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Federal Actions Are Needed to Improve Oversight of the Household Goods Moving Industry

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Abstract
The ICC Termination Act of 1995 transferred federal responsibilities for protecting consumers who move their household goods across state lines using commercial moving companies to the Department of Transportation. A 1998 congressional hearing brought to light a number of instances in which unscrupulous movers preyed on consumers. The hearing also demonstrated a lack of effective oversight and enforcement of the industry by the Department of Transportation. The Motor Carrier Safety Improvement Act of 1999 directed that we assess the effectiveness of the Department of Transportations consumer protection activities for the interstate household goods moving industry and identify alternative approaches for providing consumer protection in the industry. Accordingly, this report discusses (1) the nature and extent of consumer complaints about household goods carriers since 1996, (2) the roles of consumers in preventing and resolving disputes and of government agencies in providing consumer protection, (3) the Department of Transportations oversight and enforcement activities with respect to this industry, and (4) issues associated with an expanded state role in this area. This report focuses on commercial moves of individual households and does not discuss interstate moves arranged by governments or corporations for their employees.

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Abbreviations

FTC	Federal Trade Commission
ICC	Interstate Commerce Commission

GAO
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, D.C. 20548

March 5, 2001

The Honorable John McCain
Chairman
The Honorable Ernest Hollings
Ranking Member
Committee on Commerce,
Science, and Transportation
United States Senate

The Honorable Thomas Petri
Chairman
The Honorable Robert Borski
Ranking Minority Member
Subcommittee on Highways
and Transit
Committee on Transportation
and Infrastructure
House of Representatives

The ICC Termination Act of 1995 transferred federal responsibilities for protecting consumers who move their household goods across state lines using commercial moving companies to the Department of Transportation. A 1998 congressional hearing brought to light a number of instances in which unscrupulous movers preyed on consumers. The hearing also demonstrated a lack of effective oversight and enforcement of the industry by the Department of Transportation.

The Motor Carrier Safety Improvement Act of 1999 directed that we assess the effectiveness of the Department of Transportation's consumer protection activities for the interstate household goods moving industry and identify alternative approaches for providing consumer protection in the industry. Accordingly, this report discusses (1) the nature and extent of consumer complaints about household goods carriers since 1996, (2) the roles of consumers in preventing and resolving disputes and of government agencies in providing consumer protection, (3) the Department of Transportation's oversight and enforcement activities with respect to this industry, and (4) issues associated with an expanded state role in this area. This report focuses on commercial moves of individual households and does not discuss interstate moves arranged by governments or corporations for their employees.

To address these topics, we contacted or met with officials from a variety of industry, law enforcement, consumer, and alternative dispute resolution associations involved with the household goods moving industry or consumer protection activities. We also met with officials from the Department of Transportation's Federal Motor Carrier Safety Administration (the motor carrier administration)—the federal agency that has oversight and enforcement responsibility for this industry—and met with or contacted officials from 14 of the 52 division (state) offices within the motor carrier administration. We chose these locations because they represented the states with the greatest number of interstate moves or because our discussions with federal agencies, industry associations, and consumer groups indicated that these states appeared to be experiencing the most problems with interstate household goods moves. (See app. I for a detailed discussion of how we carried out our work.)

Results in Brief

Information is not collected in a way that would readily provide a national perspective on the extent and nature of consumer complaints about the interstate household goods moving industry. The information we compiled from selected federal agencies and industry organizations indicated that the complaints they received—covering both interstate and intrastate carriers—generally doubled between 1996 and 1999 and may number several thousand a year. The information from these organizations and from consumer groups further suggests that some complaints result from consumers' failure to protect themselves (by, for example, getting estimates over the telephone rather than having a moving company physically determine the amount of goods to be moved). Other complaints occur because carriers do not follow federal law and regulations and bill consumers excessively when consumers' goods are delivered. Still other complaints result from apparently unscrupulous carriers that demonstrate a desire to prey on consumers.

For moving services as for other major goods and services, the primary responsibility for consumer protection lies with consumers to select a reputable household goods carrier, ensure that they understand the terms and conditions of the contract, and understand and pursue the remedies that are available to them when problems arise. The Congress authorized the Department of Transportation to regulate the interstate household goods moving industry for the purpose of protecting consumers. A House Committee report accompanying this authorization directed the Department not to attempt to resolve individual households' disagreements with carriers. Rather, the Congress required carriers to establish neutral

arbitration processes to help resolve loss and damage disputes. Consistent with this congressional directive, the Department has generally not become involved in attempting to settle disputes between individual consumers and carriers. Instead, when it has undertaken enforcement actions, it has focused its efforts on carriers that appear to exhibit patterns (e.g., multiple instances) of noncompliance with its regulations. In these cases, the Department takes action against the carrier, such as issuing compliance orders, assessing monetary penalties, and revoking the carrier's operating authority.

The Department of Transportation has provided limited oversight of and taken little enforcement action in consumer protection issues because this responsibility is a relatively low priority compared with promoting motor carrier safety. Accordingly, few resources were transferred to this activity when the Department assumed responsibility for this industry, and the Department has not subsequently asked for additional resources. Among other things, it has not systematically collected and analyzed information—such as complaint information—about the industry that would help it carry out its responsibilities; it has conducted little public education to help consumers make more informed choices; it has not studied the effectiveness of arbitration as a means of resolving disputes, as required by law; it could not provide the number of reviews it has undertaken of carriers' compliance with consumer protection regulations but estimated there have been very few; and it has taken few enforcement actions. Government, consumer organization, and industry officials we contacted believe that the Department's lack of action has created a vacuum that has allowed unscrupulous carriers to flourish and take advantage of consumers. In December 2000, the motor carrier administration approved plans to increase public education, information collection, and enforcement, among other things. Although it has begun to take some action, such as establishing a toll-free hotline, many of the outlined plans consist of broad objectives and lack specific steps for implementation. We are making recommendations to assist the Department in carrying out its oversight and public education activities for this industry.

An expansion of the states' role in the regulation of interstate household goods carriers has the potential to enhance protection for consumers. Federal law currently allows the states to address abusive business practices that extend beyond their borders in other areas of interstate commerce, such as telemarketing and fair credit reporting. As in these areas, legislation could be enacted to authorize the states to enforce federal statutes and regulations applicable to interstate carriers of household

goods. The moving industry opposes state enforcement against interstate carriers because of concerns about the potential for inconsistent interpretation and enforcement among states. In addition, changes to the federal statute governing carriers' liability for loss or damage in interstate shipments, which limits state law claims, have the potential to improve protection for consumers. Federal legislation could limit the preemptive effect of the statute to allow individual consumers to recover damages from interstate household goods carriers under state law under specified circumstances. Such legislation might also explicitly authorize the states to enforce state consumer protection statutes against household goods carriers. We are not recommending that the Congress make these legislative changes, in part because we believe that the Department could take a number of actions to strengthen its oversight of this industry that might lessen or eliminate the need for legislative changes.

In commenting on a draft of this report, the Department said that it recognizes its responsibilities in the area of household goods consumer protection and will work to the best of its ability, within established resource constraints, to fulfill its responsibilities while it fulfills its motor carrier safety responsibilities. The Department also believes that its December 2000 plans to establish a new oversight and enforcement approach will be effective. We agree that this new approach has the potential to improve oversight and enforcement. However, it will be important for the Department to demonstrate to the Congress and to the public that it can follow through with its consumer protection efforts over the long term.

