

## **9 Liability and Claims**

### **9.1 *Transportation Service Provider (TSPs) Liability for Loss or Damage***

Transportation Service Providers (TSPs) providing domestic or international transportation services, pursuant to the provisions of this Household Goods Tender of Service (HTOS), shall offer full replacement value protection for each shipment. This includes all transportation services (including accessorial and terminal services) furnished by a TSP for which the TSP assumes liability for loss and damage. This will not exceed the full replacement value of the items transported.

#### **9.1.1 Released Value**

All surface and Unaccompanied Air Baggage (UAB) shipments (domestic and international) are released at full value.

All Privately Owned Vehicle (POV) shipments (domestic and international) are released at the current value of the vehicle based on the National Automobile Dealers Association (NADA) value for the vehicle. See Section 9.1.3.2 for more details.

##### **9.1.1.1 Base Valuation**

The TSP shall refer to the current Request for Offers (RFO) for the base valuation for various shipments. Note that different Federal agencies may require different base valuation amounts for their employees.

##### **9.1.1.2 Increase in Basic Released Value**

Should the employee elect to specify a released value different from that specified on the Bill of Lading (BL), after the BL has been issued but prior to the date of pick-up, the TSP should have the employee contact the Responsible Transportation Officer (RTO) and request an amendment to the original BL indicating the desired valuation.

#### **9.1.2 Exceptions to TSP Liability**

##### **9.1.2.1 Overall Exceptions**

The TSP is not responsible for loss or damage caused by:

- Acts of God, public authority or negligence of the employee and/or employee's agent
- Hostile or warlike action in the time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, including

- by any government or sovereign power (de jure or defacto), or by an authority maintaining forces
- by an agent of any such government, power, authority or forces
- Any weapon of war employing atomic fission or radioactive force whether in time of peace or war, including contamination attributable to effects of radioactive or fissionable materials
- Insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating, or defending against such occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade
- Strikes, lockouts, labor disturbances, riots, civil commotion, acts of person or persons taking part in such occurrence or disorder
- Inherent vice of the article or infestations by mollusks, arachnids, crustaceans, parasites or other types of pests, fumigation or decontamination when not the fault of the TSP.

The burden of proof shall be on the TSP to show that the immediate cause of the loss or damage was one or more of the exceptions listed above which relieved it of liability.

#### 9.1.2.2 Government Custody

Except as provided below with respect to concealed loss or damage, the TSP shall not be liable for loss or damage when the TSP can reasonably establish that such loss or damage occurred while the shipment was in the effective custody and control of the Government.

### 9.1.3 Extent of TSP's Liability

#### 9.1.3.1 Liability for Non-Vehicular Personal Property

Except when loss or damage arises out of causes beyond the control and without the fault or negligence of the TSP, the TSP shall be liable to the United States Government or the employee for the loss of or damage to any article in an amount not to exceed the released value of any article over which the TSP has control or custody. Custody on the part of the TSP shall be considered to begin at the time performance of service commences and shall continue until services are completed. This includes, but is not limited to, all times while the property is being:

- Packed
- Picked up

- Loaded
- Transported
- Delivered
- Unloaded
- Unpacked
- Stored in transit
- Serviced by a third person hired by the TSP to perform the servicing.

#### *9.1.3.1.1 Non-Vehicular Property Delivered To a Foreign Post - International Shipments*

Subject to the general provisions stated above, and in the event non-vehicular personal property is lost or damaged, the measure of damages for a shipment delivered to a foreign post shall be repair or replacement not to exceed the replacement value of the item at the foreign post. The foreign post value must be within ten percent (+/-10%) of the Continental United States (CONUS) replacement value at the point of origin at the time of arrival at the port of debarkation. In the event the foreign post value is not within ten percent (+/-10%), the measure of damages will be the CONUS replacement value of the item at the point of origin at the time of arrival at the port of debarkation plus the cost of transportation and delivery of the property, including customs clearance, to the employee at the post. Replacement value must be based on replacement of the property with property of comparable kind and quality.

