

*Section 375.217 How Must I Collect Charges Upon Delivery?*

NACAA requests a modification stating that the mover "may specify two forms of payment acceptable, only one being cash or a cash equivalent."

The AGCT suggested FMCSA establish nondiscriminatory rules governing cash-on-delivery (COD) service and collection of COD funds rather than allowing movers to develop their own procedures in the tariff. It suggested modifying paragraph (b) to require movers to relinquish possession of a shipment upon payment by the consumer of an amount substantially less than the binding or non-binding estimate. This provides the consumer with some leverage over the mover in the event of a dispute. The mover would have to pursue a claim against the consumer rather than requiring full payment by the consumer and forcing the consumer to pursue the mover. Such a burden shift provides greater protection for the consumer.

AMSA comments that the NACAA proposal, if adopted, would limit the options available to movers and their customers to effect the payment of transportation charges. The generally applicable options for payment are cash, certified check, traveler's check, or bank check (drawn by a bank and signed by a bank officer). See HGB Tariff 400-M, Item 29. In addition, the existing credit regulations in § 377.215, the household goods regulations in § 375.19, and proposed § 375.221, authorize the credit card option for payment and provide specific requirements related to the use of credit. Taken as a whole, AMSA believes these provisions adequately address the concerns expressed by NACAA.

AMSA believes the AGCT proposal for adopting nondiscriminatory rules for the collection of transportation charges in this proceeding is addressed in the preceding paragraph. Additionally, AMSA asserts that the AGCT has apparently neglected to consider the discussion at page 27128 of the NPRM that outlines the FHWA response to the moving industry's request for amendment of the existing credit regulations. AMSA states "obviously, household goods movers are not at liberty to fashion payment and/or extension of credit tariff provisions that would violate the existing or proposed FHWA regulations."

The 25AG argue that the form of payment issue is directly related to consumer overcharge complaints. The 25AG therefore propose that § 375.221 require that, if a mover agrees to accept a credit card at the beginning of the

shipment transaction, the credit card should be accepted at delivery. They also propose a related amendment to § 375.503(b)(9) dealing with bill of lading contents, which would require disclosure of the form of payment required upon delivery if it is different from that agreed to at the outset of the transaction.

In a similar vein, the AGCT is opposed to permitting movers to treat the reversal of a credit card transaction as an involuntary extension of credit. It argues that consumers should be authorized to treat a mover's failure to pay a claim for delay or loss/damage as an "involuntary extension of the shipper's credit to the mover," thus subjecting the mover to the same financial penalties as the consumer bears under the credit regulations at § 375.807.

AMSA asserts that each of these proposals is fraught with the potential for endless controversies between movers and shippers. More importantly, it believes, they reflect a misunderstanding of Congressional intent. Section 13707 provides that a motor carrier "\* \* \* shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made." Since the extension of credit by movers is permissive, it would be foolhardy to adopt regulations that would attempt to address these issues since they cannot adequately anticipate the many circumstances that occur when drivers and consumers settle accounts at the time of delivery. AMSA argues that accepting a credit card at origin, for example, provides the consumer with sufficient time to seek alternative means of payment should the charge amount be declined by the card issuer. If a driver delivers on weekends or after hours and the mover's credit/collection department is closed, the driver cannot call in the charges and the mover will not be in a position to make certain that the card issuer will accept the charge. Dealing with a credit card at delivery may also cause unnecessary delays. If the charge is declined, the consumer must seek alternative means of payment that could unnecessarily delay delivery. In the meantime, the mover must wait, which could result in additional charges, vehicle detention, or storage-in-transit. These proposals could have the unfortunate result of forcing movers to limit the payment alternatives that are presently offered to shippers.

AMSA strongly opposes the AGCT proposal that movers should be required to relinquish possession of a shipment upon payment of an amount

"substantially less than the binding or non-binding estimate" in order to provide consumers with "leverage" in the event a dispute arises. AMSA believes it obviously ignores the requirements of 49 U.S.C. 13707 and the important requirement contained in 49 U.S.C. 13702(a)(2) that:

The mover may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

AMSA believes the 25AG have approached this and a number of other issues as if the regulations to be promulgated should be treated in a vacuum with no consideration given to underlying statutory directives or restraints. They also ignore the fact that movers have a lien on the goods they transport and may refuse to deliver until their charges are paid or guaranteed. *Illinois Steel Co. v. Baltimore & Ohio Railroad Co.*, 320 U.S. 508 (1944).

*Response to Comments*

FMCSA appreciates the comments received regarding this section and has incorporated the recommendation that we require the mover to specify the form of payment when the mover prepares the estimate. The mover and its agents must honor the form of payment at delivery, except when a shipper agrees to a change. The mover must include the same information on the order for service and bill of lading. It is important to state in the rule that the carrier must accept the method of payment originally agreed in order to avoid unnecessarily burdening the shipper, who may not be prepared to make an alternative form of payment. For example, in a case where a cashier's check is the agreed payment and the carrier demands cash on a Saturday evening when the bank is closed, a serious problem would be created for the shipper, most likely resulting in the driver leaving without unloading the shipment.

FMCSA has also added another requirement to the interim final rule. If the mover or its agent agrees to accept a charge or credit card payment as the method to pay for receipt of goods at delivery, then the mover must arrange for delivery during the time the mover's credit/collection department is open to seek approval of payment by card issuer, unless the vehicle is equipped to process credit card payments.