Background

Each year, between 1.3 million and 1.5 million households have commercial moving firms move their household goods to another state, according to industry estimates.[1] There are approximately 2,900 motor carriers registered with the Department of Transportation that are active in transporting household goods across state lines. These 2,900 carriers represent a small percentage of the approximately 654,000 commercial

[1]This estimate includes moves of individual households, moves arranged by governments, and moves arranged by corporations for their employees because industry officials do not separately track moves in these categories. Industry estimates indicate an additional 1.3 million to 1.5 million households move themselves with their own or rented trucks each year.

motor carriers engaged in all aspects of interstate commerce (and registered with the Department).

Household goods carriers are of three types: national van lines, independent carriers, and short-haul movers. Most interstate moves are conducted by approximately 25 van lines—companies that market and dispatch moves in which agents, acting on the van lines' behalf, perform the actual moves.[2] These agents are local moving companies that own the moving equipment and storage facilities used in interstate moves. Independent carriers lease or own their own equipment and storage facilities but do not have agents. Independent carriers often share storage facilities and some equipment in an effort to provide enough capacity and flexibility to compete with the van lines. According to industry officials, short-haul movers typically undertake moves of around 500 miles that do not require storage facilities or return trip loads of goods.

Because most consumers seldom use moving companies for their household goods, they are less prepared to protect themselves financially than are commercial shippers. Until 1996, the Interstate Commerce Commission (ICC) had regulatory responsibility for interstate household goods carriers, including issuing regulations, conducting oversight activities, and taking enforcement actions. The ICC Termination Act of 1995, among other things, dissolved ICC and transferred these consumer protection functions (called "economic regulation") to the Department of Transportation. These functions were further assigned to the motor carrier safety office within the Federal Highway Administration. The Motor Carrier Safety Improvement Act of 1999 transferred these consumer protection functions to a new organization within the Department, the Federal Motor Carrier Safety Administration. In addition to its headquarters facilities, the Federal Motor Carrier Safety Administration maintains a field office structure consisting of 4 service centers and 52 division offices—one in each state, Puerto Rico, and the District of Columbia.

[2]A single move could involve several agents. For example, one agent might estimate the cost of the move, and a second agent might pack the household goods and move them to temporary storage at a third agent's location. Finally, a fourth agent might pick up the goods from storage and deliver them to their final destination.

Information on the Nature and Extent of Problems Is Limited

Data weaknesses do not allow us to assess the nature and extent of the problems consumers have had nationwide with various aspects of the interstate moving industry since 1996. One reason is that the government offices and business and industry organizations we contacted that receive complaints from consumers do not centrally compile information on the nature of the complaints and often do not differentiate between complaints against interstate and intrastate moving companies.[3] Another reason is that organizations did not collect information on how the complaints were resolved. The federal motor carrier administration estimates that it receives 3,000 to 4,000 complaints about interstate moves each year.

Available information indicates that consumers have complained about a broad range of problems in dealing with household goods carriers in recent years. Some alleged problems reflect misunderstandings between consumers and carriers about (1) when services were to be paid for or (2) what services were included in the original cost estimate provided to the consumer. For example, a carrier arrived at the destination with the consumer's goods on the scheduled delivery date but the consumer was not present; the carrier then took the consumer's goods to a storage facility—at an extra cost to the consumer—until the consumer arrived, and the consumer complained about the extra cost. In another example, the consumer failed to obtain complete information about the services, accepting a telephone estimate of the expected moving charges rather than having the moving company provide an on-site estimate—and then complained when the actual cost of the move included charges for services that were not covered by the estimate.

[3]For example, records were available only at the Department's 52 division offices and at the 160 local Better Business Bureau Offices. It was not feasible to obtain or review these documents from so many locations.

Other problems occurred when a carrier lost or damaged the consumer's goods but the consumer and the carrier disagreed on the amount of compensation or the carrier took a long time to settle the claim. In some instances, the disputed amounts involved thousands of dollars. Consumers have also complained that carriers held their goods "hostage" by refusing to unload them from the moving truck until the consumer paid the entire balance of money due, even though the consumer is not required to pay more than 110 percent of the estimated amount to the carrier at the time of delivery.[4] Yet some carriers required payment in full—over and above the 110 percent amount—in cash at the time of delivery. And when the consumer did not pay the amount above 110 percent of the estimate, the carrier stored the goods at an added cost to the consumer.

Finally, available information indicates that some consumer complaints arose because unscrupulous carriers had no regard for the rights of consumers or for the law. In some instances, carriers provided unreasonably low estimates that they had no intention of honoring. Some carriers also extracted unreasonably high fees from consumers by imposing unjustified and exorbitant charges for packing, boxes, tape, and other ancillary services. In addition, some carriers engaged in a practice called "weight bumping," in which they artificially inflated the weight of a shipment by including the weight of another household's goods when calculating the final bill.[5] Consumers have complained that, in some instances, even when they have won judgments against carriers in court, they have been unable to collect damages because the carrier has hidden its assets.

[4]This applies to collect-on-delivery shipments for which nonbinding estimates were made. The carrier must defer demand for payment of any remaining charges for 30 days following delivery.

[5]One common way moving companies determine freight charges is by weighing the goods to be transported. To determine the weight of goods, a moving van is weighed before and again after the consumer's goods are loaded. Large moving vans can hold more than one household's possessions. After the van is weighed initially, unscrupulous carriers add the weight of another household's possessions to increase the weight of the van—and of the final charge to the consumer.

The limited information that is available from selected federal and industry organizations suggests that the number of complaints against household goods carriers is increasing. The complaints recorded by 12 federal motor carrier administration division offices about interstate household goods carriers doubled from 318 in 1996 to 659 in 1999. (Two other division offices we contacted did not record complaints received.) Nationwide data maintained by the Council of Better Business Bureaus[6] indicate a nationwide increase in complaints against interstate and intrastate household goods carriers from about 3,000 in 1996 to about 5,100 in 1999. Another measure—consumer requests for formal arbitration proceedings to resolve disputes with carriers—indicates an increase in consumer dissatisfaction.[7] Such requests submitted to the American Moving and Storage Association[8] increased between 1996 and 2000 from about 100 to over 700. While all consumer complaints or requests for arbitration may not have merit, they represent consumer dissatisfaction that consumers want addressed. (See app. II for additional information.)

Consumers Have Primary Responsibility for Preventing and Resolving Problems; Government Has a Broader Oversight and Enforcement Role

To resolve individual disputes over interstate shipments of household goods, consumers are expected to avail themselves of self-help mechanisms, such as neutral arbitration. Under the ICC Termination Act of 1995, the Department of Transportation is authorized to conduct oversight and provide enforcement activities, among other things, to protect these consumers.

[6]One of the best-known consumer complaint organizations is the Better Business Bureau. The Council of Better Business Bureaus is the national umbrella organization for over 160 local Better Business Bureaus. These are nonprofit organizations dedicated to promoting ethical relationships between businesses and consumers.

[7]Arbitration is the submission of a dispute to one or more impartial persons for resolution.

[8]The American Moving and Storage Association is the national trade association of the moving and storage industry. It is the largest industry association and represents approximately 2,000 movers, van lines, and their agents that are engaged in the interstate transportation of household goods.

For moves of household goods across state lines, as for other services, consumers are primarily responsible for protecting their own interests. It is up to them to select a reputable carrier, ensure that they understand the terms and conditions of the contract, and understand the remedies that are available to them when problems arise so that they can resolve disputes directly with the carrier. Typically, a consumer first tries to work with the carrier directly or through state or local government agencies, if such help is available, to resolve a dispute. If the results are not satisfactory, the consumer can seek further recourse—arbitration—through industry and business associations, such as the American Moving and Storage Association, the Council of Better Business Bureaus, and other independent arbitration organizations nationwide.[9] Alternatively, the consumer can pursue civil litigation for violations of the household goods consumer protection statutes and regulations.

