

## CHAPTER 211

### LOSS AND DAMAGE CLAIMS PROCEDURES

#### A. PURPOSE

1. This chapter provides policies, procedures, and requirements to develop factual evidence to support freight loss and damage claims against commercial Transportation Service Providers (TSP) for in-transit loss or damage to Department of Defense (DoD) property. This chapter cancels Air Force Regulation (AFR) 177-19/Army Regulation (AR) 735-11-1/Naval Supply Systems Command Instruction (NAVSUPINST) 4610.34E/Marine Corps Order (MCO) P4610.16E/Defense Logistics Agency Regulation (DLAR) 4500.12, Uniform Settlement of Military Freight Loss and Damage Claims.
2. This chapter does not apply to loss or damage claims against commercial TSPs booked under a Strategic Lift contract (Universal Services Contract, Multi-Modal contract, Guantanamo Bay contract).
  - a. For information on filing a Strategic Lift claim, see Defense Travel Regulation (DTR) Part II, Chapter 210, Paragraph O.
3. The contents of this chapter do not supersede or replace any provision found within any United States Government contract. Where the provisions of this chapter conflict with any provision of any United States Government contract, the provisions in the contract apply.

#### B. GENERAL

1. Chapter 210 requires transportation personnel to report transportation-type discrepancies for shipments received by DoD activities when transported by a commercial TSP. The Transportation Officer (TO) must notify the TSP of a discrepancy in shipment.
2. 49 United States Code (U.S.C) 11706, Liability of Rail Carriers Under Receipts and Bills of Lading, and 14706, Liability of Carriers Under Receipts and Bills of Lading, provide that a shipper who suffers damage to property during transportation in interstate commerce will be compensated for "... the actual loss, damage, or injury to such property caused by ... the common carrier." Each Service has a claims office with final resolution authority to file claims against the TSP.
3. To ensure the recovery of monies due the DoD from commercial TSPs who lose or damage freight, claims offices provide experienced claims professionals and act as the central point for DoD freight loss and damage claims.
4. The TO is responsible for reporting transportation-type discrepancies. The TO must have knowledge of and familiarity with the rules and regulations governing shipments by commercial carriers to make an investigation and place responsibility for property loss or damage. The TO is encouraged to discuss the discrepancy with the TSP's local agent. This may bring out facts helpful in developing the discrepancy and document potential issues while evidence is readily available. This may help later to resolve, clarify, or dispute a TSP inquiry or protest. The TO must not discuss TSP liability during conferences with TSP agents. Discussion of liability with the TSP is reserved for the claims office, which establishes the claim.
5. The commanding officer at each DoD activity requires all individuals responsible for property at that activity to know whether property was lost or damaged while in transit and in the custody of a commercial TSP.

6. Internal controls must ensure that all unit activities (Supply, Maintenance, or Distribution) work in conjunction with the TO to provide valid data for use when reporting transportation discrepancies. Controls must also ensure that discrepancies are investigated and reported to the claims office accurately, completely, and timely.

### C. PROCEDURES

1. Before claim action can be initiated, the TO must complete three actions:
  - a. Initiate Report. Transportation personnel must gather facts on the time, place, and circumstances of an in transit property loss or damage.
  - b. Additional Development. Coordinate the loss or damage investigation with other offices and obtain legal or technical help as necessary.
  - c. Evaluate Responsibility. Determine who is responsible for the loss or damage.
2. Initiating Claim Action. Calculate the amount of loss or damage. Determine if the TSP is responsible for the loss or damage. When the loss or damage is less than \$500, file a claim against the TSP, following the procedures outlined in [Figure 211-1](#), Local Claim Filing Guidelines. When the loss or damage exceeds \$500, send a completely documented DD Form 361, [Transportation Discrepancy Report \(TDR\)](#), [Figure 211-4](#) (Source Document for Claims), to the finance center or claims office for action.

### D. INVESTIGATING DISCREPANCIES

The primary purpose of discrepancy investigation is to determine responsibility for loss or damage and establish the full actual loss to the Government. The TO must conduct a full and impartial investigation of the responsibility for loss or damage. The investigation must establish such factors as proximate cause of damage, measure of loss or damage, market value (or Federal Supply Catalog or Defense Logistics Agency [DLA] Consolidated Management Data List value), preshipment repairable value, salvage allowance, depreciation, inspection by the TSP or Government, actual repair cost, and disposition of damaged property.