#### *9.1.3.1.2 Non-Vehicular Property Delivered Within CONUS*

Subject to the general provisions stated above and in the event personal non-vehicular property is lost or damaged, the measure of damages for a shipment to be delivered within the CONUS shall be repair or replacement not to exceed the replacement value of the property at the point of destination in the United States, including the cost of transportation and delivery of the property, including customs clearance if applicable, to the employee at the destination residence. Replacement value must be based on replacement of the property with property of comparable kind and quality.

### 9.1.3.2 Liability for Vehicular Property

#### *9.1.3.2.1 International Shipment*

In the event of loss or damage to vehicular property during the course of an international shipment, the measure of damages will be the cost of repair or replacement not to exceed the current value of the vehicle based on the NADA value for the vehicle (in the month of landing converted to local currency) plus the cost of rental of a comparable vehicle for the period of

time during which the vehicle is unavailable for employee use. However, the liability for the cost of rental shall not exceed the current value of the vehicle. The quality of repair or replacement must equal or exceed the standards applied in the CONUS.

#### *9.1.3.2.2 Domestic Shipment*

In the event of loss or damage to vehicular property during the course of a domestic shipment, the measure of damages will be the cost of repair or replacement not to exceed the current value of the vehicle based on the NADA value for the vehicle, plus the cost of rental of a comparable vehicle for the period of time during which the vehicle is unavailable for employee use. However, the liability of the cost of rental shall not exceed the current value of the vehicle. The quality of repair or replacement must equal or exceed the standards applied in the CONUS.

#### **9.1.3.3 Liability for Real Property Damage**

The TSP shall be liable for any damage sustained to the premises or property of the employee caused by the TSP, its agents or employees.

#### **9.1.3.4 Liability for High Risk Items**

The TSP's legal liability for loss or damage to high risk items shall be the same as for any other property lost or damaged. Unless covered by a high risk program established in accordance with Section 9.1.5 below, a TSP's liability for high risk items shall in no way be limited to a value less than that established under the terms of the level of service stated on the BL.

#### **9.1.3.5 Liability for Concealed Loss/Damage**

The TSP shall be liable for concealed loss or damage discovered by the employee within seventy-five (75) calendar days after delivery if the employee notifies the TSP, in writing, of the loss and/or damage within seventy-five (75) calendar days from the date of delivery. The notification requirement cited here does not mean that a claim cannot be filed after seventy-five (75) calendar days by the employee. Lack of notification shall not be used as the sole basis for denying a claim.

##### *9.1.3.5.1 Burden Of Proof When Notice Is Given*

If the employee provides written notification of the discovered loss or damage within seventy-five (75) calendar days after delivery, the TSP shall bear the burden of proving that it did not cause the loss or damage. If a claim for concealed loss or damage is filed more than seventy-five (75) calendar days after delivery and the TSP received notice of all or some of the loss or damage within that period, the TSP shall bear the burden of proving that it did not cause the

loss or damage for which it received notice and on the property for which the employee did not give notice.

#### *9.1.3.5.2 Burden Of Proof When Notice Is Not Given*

If the employee files a claim for concealed loss or damage and the TSP did not receive notice of any of the loss or damage within the seventy-five (75) calendar day period, the employee will bear the burden of proving that the TSP caused the loss or damage.

#### 9.1.3.6 Liability for Delay

The TSP shall be liable for the inconvenience and extra expense caused to the employee and to the Government if the employee is required to obtain temporary quarters due to the TSP's failure to pick-up or deliver the household goods shipment in accordance with the instructions provided by the RTO, the employee, or his authorized representative. Equipment failure, actions by other TSPs or agents, and illness or error by persons in its employ or in the employ of its agents, among others, are considered within the control of the TSP and may not be used as a basis for denying a claim for damages due to delay.

#### 9.1.3.7 Liability for Terminated Shipments

In the event a shipment is terminated by the Government and is assigned to another TSP for completion of service, both the terminated and the assigned TSPs shall be jointly liable for any loss or damage to the shipment and for any delay. The Government reserves the right to file any claim for property loss or damage or for shipment delay with either the terminated TSP or the assigned TSP, and the TSP against which the claim is filed shall be responsible for settling the claim in full without waiting for any acknowledgment of liability or reimbursement from the other TSP.