Since 1996, the Department of Transportation has had primary federal authority for regulating the interstate household goods moving industry—specifically, for issuing regulations to protect consumers, conducting oversight activities (including reviewing carriers' compliance with those regulations), and taking enforcement actions. Among other things, the Department's existing consumer protection regulations cover the (1) types of cost estimates carriers can provide to consumers, (2) guidance that carriers must provide to consumers about their rights and responsibilities when they move, (3) approved methods for carriers to weigh shipments of household goods used to determine the final costs of the move, (4) process through which carriers handle inquiries and complaints, and (5) maximum charges consumers are required to pay at the time their goods are delivered to the final destination.

Historically, the Department's oversight activities for all types of commercial motor carriers—not just household goods carriers—include collecting information on the state of the industry, such as complaints lodged against registered carriers. The Department also reviews compliance with regulatory requirements (called "compliance reviews") at a carrier's base of operations. When it identifies instances of noncompliance, the Department can rely on a variety of enforcement

[9]The Congress required, under the 1995 act, that household goods carriers offer consumers the option of neutral arbitration as a means of settling disputes over household goods transportation. Required arbitration covers only the loss of or damage to goods, not other problems such as rate disputes, delay claims, or service.

activities. For example, it can issue orders to compel compliance, impose civil monetary penalties, revoke the carrier's operating authority, or seek federal court orders to stop regulatory violations. While the Congress provided the Department with the authority to regulate the interstate household goods moving industry, a House Committee report accompanying the 1995 act directed the Department not to intervene and help resolve individual complaints—as was the practice of ICC. According to Department officials, the Department has followed this direction and, when it undertakes enforcement actions, focuses on patterns of behavior (e.g., multiple complaints) by a carrier.

Another federal agency, the Surface Transportation Board,[10] has the authority to determine whether a moving company's charges to consumers are consistent with its tariff (a published list of charges for specific services provided). Consumers can use the Board's opinion in negotiating with the carrier or in court.

The states may regulate the transportation of household goods within their boundaries (intrastate transportation). In addition, 9 of the 14 states we contacted attempt to help consumers with complaints involving interstate transportation. According to state officials, this involvement is generally limited to informal mediation of the complaint with the carrier, unless state officials believe the carrier has violated that state's consumer protection or fraud statutes. State involvement in matters involving interstate carriers is limited, at least in part, by a federal statute that preempts a broad range of state law claims for loss or damage in interstate transportation. (See app. III for additional information on states' roles.)

[10]The Board is a bipartisan, independent adjudicatory agency administratively housed within the Department of Transportation, with jurisdiction over certain surface transportation economic regulatory matters. It was created by the ICC Termination Act of 1995 and received responsibility for many rail and nonrail functions previously the responsibility of ICC.

The Department of Transportation Has Done Little to Oversee the Household Goods Moving Industry

Since the Department assumed authority for the oversight and enforcement of the household goods moving industry 5 years ago, its activities in all areas—consumer education, oversight, compliance, and enforcement—have been minimal. According to Department officials, no more than two staff positions were transferred from ICC for household-goods-related functions. Typically, the Department has devoted about 5 staff years to its household goods consumer protection activities and has not requested more resources for these activities from the Congress. Rather, it has devoted its attention to motor carrier safety issues, which are its primary motor carrier responsibility. The Department undertook few, if any, activities related to the industry between 1996 and 1998. In 1998, after a congressional hearing on growing problems with certain carriers, it formed a task force to provide increased enforcement against egregious carriers. This task force initiated 29 enforcement actions against carriers but was disbanded in 2000 to be replaced with a permanent enforcement team as part of the Department's plans to increase its efforts in this area. The Department also published proposed rules implementing the ICC Termination Act and addressing certain consumer protection issues, but the rules have not been finalized because of work on other, safety-related rules.

In 2000, when the authority for these activities was transferred to the motor carrier administration, the Department established the Office of Enforcement and Compliance within the motor carrier administration, with enforcement and compliance responsibilities for all carrier types, including household goods carriers. Through January 2001, this unit had established a minimal system for recording complaints about household goods carriers, established a toll-free telephone consumer complaint hotline, and produced an outline of plans for public education and enforcement efforts, among other things. However, significant elements of the outline—including plans for public education and outreach, as well as training of field investigators on the household goods regulations—lack specific steps.

Officials of the government, industry, and consumer organizations we contacted agreed that this minimal activity has created a vacuum that has allowed egregious carriers to flourish and take advantage of consumers. According to these officials, carriers are aware that the Department does little to enforce the consumer protection regulations or provide much oversight of the industry. As a result, these officials believe that while most moves are completed by reputable carriers with few or no problems,

unscrupulous carriers are taking advantage of the lack of oversight and are operating without concern for the regulations or the rights of consumers.

Consumer Education Activities Have Been Minimal

Education helps consumers understand how they can make the choices that will lead to more successful interstate moves. The Department has not made an effort to reach out to consumers and organizations, such as consumer groups, to promote a message of how consumers can protect themselves and get redress when problems arise. Given that consumers have primary responsibility for preventing and resolving problems with moving companies, such outreach could help prevent consumer problems. The Department recognized the importance of consumer education when it continued to make available an ICC-developed booklet on consumers' rights and responsibilities. In addition, the Department continued an ICC requirement that all interstate household goods carriers provide this booklet to their customers.

The Department's consumer education efforts have been minimal, limited mostly to placing the rights and responsibilities booklet and a Department-developed "17 most frequently asked questions" document about moving on the agency's Internet Web site. The rights and responsibilities booklet[11] and the frequently asked questions document contain much useful consumer information. However, making the booklet available on the Department's Web site may not be sufficient because many households do not have Internet access.[12] In addition, some movers may not be making the booklet available to their customers, as required. In this regard, motor carrier administration officials who receive consumer complaints in California and New York and the Executive Director of the Illinois Movers and Warehouseman's Association told us that, according to consumers who contact their organizations after a move has taken place, some carriers

[11]The motor carrier administration has not updated the booklet since assuming responsibility for this area a year ago. As a result, the booklet still refers to the Federal Highway Administration as the federal point of contact for consumers.

[12]According to a Department of Commerce report, the percentage of American households with Internet access in the home is growing. About 42 percent of all households had computers with Internet access as of August 2000, up from 26 percent in December 1998. However, only about 59 percent of all *persons* using the Internet at home use it to search for information (such as to help them with moving their household goods). The report also estimated that about 10 percent of households that never had Internet access at home had access elsewhere (such as at work or at a public library). See *Falling Through the Digital Divide: Toward Digital Inclusion* (Oct. 2000).

have not offered them this booklet. The motor carrier administration also offers a "self-help" package to those who request it. However, the usefulness of this package is questionable. It consists of photocopies of federal regulations and statutes without explanation to help the reader understand them.

One means of consumer education would be through concerted outreach to consumers, such as through consumer and industry groups and state consumer protection and enforcement agencies. The motor carrier administration endorsed the concept of this approach in December 2000, but it will not develop concrete activities for carrying it out until June 2001. (The motor carrier administration's plans to increase its presence in this area are discussed at the end of this section.) We agree that such outreach could be useful in helping consumers understand how to make a move more successful and how to seek redress when problems arise. It would also be helpful to state agencies when consumers complain to them about interstate household goods movers. Over half of the state agencies we contacted did not know which federal agency regulates these movers, or that any federal agency had any role since the termination of ICC.[13] Therefore, they were unable to forward complaints they received about interstate moves to the motor carrier administration.