### E. EVALUATING FACTUAL INFORMATION AND EVIDENCE

The TO enters only factual information when describing discrepancies and clearly defines the circumstances surrounding the loss or damage in the “Remarks” (Block 36) section of the TDR. When facts are established from oral testimony, the person giving the testimony must be identified by name and position. Direct statements must be quoted.

### F. SHIPPER OR CONTRACTOR RESPONSIBILITY

The TO may obtain findings of the Contract Administration Office as to shipper or contractor liability under the contract. When such responsibility is indicated, these findings are required even if TSP liability is involved. (Use the SF 364, [Report of Discrepancy \(ROD\)](#), [Figure 211-5](#), for reporting, adjusting, and accounting for supply-type discrepancies.)

### G. DETERMINING LIABILITY

1. [Common Law Rule](#). A common TSP is liable for the loss of, or damage to, property received for transport. The TSP can justify or excuse a default where a loss or injury occurs through:
  - a. [Natural Disaster](#). As defined, an event that could not happen by the intervention of man, or be prevented by human skill, knowledge, or foresight. It includes extraordinary floods, storms, unusual lightning, sudden tempests, severe frosts, earthquakes, tidal waves, and the

- like. A natural disaster is such unusual and extraordinary manifestation of the forces of nature that it could not, under normal conditions, be anticipated or expected. It justifies the failure of the common TSP to perform its contract of carriage and relieves it of the liability for the loss of or injury to the property. The rule, however, is not absolute. Although loss or injury to property results from a natural disaster, if the TSP is negligent in avoiding or lessening the loss or damage, it is liable. For example, the rule does not apply if:
- (1) The TSP fails to obtain or ignores local reports of severe storms and brings the property into contact with the destructive force.
  - (2) The event is not the immediate or only cause of the loss or damage. As an example, the TSP takes property into an area recently struck by an earthquake, ignoring reports of unsafe roads and unstable buildings and requests to remain clear of the area. If the TSP is involved in an incident that damages the property, it is liable. The earthquake was not the immediate cause of the damage.
  - (3) A freezing condition occurs at a season of the year or in a climate where freezing weather is to be reasonably expected.
- b. Act of the Public Enemy. TSPs are not liable for loss or damage caused by acts of organized military or naval forces of a nation at war with the United States. Groups such as mobs, rioters, or strikers are not considered as the “public enemy” and losses caused by them do not fall within this exception.
- c. Act or Mandate of a Public Authority. Common TSPs are under the control of public authority to the same extent as other persons, and must equally obey the orders of properly constituted government officials. If freight is lost or damaged as a result of obedience to such orders, without any intervening fault of the TSP, the TSP will not be held responsible.
- d. Act or Fault of the Shipper. A common TSP is not liable for any loss or injury resulting from the act or fault of the shipper without fault on the part of the TSP. This exception to the TSP’s common law liability includes every case where the loss is caused by the shipper’s act, whether that act is one of negligence, misconduct, or misfortune. The rule most frequently applies to cases of loss due to defective packing and improper loading.
- (1) Three elements must be present to give the rule effect: the shipper performed the packing or loading; there was a defect in the packing or loading; and, the defect was concealed from ordinary observation.
  - (2) If the TSP acknowledges improper packing or loading, or if either is apparent upon ordinary observation and inspection, it is the duty of the TSP to refuse receipt of the property. If the TSP accepts the property, the TSP cannot be relieved of liability for loss or injury resulting from the defective packing or improper loading.
- e. Defects in or Inherent Vice of Property. This exception arises from the nature and existing character of the property carried. A TSP is not liable for loss or damage to a shipment resulting from an existing defect in the property shipped and not caused or contributed to by TSP negligence. Generally, exceptions are made on perishable goods shipments subject to decay, fermentation or evaporation. Of a more complex nature, and harder to prove as to defect or inherent vice, are items of property subject at the time of shipment to metal fatigue, defective welding, structural weakness, faulty workmanship, or poor material integrity. A TSP is not an insurer against loss caused by the nature, vice, or infirmity of the property shipped. Under federal rules, when a TSP shows that the damage resulted from the inherent infirmity of goods transported under circumstances shown not to be negligent, the burden of proving negligence rests with the claimant.