#### 9.1.3.8 Liability for Prohibited Items

When a TSP undertakes the shipment of items prohibited by law or regulatory bodies which are injurious or contaminating to the shipment, the TSP shall be liable for loss or damage resulting from its failure to decline such items.

#### 9.1.3.9 Liability for Missing Articles

If the missing articles are not found within thirty (30) calendar days from the date of shipment delivery, they shall be presumed lost by the TSP and payment to the employee will be made upon the filing of a claim without dispute.

In the event the missing articles are located subsequent to claims action by the employee or the Government, the TSP shall hold the articles at the point of location, notify the RTO, and await

disposition instructions. When articles/items are returned to the employee, any claims which have been paid in favor of the employee shall be readjusted in the TSP's favor.

#### **9.1.4 Employee Failure to Verify Inventory**

The TSP shall not deny liability for property loss or damage solely on the basis that the Government, the employee, or the employee's authorized representative failed to verify the origin or destination inventories.

#### **9.1.5 Establishment of High Risk Program**

A high risk program limiting a TSP's liability for loss of or damage to high risk items may only be established with the approval of the RTO and be evidenced by a written agreement setting out the terms and conditions established by the shipping Federal agency. The mere issuance of a BL to a TSP with a pre-existing high risk program is not sufficient to incorporate the terms of such high risk program into the government's contract of carriage.

### **9.2 *Preparation and Filing of Claims***

The TSP shall furnish to the employee all reasonable and necessary assistance in the preparation and filing of claims. Included in such assistance are inspections of the damaged property, if requested, completion of claim forms, and obtaining estimated repair costs at no cost to the employee.

#### **9.2.1 Claims for Loss of or Damage to Personal Property**

Claims for loss of or damage to personal property shipped pursuant to this HTOS must be filed with the TSP by the shipping Federal agency, provided, however, that with the approval of the shipping Federal agency, the employee or his/her authorized representative may file the claim on behalf of the employee and the Government.

#### **9.2.2 Claims for Damage to Real Property**

Claims for damage to real property belonging to the employee at the time of shipment or subsequent thereto must be filed with the TSP by the shipping Federal agency, provided, however, that with the approval of the shipping Federal agency, the employee or his/her authorized representative may file the claim on behalf of the employee and the Government.

#### **9.2.3 Inconvenience Claims**

Inconvenience claims may be filed with the TSP by either the employee or the Government. When the claim is filed by the employee, the TSP shall be liable for the reasonable costs incurred by the employee in excess of those reimbursed to the employee by the Government.

When the claim is filed by the Government, the TSP shall be liable for the reimbursement made by the Government to the employee for the temporary quarters obtained by the employee.

#### **9.2.4 Claims for Injury**

Claims for injury shall be filed with the TSP by the injured party.

#### **9.2.5 Claims for Delay**

Claims for delay may be filed by the employee, his/her authorized representative or by the Federal agency paying the cost of the services provided pursuant to this HTOS.

#### **9.2.6 Minimum Filing Requirements**

The minimum requirement to file a claim is written communication from a claimant filed with the Government or the TSP and must include:

- Sufficient facts to identify the shipment (or shipments) of property involved
- An assertion of liability for alleged loss, damage, injury, or delay
- A demand for the payment of a specified or determinable amount of money.

This written communication will be considered in compliance with the provisions for filing claims on the BL or other contract of carriage.

#### **9.2.7 Documents Not Constituting Claims**

Bad order reports, appraisal reports of damage, notations of shortage or damage on freight bills, delivery receipts or other documents, notifications of loss or damage at or after delivery, or inspection reports issued by the TSP or their inspection agencies, whether the extent of the loss or damage is indicated in dollars and cents or not, standing alone, will not be considered sufficient to comply with the minimum claim filing requirements specified above.

#### **9.2.8 Supporting Documents**

##### **9.2.8.1 Minimum Requirements**

When necessary to an investigation, each claim for each article must be supported by a statement of the nature and extent of such damage, the basis for the amount claimed (i.e., date article purchased, original cost, amount of depreciation, actual cash value at time of loss or damage) or the full replacement value, in those cases where shipments are released to full replacement value.

#### 9.2.8.2 Inconvenience Claims

Inconvenience claims shall be supported with an itemized listing of costs incurred and payments made by the Government to the employee.