Another opportunity for the Department to help consumers make informed choices is to make complaint information available to the public. For example, the motor carrier administration receives complaints from some consumers about household goods carriers but does not share this information with the public because it believes that by doing so it may violate consumers' privacy. Such concerns would have merit if the Department identified the complainant when making the information public. However, the complaints could be aggregated by carrier and type of complaint (e.g., damage to goods shipped, hostage freight) without revealing the identity of the complainant. This approach is used by the Department's Aviation Consumer Protection Division. The Aviation Consumer Protection Division routinely shares complaint information (e.g., damage to luggage, poor service) collected from consumers through its Air Travel Consumer Report. The Aviation Consumer Protection

[13]Of 24 state agencies we contacted, including offices of the attorney general, 14 did not know to refer consumers to the motor carrier administration for help. For example, officials with six agencies told us they referred consumer complaints to ICC, the Surface Transportation Board, and the Federal Highway Administration.

Division shares this information with consumers through its Internet Web site to help them make choices about which airlines to use. According to the Assistant Director for Aviation Consumer Protection, publishing these data assists consumers in assessing the airlines' service quality while encouraging the airlines to improve their service. In addition, Department officials are concerned about providing the public with complaint information that has not been substantiated by the Department. However, the Assistant Director for Aviation Consumer Protection explained that his office and the airline industry generally agree that complaints, as reported, are real and valid from a consumer's perspective regardless of whether there has been a violation of regulations or simply a disagreement over policy and procedures.

Similarly, in 1998, the Department proposed rules that would implement the requirements of the 1995 act and would require carriers to file annual reports with the agency that, among other things, include information on the number of claims filed with the carrier. The Department planned to make this information available to the public, further indicating that privacy concerns could be addressed. (The Department has not finalized these rules and, therefore, has not implemented this action.) Previously, ICC required similar reports and made this information available to the public.

The Department Has Undertaken Little Industry Oversight

Oversight efforts that would help the Department understand the industry and shape its enforcement strategy have been minimal. The motor carrier administration has not collected information on the nature and extent of complaints in a way that could be used in overseeing the industry. Even though it required its division offices to collect information on all complaints that came in to them in a complaint register, 2 of the 14 division offices we contacted were not using complaint registers because the officials in charge of those offices decided that the complaints were so infrequent that the registers were unnecessary. The other offices collected the information inconsistently, hampering the motor carrier administration in understanding the nature and extent of problems reported by consumers.[14] For example, one office recorded only complaints made in writing and ignored complaints made over the telephone, even though the

[14]After we discussed this issue with the motor carrier administration official in Texas responsible for entering complaints into that office's register, the state director developed procedures to ensure that all telephone complaints were recorded in the complaint register.

motor carrier administration's guidance specified that information from telephone complaints be recorded.

Agency guidance indicates that a primary purpose of the complaint register is to identify substantial patterns of noncompliance that would aid in targeting unscrupulous carriers for enforcement actions. However, the motor carrier administration did not issue any guidance to its division offices on how and when to report complaint data to headquarters. Division office staff told us that the registers were primarily used to log complaints because the agency guidance did not ask for complaints to be supplied to headquarters for analysis. In addition to having data quality problems, the complaint register system is not designed to share information across state lines or with headquarters: The databases that each office maintains are "stand-alone"—not electronically linked to each other or to headquarters. This design limits the register's usefulness in oversight and enforcement. According to Department officials, the motor carrier administration plans to create a new, national consumer complaint database by April 2001 for use in enforcement and oversight. While this database will accept complaints from all sources—including the general public—motor carrier administration staff at headquarters, service centers, and division offices will have limited access to the entire system.

Finally, the Department has not undertaken a study of the effectiveness of arbitration as a means of settling household goods disputes, despite the requirement in the ICC Termination Act that it complete this study within 18 months. A study of arbitration—required for the first time by the 1995 act—would be useful in determining the degree to which carriers have established accessible and fair arbitration programs. The motor carrier administration has no plans to undertake the study.

The Department Does Not Know the Extent to Which It Has Examined Carriers' Compliance With Household Goods Rules

Agency officials could not tell us how many of the nearly 500 compliance reviews of carriers that transport household goods conducted since 1996 involved ensuring compliance with consumer protection requirements, such as the one for carriers to establish accessible and fair arbitration programs. Agency officials told us that unless specific complaints have been made against a carrier, compliance reviews typically do not include checks of the carrier's compliance with the consumer protection regulations because (1) the focus of compliance reviews is to determine the operating safety of the carrier; (2) investigators' training, limited to 1 day, is insufficient for them to evaluate compliance with the regulations; and (3) departmental manuals on how to conduct compliance reviews include

guidance on only one of the consumer protection regulations (that carriers participate in an arbitration program). While the Department's December 2000 plans include providing additional training to field safety investigators on the household goods regulations, the plans do not indicate the extent of training to be provided. In addition, this training is not scheduled to be completed until September 2001. In commenting on a draft of this report, Department officials noted that the Department began updating its compliance review manual to include additional household goods regulations in January 2001.

The Department Has Not Determined Whether Its Level of Enforcement Is Appropriate

The Department has not determined whether it is carrying out the appropriate level of enforcement activity with respect to households goods carriers relative to the other carriers it regulates. Departmental data suggest that disproportionately fewer household goods carriers are targeted for enforcement than are other types of carriers. In connection with routine enforcement activities, the Department has opened 11 cases involving household goods carriers (of the approximately 2,900 carriers registered with the Department) as compared with completing about 13,000 enforcement cases involving over 650,000 carriers of all types departmentwide since 1996 for all regulatory violations. The 11 cases opened against household goods carriers were for (1) violating consumer protection regulations, (2) failing to register with the Department, or (3) failing to have insurance. The Department had settled these cases, including assessing civil penalties against the carriers, as of February 2001. In response to congressional concerns in 1998 about such limited enforcement, the Department established a temporary task force with seven members, including three former ICC investigators, to inspect household goods carriers reported to the agency for egregious behavior. The task force investigated 29 household goods carriers and brokers that appeared to exhibit patterns of abusive activities. Various criminal and civil actions were imposed against 22 of them.

In December 2000, the motor carrier administration proposed to evaluate its compliance and enforcement efforts to ensure the effectiveness of its enforcement activities. The Department plans to establish a tracking and monitoring system to evaluate its efforts by May 2001. In addition, it plans to prepare press releases (as needed) of civil penalties and other significant enforcement actions taken against household goods carriers or brokers.

The Motor Carrier Administration's Plans Lack Specificity

Only recently has the motor carrier administration decided that increased efforts are needed. As a result, in December 2000, it approved an outline of plans to take a more active role in public education, oversight, compliance, and enforcement in the household goods moving industry. The outline proposes establishing two motor carrier administration teams dedicated to addressing consumer problems in the industry. The consumer affairs team, comprising two motor carrier administration staff and five contract employees, would provide guidance for the public and others about available consumer protections, take consumer complaint calls on a toll-free telephone hotline, and log complaints into a national complaint database. Team members would be responsible for handling any hostage goods complaints through negotiation and appropriate exercise of agency authority. If this team was not available to handle the complaint, the complaint would be forwarded to the second team, the enforcement team, for further handling. This latter team, to consist of four headquarters and three field staff members, would monitor complaints and investigate household goods carriers on the basis of such factors as the kinds of alleged violations, the number of complaints relative to the size of the carrier, and the degree of harm to consumers. Enforcement actions would then be taken in response to those violations for which the agency determined such actions were warranted. The team would also work to provide information for the news media, public interest groups, industry groups, state governments, and others about consumers' rights and responsibilities and about enforcement remedies within the motor carrier administration's jurisdiction through such means as presentations and Internet postings.