## **H. BEGINNING OF LIABILITY**

A common TSP assumes liability when it receives freight under its control (e.g., as soon as the delivery is complete and the possession of the goods is transferred from the shipper to the TSP). No formal acceptance is necessary. If a bill of lading (BL) was not receipted, this does not necessarily indicate that the TSP did not accept the goods. Delivery cannot be complete if there is something that must be done by the shipper before the goods can be forwarded. However, if it is the TSP's responsibility to deliver the material without further shipper action, the TSP's liability has begun.

## **I. TSP DUTY TO PROTECT PROPERTY**

A TSP's duty is not limited to the transportation of goods delivered for carriage. Law requires the TSP to protect the goods from preventable destruction and injury. The carrier must guard the goods from destruction or from the elements, the effects of delays, or other sources of damage that, by exercising care and ordinary intelligence, it could anticipate and prevent.

## **J. COMMON TSP FAULTS**

1. The TSP is responsible for loss or damage, when:
  - a. A fire, wreck, or other casualty, not directly attributable to a natural disaster, destroys the property in its possession.
  - b. The loss or injury is attributable to a combination of a natural disaster and the negligence of a TSP. If the loss or damage could have been averted had the TSP acted with caution or efficiency, the TSP may not be relieved of liability. See the second example under the natural disaster exception.
  - c. The freight disappears while in its possession; this includes theft or pilferage.
  - d. The freight is delivered, without authority, to other than the designated consignee.
  - e. The freight is damaged through rough handling in transit, at TSP's terminals, or transfer points.
  - f. Defective or inadequate packing or loading is readily apparent and could be observed by the TSP at time of acceptance, but the TSP still accepts the shipment for transport.
  - g. The TSP fails to provide safe and adequate service, equipment, or facilities for the transport of the property.
  - h. The shipper seals the freight and the TSP breaks the seal(s).
    - (1) Truckload (TL)/Carload (CL) freight. If the TSP breaks the seal(s) en route to the destination, reseals the freight, and then delivers freight short or damaged, the TSP may be held liable.
    - (2) Less-Than-Truckload (LTL)/Less-Than-Carload (LCL) freight. If the TSP breaks the seal(s) at the local terminal or first BB point and discovers shortage/damage, but fails to notify the shipper of discrepancies, the TSP may be held liable.
  - i. The TSP fails to properly load, stow, block, or brace a LCL or LTL shipment.

## **K. COMMON SHIPPER FAULTS**

1. The TSP may be relieved of responsibility for loss or damage occurring en route when it can be proven that the shipper:
  - a. Failed to ship items described or listed on the BL.
  - b. Failed to package and pack the shipment properly.
  - c. Failed to use suitable containers (e.g., pallets, skids) for shipment.
  - d. Failed to load, stow, block, and brace a CL or TL shipment properly.
  - e. The examples above do not apply if the TSP knew about the improper lading, loading, or similar deficiency or if such were apparent upon ordinary observation. The TSP is not relieved of liability if a deficient shipment is accepted for transport.

