percentage of claims (in excess of \$200) that were resolved after the carrier received a legal notice of a lawsuit filed by the shipper .....

less than 24 months following the date of filing such a report.

4. The data in Form OCE-101 must be verified by a sworn statement signed by an official of the company.

SPECIFIC INSTRUCTIONS

Part A

Line 1: Only report those 1st proviso C.O.D. shipments moved under your common carrier authority after excluding all Government, Freight forwarder and Interline traffic.

Line 2: Report all other 1st proviso shipments, including those moving under contract carriage provisions and all Government, Freight forwarder and Interline traffic.

Line 3: Sum lines 1 and 2. The total should agree with total 1st proviso shipments reported in your Annual Performance Report, Schedule 600, Line 7, Column d, if you are required to file that report.

Part B

It is not necessary to complete Part B if the total of C.O.D. shipments reported on Part A, Line 1, did not equal or exceed 100 shipments. If completion of Part B is not required, sign the Certification and return the form to the Federal Motor Carrier Safety Administration.

Line 4: Report only those C.O.D. shipments where the order for service was signed after the receipt of a written binding estimate. Include in this computation all so-called hybrid estimates (e.g., Guaranteed Price and Price Protection options).

Line 5: Report the total number of C.O.D. shipments where the order for service was signed after the receipt of a written non-binding estimate. In the case of non-binding estimates, the actual charges are determined after the shipment has been picked up and weighed.

Line 6: Report only those C.O.D. shipments where there was no requirement for the preparation of a binding or non-binding written estimate by the carrier. As with non-binding estimates, the charges here are determined after the shipment has been picked up and weighed.

Line 7: Sum of Lines 4, 5, and 6. The number of shipments reported on Line 7 should be the same as those reported in Part A, Line 1.

COMPUTATION OF PERCENTAGES OR AVERAGES

You must determine the number of shipments falling into each of the categories described in Lines 8 and 9, respectively, and divide these shipments by the number of shipments reported on Lines 4 and 5, respectively.

CARRIER'S OATH (MUST BE COMPLETED BY A CARRIER OFFICIAL)

I, (name and title of company official), verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relative to the data contained in the form is, to the best of my knowledge and belief, true, correct and complete, based on all the information required to be included therein, of which I have any knowledge, and these representations are made in good faith. Further, I certify that I am qualified and authorized to certify the accuracy of the data. I know that willful misstatements or omission of material facts constitutes Federal crime violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to \$10,000 for each offense.

Signature

Title

Date

(c) Instructions for Preparation of Annual Performance Report, Form OCE-101.

INSTRUCTIONS FOR PREPARATION

General Instructions

1. Data for completion of Form OCE-101 may be obtained by random sampling providing that in every instance, the universe sampled is all shipments delivered under your common carrier authority (excluding Government, Freight forwarder, and Interline traffic) during the report year or all claims arising out of the transportation of those shipments that were received or settled, as appropriate, during the report year.

2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95% confidence level.

3. Carriers submitting Form OCE-101 shall retain and make available for review by an authorized FMCSA employee all working papers, notes, and other files relating to the preparation of each report for a period of not

You must determine the number of shipments falling into each of the categories described in Lines 10 through 16 and divide these shipments by the number of shipments reported on Line 7. (Exception: Line 13 is an average, not a percentage.)

Line 8: Compute the percentage of those shipments delivered where the final charges exceeded the written estimate initially provided to the shipper because of changes agreed to by the carrier and shipper in commodities transported and services provided.

Line 9: Compute the percentage of those shipments delivered under a non-binding written estimate where the final charges exceeded the written estimate provided to the shipper by 10% or more. The 10% figure is used because every C.O.D. shipper is required to have available 110% of the estimate at the time of delivery.

Line 10: Compute the percentage of those shipments where the actual pickup date occurred after the last date for pickup promised on the order for service or bill of lading.

Line 11: Compute the percentage of those shipments where the actual delivery date occurred after the last date for delivery promised on the order for service or bill of lading.

Line 12: Compute the percentage of those shipments where there was a claim filed within 60 days of the actual date of delivery to the residence. Only count those claims where the dollar value of the amount claimed by the shipper exceeded \$200 and resulted from property damaged or lost. This excludes claims for late pickups and deliveries which are reported on line 13.

Line 13: Compute the percentage of those shipments where there was a claim filed within 60 days of the actual date of delivery to the residence. Only count those claims where the dollar value of the amount claimed by the shipper exceeded \$200 and resulted from a late pickup or delivery. Late pickups and deliveries are defined in Instructions 10 and 11.

Line 14: Enter the average number of days required to pay, decline, or make a firm compromise offer of settlement of all claims exceeding \$200 during the report year. For the purpose of this report, a claim shall be considered to be a "claim filed" if it meets the criteria set forth in Lines 11 and 12, and shall be considered as paid, declined, or compromised on the date on which a written offer is mailed or delivered in person to a claimant.

Line 15: Compute the percentage of the claims exceeding \$200 arising out of the transportation of shipments which were resolved during the report year through the use of a dispute resolution or arbitration

procedure maintained or participated in by the carrier.

Line 16: Compute the percentage of the claims exceeding \$200 arising out of the transportation of shipments which were resolved during the report year as a result of legal notice of suit to recover being filed by the shipper.

[59 FR 2305, Jan. 14, 1994, as amended at 59 FR 34392, July 5, 1994; 62 FR 49941, Sept. 24, 1997]

### §375.19 Use of charge card plans.

Motor common carriers of household goods, as defined in 49 CFR 375.1(b)(1), may provide in their tariffs for the acceptance of charge cards for the payment of freight charges whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check or money order. Payment by charge card shall be considered the same as payment by cash, certified check or money order. Any tariff rule or item permitting the acceptance of charge cards shall identify the charge card plans participated in by the carrier.

[46 FR 16218, Mar. 11, 1981. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49941, Sept. 24, 1997]

## PART 376—LEASE AND INTERCHANGE OF VEHICLES

### Subpart A—General Applicability and Definitions

Sec.

376.1 Applicability.

376.2 Definitions.

### Subpart B—Leasing Regulations

376.11 General leasing requirements.

376.12 Written lease requirements.

### Subpart C—Exemptions for the Leasing Regulations

376.21 General exemptions.

376.22 Exemption for private carrier leasing and leasing between authorized carriers.

376.26 Exemption for leases between authorized carriers and their agents.

### Subpart D—Interchange Regulations

376.31 Interchange of equipment.