The approved plans did not include milestones for implementing the Department's proposed actions. In commenting on a draft of our report, which pointed out this omission, the Department announced that in January 2001, it had approved milestones for elements of its planned approach. However, these plans consist of little more than objectives, lacking specific steps needed for implementation. For example, the plans lack details on the duration and frequency of training for field investigators on the household goods regulations. In addition, the Department's plans do not address the possible retirements within 3 years of several motor carrier administration staff with institutional knowledge of the household goods regulations.

Issues Associated With an Expanded State Role in the Regulation of Interstate Household Goods Carriers

Consumer protections have the potential to be enhanced by expanding the states' role in the regulation of interstate household goods carriers. The Congress has already expanded state authority in certain other areas of commerce, including telemarketing and fair credit reporting, in which the Congress has recognized that the states can contribute to addressing abusive business practices that extend beyond their borders. As in these areas, the states could be authorized to enforce federal statutes and regulations applicable to interstate carriers of household goods. Industry representatives we contacted opposed such changes, stating that inconsistent interpretations of federal statutes and regulations by states would damage legitimate carriers. Changes to the federal statute governing carriers' liability for loss or damage in interstate shipments, which limit state law claims, also have the potential to improve protection for consumers.

States Have Enforcement Authority in the Telemarketing and Fair Credit Reporting Industries

The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 required the Federal Trade Commission (FTC) to adopt rules prohibiting deceptive and abusive telemarketing practices and authorized the states to take enforcement action against those engaging in patterns or practices of telemarketing that violate those rules.[15] The act reflects congressional findings that interstate telemarketing fraud had become a problem of such magnitude that FTC's resources were not sufficient to ensure adequate consumer protection. Although FTC does not regularly track state activities, an official estimated that at least 21 individual state actions have been brought and that joint actions number in the hundreds. An FTC official also pointed out that since 1996, in joint FTC and state investigations of telemarketing fraud, the resources of all 50 states and FTC have been efficiently used to benefit consumers nationwide.

The states also share enforcement authority with FTC with respect to credit reporting under the 1996 amendments to the Federal Fair Credit Reporting Act. The act authorizes the states to take enforcement action on behalf of consumers to bring a stop to violations and recover damages. According to an FTC official, the states have generally not yet used their authority under the act and may be allocating enforcement resources to other law enforcement priorities.

[15]Among other things, the states may obtain injunctions against illegal telemarketing activities and damages on behalf of their residents.

Industry Believes That State Enforcement Is Inadvisable

The industry position, as articulated by the American Moving and Storage Association, is that authorizing the states to enforce federal statutes and regulations would result in " . . . a firestorm of inconsistent, varying interpretations of federal law that present the potential for injunctive relief, threatening the continued operations of legitimate movers." The Association has also argued that a small minority of consumers would push their grievances, even when carriers had complied with federal regulations, and that some states would improperly move against the carriers.

To address the potential for inconsistent state interpretation in connection with the telemarketing and fair credit reporting statutes, FTC works with the states to address interpretation issues before cases are initiated. Both statutes require the states to notify the Commission before taking enforcement action or, if that is not possible, immediately upon taking action.

The Carmack Amendment Limits Claims Under State Law

Consumer advocates and state officials we contacted also advocate changes to the Carmack Amendment, a federal statute that preempts a broad range of state law remedies in connection with loss and damage in interstate shipments.[16] The Carmack Amendment imposed a uniform scheme of liability for loss or damage to eliminate the uncertainty associated with conflicting state laws regarding interstate shipments. Courts have consistently held that the Carmack Amendment bars consumers from filing claims under state law, including those for a carrier's breach of contract, negligence, deceptive practices, and fraud.

However, the extent of the Carmack Amendment's preemptive effect in connection with individual consumer claims is not as clear. Furthermore, there is some question about the states' authority to take enforcement action against interstate carriers unrelated to loss or damage under state consumer protection statutes. The National Association of Consumer Agency Administrators and several state officials have suggested that the Congress explicitly authorize the states to enforce such statutes against interstate movers to remove any questions concerning their enforcement authority in light of the Carmack Amendment. In addition, the preemptive effect of the Carmack Amendment could be limited to allow individual consumers to recover damages under state law under certain

[16]The Carmack Amendment is set forth in section 14706 of title 49, U.S. Code.

circumstances. For example, an official from one state suggested that the Carmack Amendment be modified so as not to preempt state law with respect to household goods carriers operating without tariffs in violation of federal law. (See app. III for additional information.)

As discussed in the previous section, a number of areas exist in which the motor carrier administration could better oversee the household goods moving industry and help consumers make informed choices when they move their household goods. We believe that actions in these areas could lead to improved compliance with federal laws and regulations. We also believe that action by the Department in areas in which it currently is exercising little authority should precede state involvement in this area. Once the Department completes its December 2000 plans and effectively implements the recommendations contained in this report, it will be in a better position to determine what additional benefits, if any, would accrue from legislative changes that would expand the states' role with respect to interstate household goods carriers.

Conclusions

Available information indicates that consumer complaints in the household goods industry are increasing. In addition, there was widespread agreement among the government, industry, and consumer organizations we contacted that the Department's lack of action has contributed to the growth of problems. The Department defends its limited actions by stating that safety activities are the primary focus of its motor carrier efforts. However, the Department has not taken steps to understand the nature and extent of problems in the industry—and therefore to determine whether its limited approach to oversight and enforcement is appropriate. Nor has it made more than minimal efforts to provide information to consumers that would assist them in making more informed choices. Consumer education as a preventative tool takes on increased importance if the motor carrier administration is to pursue its course of limited oversight and enforcement. The motor carrier administration has recently recognized the need to be more active in this area and has outlined plans to increase its involvement. We are making recommendations for actions to better ensure that these actions are fully implemented and achieve the intended results.

Recommendations for Executive Action

We recommend that the Secretary of Transportation direct the Administrator of the Federal Motor Carrier Safety Administration to

undertake activities that would help it better oversee the industry. These actions should include

- undertaking and completing the study of alternative dispute mechanisms required by the ICC Termination Act of 1995 and
- ensuring that the motor carrier administration's division offices collect and maintain information on consumer complaints consistently and that the information be shared across division offices and with headquarters.

We further recommend that the Secretary direct the Administrator to determine the adequacy of its enforcement efforts. These actions should include

- assessing whether enforcement activities against household goods carriers are effective and sufficient and, if not, increase enforcement actions against interstate household goods carriers, as outlined in the motor carrier administration's plans, and
- determining whether legislative changes are needed to supplement the Department's efforts, including (1) authorizing the states to enforce federal statutes and regulations and (2) changing the federal statute limiting carriers' liability with respect to interstate shipments of household goods. If such changes are needed, the Department should submit them to the Congress. This determination should be made after the other recommendations in this report have been implemented and sufficient time has passed to assess the effects of the Department's actions.

We also recommend that the Secretary direct the Administrator to carry out public education efforts that will promote awareness of means that consumers can employ to protect themselves when they are moving their household goods across state lines and on what they can do when problems arise. These efforts should include

- reaching out to consumers, consumer and industry groups, and state governments and using Internet postings and other means, consistent with the motor carrier administration's plans;
- notifying state consumer and law enforcement agencies and national consumer organizations that the motor carrier administration is responsible for regulating the interstate household goods industry;
- making information on the number and general nature of complaints made against individual carriers available to the public without disclosing the complainants' identity; and

- publicizing the results of the Department's enforcement cases against household goods carriers.