## **L. MEASURE OF LOSS AND DAMAGE - DETERMINING VALUE**

1. Right to Recover Money. The DoD is entitled to payment for the actual loss of or damage to property. The Government's damages will be measured as determined by principles of law. The exact amount of loss or damage must be documented. Claims for commercial TSP loss or damage to Government property are based on firm evidence and documented facts. The burden is on the Government to prove the loss or damage occurred while the property was in the TSP's possession. Evidence submitted must support both the charge of TSP responsibility and the amount of the Government's loss, including any incidental damage arising from the loss or damage to the property. Incidental damages are those expenses reasonably and necessarily incurred by the Government to restore the property or to mitigate the damages. The actual value of the lost or destroyed property may be at market value at the time of the shipment.
2. Property Valuation at "market value". The term "market value" is not always applicable to Government property. Some DoD property is not suitable for commercial or industrial use, and valuable for military purposes only, with no comparable commercial market value. The law provides that the measure of loss or damage to an article having no "market value" is the value of the article to the owner (14 American Jurisprudence, Second Edition. § 631, Carriers).
3. Contracts, purchase orders, and invoices are acceptable proof of value and sometimes apply when an item moves from the manufacturer to the first Government destination. However, these procurement documents are not maintained as a means of determining property value after the purchased items are placed in the federal property system. Price quotations may be obtained from a variety of supply systems (e.g., FED LOG) and become the authority for the value of the lost or damaged item. The price quote is based on the average purchase of like items procured by DLA, the Defense Contract Management Agency, the General Services Administration, or the Service under contract for the same period. These costs are usually less than open market prices due to the volume of purchases.
4. If, for some reason, the value is unknown or there is doubt concerning the pre-shipment value of an item lost or damaged, consult the Item Manager (IM), who determines value based on consideration of original cost, utility and use, condition and age, and extent, if any, to which it has deteriorated or depreciated. If there is a continuing need for a like or similar item, and there are none available in the supply system, the value may be the estimated cost to reproduce or replace the item (including transportation cost) less allowances, for preshipment condition of the property lost or irreparably damaged.
5. Sometimes lost or damaged property has no value other than as scrap. The property may be obsolete or shipped for disposal through the established property disposal channels. If the property has no value other than as scrap, that value will represent the measure of loss.

## **M. PROPERTY DEPRECIATION**

1. Many items of government property, although classified as serviceable (material condition code A), are depreciated in value at time of shipment from one site to another. When “used” property is lost, irreparably damaged, or damaged beyond economical repair, the level of depreciation must always be considered when determining the amount of the Government’s actual loss.
2. For property in “pre-shipment reparable” condition, both depreciation allowance and average standard cost of repair may apply for computation of the actual loss. When there is a continuing need for an item and it must be replaced, the amount of loss is based on the adjusted replacement cost. Obtain it by deducting the depreciation to the used item from the cost of a new like item. For property that will not be replaced, the amount of loss is determined by deducting the depreciation allowance from the original cost or the supply system price quotation under which the property was carried in DoD inventory.
3. Usually, a depreciation rate is based on the service-life expectancy of an item of property. The IM of the class of property will maintain these rates. When a depreciation allowance applies, the TO requests it from the IM. Depreciation allowances based on the technical knowledge of the IM will establish a sound basis for an equitable claim. The statement of depreciation allowance must accompany the TDR, and must show factors considered and the method used to compute the depreciation allowance. The depreciation allowance statement documents the claim against the TSP. The statement will include:
  - a. Date of purchase and manufacturer.
  - b. Original acquisition cost.
  - c. Replacement cost of a like item and source of this quotation.
  - d. Estimated or published life expectancy (if published, give the source).
  - e. Preshipment condition.
  - f. Current need to the DoD.
  - g. Average standard repair cost, when an item was shipped in “reparable” condition.
  - h. See [Figure 211-2](#) for an example of a pre-shipment value statement.

## **N. REPAIRS AND COSTS**

1. As with all elements of damages, the cost of repair (actual or estimated) must be shown to be reasonable.
2. Actual Costs. When damage occurs to DoD property and the damage can be repaired, the damages are measured by the cost of the repair necessary to restore the property to its condition before the injury. The DoD is not entitled to any portion of the repair cost that makes the property more valuable than it was before the injury. If the cargo was shipped with pre-existing damage, a needed repair or for update prior to shipment, that cost is deducted from the actual repair cost. The TSP cannot be charged for a pre-existing condition, only for the damage it caused.
3. Several options exist when repairs are made to the damaged property. Some repair actions follow. The property owner must work with the TO to determine the proper course of action and acquire the necessary funds for repair. The claims office does not furnish the funds for repair. In all instances, the matter will be coordinated with the TSP before repairs are made.
4. Property on Which Repairs Will Be Estimated. It is not necessary to spend money or owe a repair bill to recover the cost of repair (78 American Law Reports [A.L.R.] 905). When repair

will not be made, repairs will be delayed due to lack of parts or backlog in the repair facility, or when the damaged property must be shipped to another facility for repair, use the estimated repair costs to settle claims.

#### **O. TSP REPAIR OF DAMAGED PROPERTY**

1. The TSP may repair damaged property (except classified and protected cargo).

**NOTE:** Do not release TOP SECRET, SECRET, CONFIDENTIAL, sensitive, or technical supplies or equipment to a TSP for repairs.

