

Section 375.221 May I Use a Charge or Credit Card Plan for Payments?

The OCC believes the term “cashier’s check” should not supplant the term “money order.” A loss of an open money order that does not denote a payee can result in a stop payment of the same. No stop payment is available for the loss of cash. A shipper may hesitate to carry a large sum of cash and may want to go to a convenience store and convert the cash into consecutive money orders. AMSA agrees that both terms should be used.

The 25AG believe the regulations should mandate that the mover’s payment policy be the same at all stages of the transaction. If charge or credit cards are permitted at the order for service, the cards should be allowed at the time of delivery. They suggest that carriers should inform consumers of their payment policies.

The AGCT suggests the regulations should not allow carriers to treat reversal of credit card transactions as an involuntary extension of credit. This is not consumer protection, it believes. If carriers suffer financial loss due to actions of the consumer, carriers should be required to rely on the same avenues of dispute resolution that are available to the shipper. It further recommends that FMCSA should allow a consumer to treat a carrier’s failure to pay a claim for untimely shipments or damage or loss as an involuntary extension of the shipper’s credit to the carrier, subjecting the carrier to the same financial penalties as the consumer listed in § 375.807.

Response to Comments

FMCSA has added money orders as a form of acceptable payment in the interim final rule. If a mover accepts money orders as an acceptable form of payment, the mover must include the provision in its tariff.

FMCSA has also added language to § 375.221(a) to make it clear that a carrier is bound by the payment provisions in its tariff from the time it gives an estimate until completion of any transaction that results from that estimate, unless otherwise agreed with a shipper under § 375.217(a).

FMCSA has retained the rule language that allows a carrier to treat a reversal of a credit card transaction as an involuntary extension of credit because the use of a credit card is considered an alternative to payment in cash, certified check, money order, or cashier’s check, which are payment methods that cannot be reversed.

However, FMCSA has not added a provision allowing a consumer to treat

an unpaid claim against a carrier as an involuntary extension of credit. Adding such a provision would be beyond the scope of the NPRM. Resolution of a claim that may be in dispute is traditionally resolved in a State court.

Section 375.301 What Service Options May I Provide?

The AGCT recommends that the regulations should require carriers to have liability insurance covering casualty losses resulting from the actions of the carrier.

AMSA comments that the rationale underlying the AGCT recommendation is not clear. AMSA states that carriers are liable for cargo loss and damage under 49 U.S.C. 14706 and must provide evidence of insurance pursuant to 49 U.S.C. 13906(a)(3). As a general proposition, casualty insurance coverage contemplates personal injury losses, a subject that is not related to this proceeding. In any event, carriers are also required by statute to maintain liability insurance in amounts prescribed by the Secretary covering bodily injury, etc. See 49 U.S.C. 13906(a)(1).

Response to Comments

FMCSA agrees with AMSA. The AGCT’s recommendation appears to contemplate requiring personal injury loss coverage in these regulations. This is not within the scope of this rulemaking and is already required by statute and regulation.

Section 375.303 If I Sell Liability Insurance Coverage, What Must I Do?

The 25AG recommend requiring clear and conspicuous disclosure to consumers of all limitations on liability coverage and any inventory requirements needed for valuation of their shipments, as well as requiring disclosure, at the time of delivery, of whether any agents were used during the move and whether the consumer’s goods were stored during the shipment. They further recommend that upon the consumer’s request, carriers should provide numerous pieces of information. Such information would include the agents or subcontractors used during the move, liability coverage for that move, identification of all storage facilities used, and liability coverage attendant to that storage. They also suggest development of regulations that will sharply limit the use of disreputable tactics by some carriers to avoid legitimate liability coverage obligations.

The AGCT suggested the regulations require carriers to procure insurance on behalf of the shipper. If a carrier sells or

offers to sell liability insurance to the shipper, the carrier must comply with any applicable licensing requirements of a State insurance regulatory body. If the carrier sells or procures insurance on behalf of the consumer, the consumer must be the named insured on the policy and the carrier must provide the consumer with a copy of the policy and a certificate of insurance indicating the period of coverage.

AMSA comments that the language proposed in § 375.303(a)(1) and (2) is unclear in establishing the conditions under which carriers may sell or procure insurance coverage for cargo loss or damage. As written, paragraph (a) provides that insurance may be procured only under the two conditions set out in paragraphs (a)(1) and (2). However, those paragraphs are not connected with the conjunctive “and” or the disjunctive “or.” Moreover, AMSA believes the language in paragraph (a)(2) is confusing. It describes a situation where the shipper fails to declare a valuation of \$1.25 per pound and pays or agrees to pay the carrier for assuming liability equal to “the declared value.” This condition is at odds with itself.

AMSA points out that under the outstanding Surface Transportation Board released rates order (RRO), the failure to declare a lump sum value or valuation of \$1.25 per pound will result in the shipment being deemed to have been released to a declared lump sum value of \$1.25 per pound times the weight of the shipment. See 9 I.C.C. 2d 523.

In any event, AMSA believes paragraph (a)(2) can be eliminated as unnecessary. Historically, carriers were authorized to sell or procure excess insurance only when the shipment was released to a value not exceeding 60 cents per pound. Although current § 375.11(a) contains the additional condition that “the shipper does not declare a valuation of \$1.25 or more,” it is clear that the latter condition is superfluous. Although stated as two conditions, they are actually the same. If a shipper releases a shipment at 60 cents per pound, he could not declare a valuation at \$1.25 per pound or more. Conversely, if he declares a valuation at \$1.25 or more, he could not release the shipment at 60 cents per pound. This mutual exclusivity is made clear in the RRO giving rise to this language. See RRO No. MC-505, Released Rates of Motor Common Carriers of Household Goods, June 7, 1966, and Released Rates Decision No. MC-999, 9 ICC. 2d 523 (1993). AMSA therefore recommends that paragraph (a)(2) be deleted.