Agency Comments and Our Evaluation

We provided the Department of Transportation with a draft of this report for review and comment. We obtained comments from departmental representatives, including the Director of the Federal Motor Carrier Safety Administration's Office of Enforcement and Compliance. These representatives told us that the motor carrier administration recognizes its responsibility in the area of household goods consumer protection and has been endeavoring to do the best it can with the limited resources available. It will continue to work to the best of its ability, within established resource constraints, to effectively fulfill its responsibilities in this area. The officials indicated that the Department has received only a fraction of the resources ICC devoted to the area and has augmented its staffing to the degree it is able, while it continues to pursue the ambitious safety agenda set out before it with the motor carrier community. The representatives also told us that the motor carrier administration recently established a new approach to deal more effectively and comprehensively with issues in the household goods moving industry, particularly those involving carriers and brokers that have demonstrated persistent noncompliance with applicable economic and commercial regulations. They said that this approach will focus on educating consumers, tracking complaints, and formulating a more effective approach to regulatory enforcement.

We agree that the new approach adopted by the Department has the potential to improve oversight and enforcement over the household goods moving industry. However, since many of the initiatives are still in their early stages, we cannot predict the ultimate success of these endeavors. The Department will need to demonstrate to the Congress and to the public that it can follow through with its consumer protection efforts over the long term. The Department also made several technical and clarifying comments, which we incorporated where appropriate.

Finally, the Department did not comment on our recommendations. Our draft report contained a proposed recommendation that the motor carrier administration establish implementation and completion dates for actions contained in its plans to improve oversight and enforcement activities involving interstate household goods carriers. As discussed in this report, the motor carrier administration has developed these milestones and incorporated them into its plans. As a result, we deleted this recommendation from this report.

We are sending copies of this report to congressional committees and subcommittees with responsibilities for transportation and consumer protection issues; the Honorable Norman Y. Mineta, Secretary of Transportation; Ms. Julie Anna Cirillo, Acting Deputy Administrator of the Federal Motor Carrier Safety Administration; the Honorable Linda J. Morgan, Chairman of the Surface Transportation Board; and the Honorable Mitchell E. Daniels, Director of the Office of Management and Budget. We will make copies available to others upon request.

If you or your staff have any questions about this report, please call me at (202) 512-2834. Key contributors to this report were Lori Adams, Helen Desaulniers, James Ratzenberger, Deena Richart, and William Sparling.

Phyllis F. Scheinberg
Director, Physical Infrastructure Issues

Scope and Methodology

To attempt to determine the extent of complaints in the interstate household goods moving industry, we obtained summary information from several sources. We did so because detailed records on the complaints were kept as paper records in individual offices where the complaints were filed. In addition, some sources could not readily provide information on whether complaints were for interstate or intrastate moves. From 12 motor carrier administration division offices in Arizona, California, Colorado, Florida, Georgia, Illinois, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Texas, we obtained summary information from their Economic Complaint Registers. We selected these offices because they represent the states that (1) had the most interstate moves and, according to motor carrier administration officials, (2) reported the most problems with household goods movers. We did not verify the reliability of the data maintained in these registers. We also obtained summary complaint information and/or summary requests for arbitration from the Council of Better Business Bureaus and the American Moving and Storage Association. To determine the number of motor carriers that might be involved in interstate household goods moves, we obtained information from the Department of Transportation and from the American Moving and Storage Association. To determine the nature of the complaints, we interviewed federal and state officials and a number of industry and law enforcement and consumer protection organization officials. We relied on interviews because information on the nature of problems was not available without expending extraordinary efforts. We also reviewed the record for the 1998 hearing on consumer protection issues involving the household goods moving industry.[1]

To establish how consumer protection for this industry is provided, we determined the Department of Transportation's role with respect to the household goods moving industry, as well as the roles of other federal agencies and the states. To do so, we reviewed the ICC Termination Act of 1995 and the Motor Carrier Safety Improvement Act of 1999. We also reviewed the Department of Transportation's applicable regulations, program guidance, and self-help packages provided to consumers. We discussed with motor carrier administration officials (at headquarters and in 14 division offices—the 12 previously mentioned, as well as those in New Hampshire and North Carolina) their duties and actions with respect to the

[1]Motor Carrier Economic Regulatory Issues, Hearing before the Subcommittee on Surface Transportation of the Committee on Transportation and Infrastructure, House of Representatives (Aug. 5, 1998).

household goods moving industry, including consumer complaint tracking, public education efforts, and enforcement efforts. We also contacted officials at the Surface Transportation Board and the Federal Trade Commission (FTC) to discuss their roles in consumer protection for this industry. In addition, we contacted agencies in 14 states to determine what activities they undertake with respect to this industry. (The organizations we contacted are listed at the end of this appendix.) We chose these states because they either had the most interstate moves or were identified through our discussions with federal agencies, industry associations, and consumer groups as those apparently experiencing the most problems with interstate moves.

To assess the Department of Transportation's consumer protection activities for the household goods moving industry, we reviewed the Department of Transportation's documents and interviewed its officials on how it implemented its responsibilities. Topics included its overall regulation and enforcement philosophy, rulemaking, staffing, public education and outreach, complaint resolution, enforcement actions, and investigator training. We also reviewed and discussed with motor carrier administration officials the agency's plans for increasing its activities in this area. In addition, we obtained information on the Department of Transportation's Aviation Consumer Complaint Database for air travel complaint reporting and resolution. Finally, we met with a number of industry, consumer, and alternative dispute resolution organizations and with selected states to obtain their perspectives on the actions taken by and the effectiveness of the Department of Transportation in this area.

To identify issues surrounding an expansion of the states' role with respect to the interstate moving industry, we contacted officials from federal, state, industry, consumer protection, and alternative dispute resolution organizations that are knowledgeable about the household goods moving industry and obtained their insights. We reviewed legislation and discussed with officials from FTC, state offices of the attorney general, and the National Association of Attorneys General how consumer protection is provided and enforced for the telemarketing industry. We also discussed consumer protection in consumer credit reporting with FTC and reviewed applicable legislation. We selected these industries because they were cited in an August 1998 congressional hearing on the Department of Transportation's efforts to oversee the household goods moving industry as possible models for federal oversight.

We conducted our review from June 2000 through February 2001 in accordance with generally accepted government auditing standards.