When the TSP performs the repairs, the TSP must agree in writing to:

- a. Restore the damaged property to the condition it was in when the Government released it for shipment.
- b. Repair the damaged property to meet military or contract specifications.
- c. Repair the property promptly.
- d. Return the repaired property to the releasing activity or other activity directed to receive it, without undue delay.
- e. TO will obtain a receipt for the property when released to the TSP for repairs. When the above conditions have been met, the TDR will be canceled as no claim against the TSP is warranted.

#### **P. TSP REPLACEMENT OF DAMAGED PROPERTY**

1. The TSP may elect to replace damaged property at no cost to the Government. When the TSP replaces damaged property, it must agree, in writing to:
  - a. Replace the damaged item with an identical one.
  - b. Replace the damaged item promptly.
  - c. Deliver the replacement item damage-free.
2. The TO will give the damaged item to the TSP for salvage or disposition and cancel the TDR as no claim action is warranted. However, do not release TOP SECRET, SECRET, CONFIDENTIAL, sensitive, or technical supplies or equipment to a TSP.

#### **Q. REPAIR OF DAMAGED PROPERTY**

1. When DoD property is damaged in transit and a claim is filed against the TSP, the TSP is entitled to receive an itemized repair cost statement (breakdown) of the actual repair costs relating to the damaged item. The repair cost statement will contain parts, labor, and overhead as separate items.
2. Transportation Charges to Repair Facility. When it is necessary to send damaged property to a repair activity, add the freight transportation cost(s) to and from the repair facility to the TDR. When damaged property is sent to a repair activity, then transshipped, the transportation cost chargeable may not exceed the original transportation charges to the repair activity and back to the original BL destination location. If the item is a replacement, the record must show that a second item was shipped to replace the damaged item. Normally, this charge will not exceed the cost of sending the damaged item to and from the repair facility, provided the replacement is shipped from the facility by the same mode. Transportation charges to and from repair activities must be supported by copies of the BL, TSP's freight bills, and a statement showing that the

repair could not have been made locally at less cost by a government facility or a commercial firm.

3. Prevention of Loss of Identity at Repair Facility. Because of the administrative costs involved, repair facilities do not maintain repair cost data for each item repaired. They can, however, provide the actual itemized repair cost data for repair of in transit damages when the reporting activity properly marks the damaged property for shipment to the repair facility and shows that separate repair cost data is needed for freight loss and damage claim action. To prevent loss of the damaged items and their actual repair cost data at the repair facility, the reporting activity must:
  - a. Notify repair facility's transportation personnel and request they alert the IM and maintenance shop or facility of pending shipment of damaged property and the requirement for separate actual repair cost data for claim action against the TSP. Ensure the BL, shipping document, and "reparable" tag attached to the damaged property are all annotated to show the office responsible for the TDR, file reference number, BL number, and that the actual repair costs to the specific item are required to file a freight loss and damage claim against the TSP.
  - b. Ensure the repair facility/maintenance shop is capable of and responsible for providing the actual repair cost statement, when the reporting activity places them on notice that separate actual repair cost data is required.
  - c. If the item loses its identity at the place of repair and another is shipped to replace it, include transportation charges for the replacement item on the TDR.

#### **R. REPAIR COSTS CHARGED BY MILITARY FACILITIES WITH A COST ACCOUNTING SYSTEM**

In addition to the direct costs of material and labor, Services must include the overhead costs for the claim. Where a cost accounting system is used, the overhead costs provided by that system will be included in the repair cost statement. If the overhead costs are not provided by the cost accounting system, repair costs will be computed using the procedures in Paragraph T. [Figure 211-3](#) is an example of a repair cost statement.

#### **S. REPAIR COSTS (DIRECT AND INDIRECT) CHARGED BY MILITARY FACILITIES WITHOUT A COST ACCOUNTING SYSTEM**

1. Activities that do not have detailed cost accounting data will compute the cost of repair work as follows:
  - a. For repair work performed by civilians, charge the cost of the regular civilian time plus 42.9 percent, which covers the cost of annual leave, sick leave, holidays, and contributions to employee benefit programs.
  - b. Add the direct cost of any civilian overtime to (a) above, but do not add the 42.9 percent to the overtime rate.
  - c. Add the direct cost of work performed by military personnel to subparagraphs a. and b. above. Use the standard daily or hourly rates published in service personnel cost directives. Multiply the number of hours or days worked times the standard rate, plus 32 percent of the total standard rate for enlisted personnel and 20 percent for officers, as prescribed in pertinent Service personnel cost directives. These percentages cover the leave, holidays, and certain other personnel costs not included in the standard rate.
  - d. Increase the sum of subparagraphs a., b., and c. above by 30 percent. This percentage covers costs such as administration, heat, light, and water.