#### 9.2.9 Only Claim

When a claim asserted for loss of an entire package or an entire shipment cannot otherwise be authenticated upon investigation, the TSP shall obtain from the claimant a certified statement, in writing, that the property for which the claim is filed has not been received from any other source.

#### 9.2.10 Inventory Correctness

When a claim is asserted for loss of an article, either contained in a carton or as a stand-alone item, and it is not specified on the inventory, the item shall be construed as present and the TSP shall not contest a claim for the missing item, unless the TSP can establish that the inventory was a complete listing of all items in the shipment and that the article was not received by the TSP.

### 9.3 *Claims Settlement*

The TSP shall acknowledge a claim in writing within ten (10) calendar days and shall settle the claim settled within thirty (30) calendar days of receipt.

#### 9.3.1 Settling Property Loss or Damage Claims

The TSP shall satisfy a claim by repairing or replacing the property lost or damaged to the extent of TSP liability with materials of like kind, quality, and condition at time of acceptance by the TSP. Repair or replacement will also be construed to include payment in cash.

In the event that estimates of repair costs are obtained by the employee, either on his/her own or at the request of the TSP, the estimator's cost to furnish such estimates shall be reimbursable to the employee. However, if the terms of the estimate provide that the cost of the estimate will be deducted from the cost of repairs when repairs are completed, the TSP's liability will not exceed the cost of repairs.

#### 9.3.2 Delays in Settlement

If the claim cannot be processed and disposed of within thirty (30) calendar days after receipt thereof, an additional thirty (30) calendar day period will be available for settlement of the claim. The TSP shall, at that time, advise the claimant and the RTO in writing or electronically of the status of the claim and the reason for the delay in making final disposition. The TSP shall retain a copy of such advice to the claimant in its claim file.

### **9.3.3 Claim Settlement Penalty**

If the TSP does not settle the claim within thirty (30) calendar days after receipt, the TSP shall pay a \$25.00 per day penalty to the Ordering Agency. The total penalty shall not exceed \$250.00. The RTO can waive the penalty in whole or part depending on the circumstances.

### **9.3.4 TSP Failure to Settle**

Failure to make settlement within the initial thirty (30) calendar day period (or the maximum sixty (60) calendar day period if proper notice is given) shall be construed as a refusal by the TSP to settle the claim. If a TSP fails to settle a claim in the time allowed or to its legal liability as determined and to the satisfaction of the employee, the Federal agency paying the costs of the shipment, Ordering Officer and RTO are authorized to make a determination of TSP liability for:

- Equitable adjustment for incomplete or non-performance of services
- Loss of or damage to real and personal property.

In making these decisions, the RTO should interview the TSP and the employee or authorized representative and review the TSP's settlement offer (if any) and all supporting schedules and documentation. Upon review, the RTO will determine the propriety of the settlement or, when appropriate, direct the TSP to resettle in the amount or amounts determined to be proper by the RTO.

### **9.3.5 Setoff**

Failure to make settlement within the initial thirty (30) calendar day period, or the maximum sixty (60) calendar day period shall be construed as a refusal by the TSP to settle the claim and as an admission of its liability to the full extent of the law and this HTOS.

If the TSP refuses to settle a claim, the RTO or Program Manager can initiate action to collect the money due from the amount owed the TSP.

## **9.4 *Additional International Provisions***

The following provisions apply to TSPs performing international HHG shipments.

### **9.4.1 Liability for General Average/Salvages**

On ocean shipments, in addition to the TSP's liability as otherwise provided in this HTOS, the TSP assumes full liability for and shall pay all contributions in general average or salvage assessed against personal property and shall provide bonds or make arrangements for the prompt release of the shipments from any maritime lien arising there from.

#### **9.4.2 Government Liability**

The United States Government (DOS or other US Government agencies assuming effective custody) will be liable to the TSP for damage to or loss or destruction of liftvans due to negligence of the Government, reasonable wear and tear excepted.

#### **9.5 *Limitation of Action – Claims for Property Loss or Damage***

The time frame for the filing of claims for property loss and damage shall be in accordance with the laws of the United States of America and the terms and conditions of the applicable Bill of Lading.