Organizations Contacted

Federal Agencies

Department of Transportation

- Aviation Consumer Protection Division
- Federal Highway Administration
- Federal Motor Carrier Safety Administration
- Federal Trade Commission
- Surface Transportation Board

State Agencies

Arizona

- Office of the Attorney General
- Corporation Commission
- Department of Commerce
- Department of Transportation

California

- Office of the Attorney General
- Public Utility Commission

Colorado

- Office of the Attorney General
- Department of Transportation
- Public Utilities Commission

Florida

- Office of the Attorney General
- Department of Agriculture and Consumer Services

Georgia

Office of the Attorney General
Governor's Office of Consumer Affairs
Public Service Commission

Illinois

Office of the Attorney General
Commerce Commission

Missouri

Office of the Attorney General
Department of Transportation

North Carolina

Office of the Attorney General
Utilities Commission

New Hampshire

Office of the Attorney General
Department of Safety

New Jersey

Department of Law and Public Safety
Division of Consumer Affairs

New York

Office of the Attorney General
Department of Transportation

Ohio

Office of the Attorney General
Public Utilities Commission

Pennsylvania

Office of the Attorney General
Public Utility Commission

Texas

Office of the Attorney General
Department of Transportation

Industry Associations

American Moving and Storage Association
California Moving and Storage Association
Florida Movers and Warehousemen's Association
Georgia Movers Association
Illinois Movers and Warehousemen's Association
National Council of Moving Associations

Law Enforcement and Consumer Associations

American Association of Retired Persons
The Better Business Bureau of Chicago and Northern Illinois
The Better Business Bureau of Los Angeles, California
The Better Business Bureau of Metropolitan New York
Council of Better Business Bureaus
National Association of Consumer Agency Administrators
National Association of Attorneys General

Alternative Dispute Resolution Associations

American Arbitration Association
Fulcrum Institute Dispute Resolution Clinic
Interstate Dispute Resolution

Companies

Greenmount Moving and Storage, Inc.

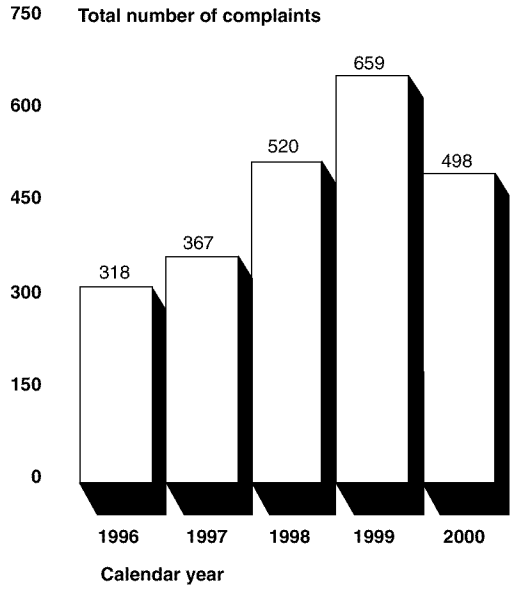
Complaints Recorded by Selected Federal and Industry Organizations

Complaints Recorded by the Federal Motor Carrier Safety Administration

The motor carrier administration does not centrally compile information on the number or nature of the consumer complaints it receives about interstate household goods carriers. However, motor carrier administration officials estimated that the agency's division offices receive between 3,000 and 4,000 complaint calls each year about interstate household goods carriers.[1] We contacted 14 of the agency's 52 division offices to obtain data on the number and types of complaints recorded. For the 12 division offices we contacted that collected this information, the number of complaints increased from 318 to 659 between 1996 and 1999—an increase of 107 percent. (See fig. 1.) About 75 percent of these complaints came from the division offices in three states—California, New Jersey, and New York. However, the number of consumer complaints is understated because the division offices said they did not record all complaints—such as those made by telephone. Two other division offices we contacted—in New Hampshire and North Carolina—did not have a database in place to record consumer complaints.

[1]The division offices are responsible for receiving and recording consumer complaints.

Figure 1: Complaints Recorded by Selected Federal Motor Carrier Safety Administration Division Offices, January 1996-September 2000



Note: Data are from 12 motor carrier administration division offices. Year 2000 data are through September.

Source: Federal Motor Carrier Safety Administration.

Motor carrier administration data from 11 of the division offices we contacted on the nature of the complaints show that almost all—96 percent—of the complaints concerned lost and damaged goods, untimely deliveries of goods, and rates and charges (e.g., overcharges or final charges that differed from original estimates).[2] However, the motor carrier administration's records do not indicate the exact nature of each complaint recorded or how it was ultimately resolved. According to motor carrier administration officials, the most egregious complaints do not involve agents of major moving companies; most concern small companies that act as independent movers. They said most of these complaints come from two corridors: (1) the West Coast and (2) the New York/New Jersey area to Florida. Officials noted that the worst cases arise from the latter corridor

[2]The Illinois Division Office recorded more details on the nature of complaints than required in the complaint register. Because this office's recording format was not consistent with that of the other division offices, its data could not be included in this summary.

and involve movers who prey on senior citizens—most of whom have never moved before and are not very "move savvy."

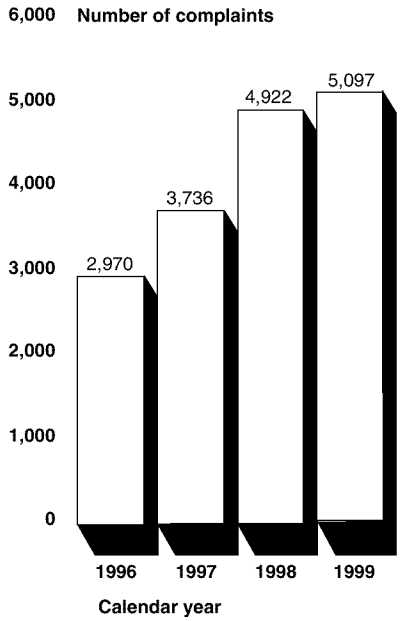
Motor carrier administration officials estimated that the dollar value of individual consumer claims against interstate moving companies has ranged anywhere from $500 to $10,000. An official with the American Moving and Storage Association indicated that the average amount paid on a claim is $610 (1995 data).

Complaints Recorded by the Council of Better Business Bureaus

The Council of Better Business Bureaus has also received an increasing number of complaints against household goods carriers. Complaints increased from 2,970 in calendar year 1996 to 5,097 in 1999, an increase of about 72 percent. (See fig. 2.) These data include both interstate and intrastate moves. The Senior Vice President of the Council's Dispute Resolution Division told us that if the number of complaints against household goods carriers keeps rising, the moving industry could go into the top 10 most-complained-about industries in the next couple of years. Although the Council does not have readily available information on what types of complaints have been lodged, whether they involve interstate or intrastate carriers, or whether they are lodged against national or independent carriers,[3] Better Business Bureau officials in New York, Chicago, and Los Angeles told us that most complaints involve lost or damaged goods, untimely deliveries, or "low-balling" estimates. While the Chicago official estimated that the complaints lodged in that office were against an array of movers, the Los Angeles and New York officials estimated that the majority of the complaints received in their offices were against smaller, locally based movers.

[3]This information is in the form of paper records at the over 160 local Bureau locations across the nation.

Figure 2: Complaints Recorded by the Council of Better Business Bureaus, 1996-99



Note: The complaints reported are for both interstate and intrastate moves.

Source: The Council of Better Business Bureaus.

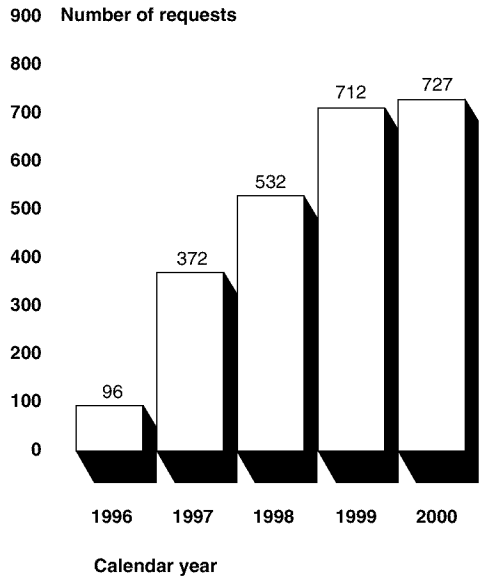
Complaints and Requests for Arbitration Received by the American Moving and Storage Association

The American Moving and Storage Association also receives informal complaints from consumers about loss and damage, untimely service, inadequate service, and other matters. The Association advises consumers to file a claim with the mover but also notifies member carriers about any complaints received. The Association does not track the number of such complaints it receives or the nature of the complaints. However, for loss and damage claims that are not resolved to the consumer's satisfaction, the Association keeps a record of how often consumers request an arbitration proceeding through its Dispute Settlement Program.[4] The number of requests for such arbitration increased from 96 in 1996 to 727 in 2000. (See

[4]The Association sponsors a Certified Mover and Van Line Program for the purpose of promoting sound principles and acceptable practices in the industry. Members opting to join the program agree to arbitrate disputes meeting the Association's guidelines. Additional arbitration programs are offered by organizations including the Council of Better Business Bureaus.

fig. 3.) The Association does not keep track of whether the arbitration was completed or how the complaints were resolved. An Association official familiar with the arbitration program told us that it is difficult to determine why the number of requests for arbitration has increased, noting, however, that the program only started in 1996.