- e. Increase direct material costs by 3.5 percent as prescribed in pertinent service personnel cost directives for accessorial costs (packing, crating, and handling) of material issued from stock for use in repair of damaged items. Add this amount to the sum of subparagraphs a., b., c, and d.
- f. If subassembly items or parts recovered incident to repair of the damaged article are salvaged, the TSP is entitled to the salvage value of those recovered items/parts, less any costs to process the salvage. Subtract the salvage value from the total repair costs.

#### **T. PROPERTY NOT TO BE REPAIRED**

1. If property will not be repaired, either ship the property to the item or inventory manager for disposal or return the material to storage.
2. Receiving TOs will obtain itemized estimates of repair costs as soon as possible. Estimates will be prepared and signed by technically qualified personnel who are familiar with labor costs, parts, and overhead.
3. The TO must tell the TSP that:
  - a. The property will not be repaired.
  - b. A technically qualified person computed the estimated cost of repair.
  - c. The claim will be settled based on estimated cost.

#### **U. PROPERTY NOT TO BE IMMEDIATELY REPAIRED**

1. When repair delays occur, use the estimated repair cost to establish the measure of damage.
2. Estimated repair costs are subject to adjustment when the actual repair charges are determined. The TO must obtain and report the actual cost of repairs to the claims office.
3. The claims office will inform the TSP that:
  - a. There will be a delay before the property can be repaired.
  - b. A technically qualified person computed the estimated cost of repair.
  - c. The DoD is filing its claim based on the estimate.
  - d. The TSP will settle the claim based on the estimate, subject to adjustment when actual repair is completed.

#### **V. DISPOSITION OR SALVAGE OF DAMAGED PROPERTY**

1. When a determination is made to salvage the damaged property accepted by the Government, the TSP must be notified of the intent to salvage. If release of the property is not restricted, it may be offered to the TSP. A TSP is entitled to credit for the salvage value of property not released to it. Such credit does not apply if the recoverable amount of the shipment claim under released valuation is less than the Government's actual loss.
2. When articles are damaged to the point they must be scrapped, the TSP must be allowed credit for the value of the scrap recovered. Deduct the cost of processing the salvage for sale from the salvage value.
3. The policies for disposal or salvage of TSP -damaged property are contained in transportation, materiel, and security directives. Field activities must arrange to dispose of TSP -damaged property according to their Service directives for handling unserviceable property. The claims office does not furnish disposition instructions or funds for disposition.

## **W. DISPOSITION OF TSP -DAMAGED PROPERTY MOVING UNDER RELEASED RATES**

A TSP liability for loss or damage to Government property may be limited to the released valuation cited in the TSP's tender or schedule of rates and on the BL. When the BL cites "released valuation," field activities must not release damaged property to TSPs for salvage when the released valuation or amount recoverable from the TSP is less than the actual property value.

## **X. DISPOSITION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES**

1. Damage to explosives and other dangerous articles, especially where damage cannot be readily noted, present a special situation. Rough handling may require destruction of the entire shipment even though damage to every item may not be visible. Do not give explosives or other dangerous articles to the TSP for salvage.
2. Supporting documentation for these special situations consists of:
  - a. A statement that the TSP had the opportunity to reinspect the commodity before its destruction. This does not apply to classified material.
  - b. Evidence (e.g., photographs, statements) showing in detail how the commodity was prepared for shipment (e.g., blocked, braced).
  - c. A statement from technically qualified personnel and supporting evidence (e.g., technical orders) showing destruction is required.
  - d. A statement that the TSP was aware of:
    - (1) The nature of the commodity transported.
    - (2) The possibility the Government might have to destroy the entire shipment after delivery if the commodity was handled roughly.
    - (3) The basis for determining that the commodities were handled roughly.
  - e. Obtain the TSP's written agreement to the destruction of the commodity or attach a statement that an agreement could not be obtained. Installation commanders, TOs, or freight claim personnel will determine the necessity for such a statement or agreement.

## **Y. DOCUMENTATION REQUIREMENTS**

Instructions on proper completion of the TDR are contained in Chapter 210 or App I. The DoD objective is prompt, equitable settlement of transportation claims. It is imperative the TDR be a comprehensive report of transportation-type discrepancies in shipments of Government property and be supported by documents which establish TSP responsibility. The TO must use logic and sound judgment in determining documents required to support the TDR, since the TO is the primary source of information for the claims office. The TO must document each TDR, based on its own merits, keeping in mind that the claims office requires factual information and documented evidence to determine liability, establish the measure of loss or damage, and file an equitable claim against the TSP. See [Table 211-1](#), for the minimum supporting documentation needed for TDR submission.

## **Z. DISTRIBUTION OF THE TDR FOR CLAIM ACTION**

The reporting activity must maintain a copy of all TDRs and supporting documents for future reference. Documents will be maintained and disposed of in accordance with Service/Agency file retention guidelines. Chapter 210, Paragraph H, furnishes distribution guidance.

**AA. RESPONSIBILITY FOR REPORTING TDR CORRECTIVE ACTIONS AND TSP PROTESTS TO THE CLAIMS OFFICE**

1. See Chapter 210 for guidelines on correcting, amending, or canceling a TDR.
2. Freight Loss and Damage Claims Reopened. Claims filed by the claims office may be reopened by the TSP, reporting activity, shipper, claims personnel, or by direction of higher authority. Claims personnel must review the protest or evidence that reopens the claim, and determine whether to reinvestigate, amend, sustain, or withdraw the claim. If necessary, claims personnel may request that the reporting activity reinvestigate the discrepancy. When the claims office sends a request to the TO for further investigation, the TO must furnish the requested evidence to claims personnel.
3. TSP Protests. Claims personnel are required to answer TSP requests for documents or reconsideration of the claim. Activities receiving misdirected inquiries must promptly forward them to the claims office and advise the TSP of the referral. TOs are encouraged to cooperate with TSPs to resolve issues locally. However, TOs must refrain from making comments or commitments to TSP agents concerning liability or amount charged for loss or damage.

**BB. FEDERAL CLAIMS COLLECTION ACT OF 1966 (PUBLIC LAW 89-508, 80 STATUTE 308) AND AMENDMENT AS GENERATED BY DEBT COLLECTION ACT OF 1982 (PUBLIC LAW 97-365, 25 OCT 1982)**

The revision generated by the Debt Collection Act of 1982 prescribes standards for administrative collection action, and referral of claims to the General Accounting Office or the Department of Justice for litigation. TOs receiving inquiries from TSPs concerning compromise, litigation, suspension, or termination of collection actions must immediately forward them to the claims office for processing.

### **Local Claim Filing Guidelines**

1. These are the minimum basic requirements for filing a loss or damage claim against a commercial TSP. These procedures supplement the procedures in Chapter 210 for completing and submitting a TDR package to the finance center/claims office. These local claim-filing procedures must be followed after the TDR investigation is complete. Refer to Paragraphs 5 and 6 below for guidance.
2. By law, the claim must be proven with documented evidence that proves all three points below:
  - a. Shipment was given to the TSP in good condition.
  - b. Shipment was delivered in lesser condition or quantity than when tendered to the TSP.
  - c. The amount of the loss.
3. The TSP can relieve itself of liability by showing evidence that one of the following exceptions apply and that the TSP was not negligent. The exceptions are a natural disaster, act of the public enemy, act or mandate of public authority, act or fault of the shipper, and/or defects in or inherent vice of property. See Paragraph H, for a more detailed explanation of these exceptions.
4. To properly file a shortage or damage claim against a TSP, refer to Chapter 210, Table 210-4 for the minimum supporting documentation needed. To determine the actual value of the Government's loss, refer to Paragraphs M through X. These paragraphs discuss the measure of damage, replacement or repair issues, and salvage. Become familiar with these basic concepts to effectively file a valid freight loss and damage claim against a TSP.
5. Claims for loss or damage must be filed within a certain amount of time. The time limitation is based on the mode of transportation used. Consult the chart in Chapter 210, Table 210-2 for the basic claim filing time limits. The time limit is greatly reduced when an air or small package TSP moved the shipment.
6. Once the investigation is complete and all evidence has been gathered, reviewed and documented, file a formal claim against the TSP. The TO may:
  - a. Use the TSP's own claim form(s). To obtain the form(s), contact the TSP's local terminal. Inform the TSP of the need to file a freight loss and/or damage claim and request they mail or fax their form(s).
  - b. Regardless of the form used, prepare a cover letter to the TSP advising that a freight loss and/or damage claim is being submitted. This letter will instruct the TSP where to send the claim payment check. (Note: Small package TSPs generally send the claim check to the shipper only.) Provide the TSP with a copy of all supporting documentation, including photographs and the DD Form 361 (front side only), in the claim package. Submit the claim package by a traceable means to the TSP's home office, not its local terminal.
7. Some TSPs permit filing claims online. If this option is available, comply with all instructions provided by the TSP for supporting documentation. Consult with the TSP's local terminal if problems are encountered.
8. The TSP must acknowledge the claim within 30 days. Follow up with the TSP after 60 days. The TSP has 120 days to pay, protest, or deny the claim. If there are any problems or concerns, or no response is received from the TSP, then forward the TDR and supporting documents along with a copy of the claim package to the service or agency finance center/claims office. Advice or assistance may be requested at any time from claims office personnel to resolve the claim.