Figure 3: Requests for Arbitration Received by the American Moving and Storage Association, 1996-2000



Source: American Moving and Storage Association.

Role of States Regarding Consumer Complaints

Federal Law Limits State Law Claims Against Interstate Household Goods Carriers

The federal statute governing interstate carriers' liability for loss and damage to goods (called the Carmack Amendment) limits state law claims against interstate household goods carriers.[1] Under the Carmack Amendment, carriers are liable, to the person entitled to recover under a receipt or bill of lading,[2] for actual loss or damage to property, but they may limit their liability to a declared value or other amount agreed to by the consumer as authorized by the Surface Transportation Board. The Carmack Amendment was enacted to impose a uniform scheme of liability that would eliminate the uncertainty associated with conflicting state laws on interstate shipments.

Courts have consistently held that the Carmack Amendment preempts a broad range of state law claims relating to the loss or damage of goods in interstate shipments.[3] Specifically, the Carmack Amendment bars individual consumers from asserting claims that would enlarge the carrier's responsibility for loss or affect the grounds or measure of recovery, including those for violations of state consumer protection statutes, breach of contract, negligence, and fraud. However, the extent of the Carmack Amendment's preemptive effect is not as clear. Emphasizing the goal of uniformity underlying the Carmack Amendment, some courts addressing state law claims asserted by individual consumers have held that the amendment essentially preempts every state law claim related to the contract of shipment.[4] Others have suggested that the Carmack Amendment does not preempt claims that stem from injuries separate and

[1]Section 14706 of title 49, U.S. Code.

[2]A bill of lading is a contract issued to a consumer by a household goods carrier listing the goods shipped, acknowledging their receipt, and promising delivery to the person named.

[3]*See Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U.S. 597 (1915); *Missouri, Kansas & Texas Ry. Co. of Texas v. Harris*, 234 U.S. 412 (1914); *Adams Express Co. v. Croninger*, 226 U.S. 491 (1912); *Rini v. United Van Lines, Inc.*, 104 F.3d 502 (1st Cir. 1997); *Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700 (4th Cir. 1993) (and cases cited therein); *Underwriters at Lloyds of London v. North American Van Lines*, 890 F.2d 1112 (10th Cir. 1989) (and cases cited therein).

[4]*See, e.g., Moffit v. Bekins Van Lines Co.*, 6 F.3d 305 (5th Cir. 1993); *Arnell v. Mayflower Transit Inc.*, 968 F. Supp. 521 (D. Nev. 1997); *Pietro Culotta Grapes, Ltd. v. Southern Pacific Transportation Co.*, 917 F. Supp. 713 (E.D. Cal. 1996).

distinct from loss or damage, but have identified little actionable conduct.[5] Furthermore, there is some question about the states' authority under consumer protection statutes to take enforcement action against interstate carriers for claims unrelated to loss or damage. [6] Although at least one state has successfully taken action against an interstate household goods carrier under such statutes and other states are currently pursuing such action, officials from two states told us that they would not attempt to bring such cases because of the Carmack Amendment's pervasive preemption of state law.

The states can provide for the regulation of intrastate household goods carriers, and some states have decided not to regulate the household goods moving industry. Of the 14 states we contacted, 11 regulate household goods carriers through a state agency, such as a public utilities commission or a department of transportation. The remaining three states (Florida, Arizona, and Colorado) do not regulate the industry. The states that regulate intrastate household goods carriers require them to follow regulations, such as those to file tariffs, file proof of insurance, provide educational material to potential consumers, maintain operating authority, and pass examinations on state regulations to obtain authority. While all 12 state offices of the attorney general we contacted said they would bring cases against intrastate carriers for violations of state fraud or business fair practices laws, only 3 of the offices—in New York, Illinois, and Pennsylvania—were pursuing intrastate household goods cases. The states' enforcement authority includes imposing temporary restraining orders and injunctions to halt practices, imposing monetary penalties, and revoking carriers' authority to haul goods. For example, in three cases in which the State of New York showed the court that the mover was performing moves within New York without authority from the state, the

[5]*See, e.g., Rini v. United Van Lines, Inc.*, 104 F.3d at 506 (stating that the Carmack Amendment would not have preempted a claim for intentional infliction of emotional distress); *Gordon v. United Van Lines, Inc.*, 130 F.3d 282, 289 (7th Cir. 1997) (holding that a claim of intentional infliction of emotional distress was not preempted, but that the Carmack Amendment did preempt a claim of fraudulent inducement to contract on the grounds that such a claim was so closely related to the performance of the contract). *See also Richter v. North American Van Lines, Inc.*, 110 F. Supp. 2d 406, 411 (D. Md. 2000) (explaining the logic favoring "a few state common law claims" such as intentional infliction of emotional distress or assault by a carrier on a consumer).

[6]In response to an inquiry from a state official, the Department of Transportation advised that there was "no real legal precedent" regarding state enforcement actions unrelated to consumer loss or damage.

court agreed to order that the mover's phone lines be disconnected to prevent continued illegal business activities.

Views on State Enforcement of Federal Statutes and Regulations

In the areas of telemarketing and fair credit reporting, the Congress has enabled the states to enforce federal statutes and regulations. According to our discussions with FTC officials, authorizing the states to enforce federal statutes and regulations can result in more investigations and enforcement actions if the states pursue cases that the Commission would consider too local to pursue, given available investigation and enforcement resources. The Commission allocates its investigative and law enforcement resources to address practices that cause the greatest harm. As a result, cases considered significant on a state or regional level may not spur the Commission to initiate an investigation. While the states may be required to use their enforcement resources in other areas, allowing 50 states to enforce federal and state consumer protection statutes has an enhanced deterrent effect not realized through FTC's enforcement alone, according to Commission officials.

Consumer advocates and household goods moving industry representatives with whom we spoke see the states' enforcement of federal statutes and regulations in very different ways. The industry position, as articulated by the American Moving and Storage Association, is that authorizing the states to enforce federal statutes and regulations will result in " . . . a firestorm of inconsistent, varying interpretations of federal law that present the potential for injunctive relief, threatening the continued operations of legitimate movers." Consumer advocates support an expansion of the potential for enforcement against unscrupulous interstate household goods carriers. Commenting on the similarities between telemarketing and interstate moving, one state official noted that the states are well positioned to identify the worst problems through their established consumer-complaint-gathering function. Similarly, while the National Association of Attorneys General does not have an official position on state regulation in household goods transportation, it generally supports federal legislative efforts to ensure that consumer protection laws are not preempted and that the states have the option to enforce both federal and state consumer protection laws in federal court.