**Figure 211-1. Local Claim Filing Guidelines**

<b><u>VALUE STATEMENT</u></b>		
Item:	Clock TD 1251/U	
NSN:	6645-01-063-0399EX	
Requisition Number:	FB2930-0075-0742	
Bill of Lading Number:	D0692473, 03/04/01	
Date Purchased	1992	
Manufacturer	Ace Industries, Inc.	
Original Acquisition Cost	\$81,314.18	
Replacement Cost 2001	\$107,900.50	
Life Expectancy	20 yrs (published in [give source])	
Pre-shipment Condition	Repairable	
Current Need to DoD	Required	
Standard Repair Cost 2001	\$4,596.00	
<b><u>Computation</u></b>		
Replacement Cost		\$107,900.50
Depreciation		
9 yrs @ \$5,395.03 per yr		- 48,555.27
Value after depreciation		59,345.23
Standard repair cost 2001		- 4,596.00
Pre-shipment value		\$ 70,934.32
Date	_____	
	[Name of Technically Qualified Person]	
	[Title]	
	[Location]	

**Figure 211-2. Example of Pre-Shipment Value Statement**

<b><u>REPAIR COST STATEMENT</u></b>	
Item: Aircraft Leading Edge	
Value: \$49,750.00	
Civilian labor 40 hours @\$15.50/hour .....	\$ 620.00
Civilian indirect labor costs	
42.9% of civilian labor cost .....	265.98
Civilian overtime 10 hours @ \$23.25/hour .....	232.50
Military labor 10 hours @ \$9.65/hour .....	96.50
Military indirect labor costs	
32% of military labor cost .....	30.88
Total Labor Cost.....	\$1,245.86
Overhead	
30% of total labor cost.....	373.76
Direct material cost (must be itemized) .....	675.50
Accessorial Cost	
3.5% of direct material cost .....	23.64
Salvage value of parts removed.....	(52.75)
Total Repair Cost.....	\$2,266.01
Date	_____
	[Name of Technically Qualified Person]
	[Title]
	[Location]

**Figure 211-3. Example of Repair Costs (Direct and Indirect) by a Military Facility Without a Cost Accounting System**



REPORT OF DISCREPANCY (ROD)				1. DATE OF PREPARATION	2. REPORT NUMBER			
<input type="checkbox"/> SHIPPING <input type="checkbox"/> PACKAGING								
3. TO (Name and address, include ZIP Code)				4. FROM (Name and address, include ZIP Code)				
5a. SHIPPER'S NAME			5b. NUMBER AND DATE OF INVOICE		6. TRANSPORTATION DOCUMENT NUMBER (GBL, Waybill; TCN, etc.)			
7a. SHIPPER'S NUMBER (Purchase Order/Shipment, Contract, etc.)		7b. OFFICE ADMINISTERING CONTRACT			8. REQUISITIONER'S NUMBER (Requisition, Purchase Request, etc.)			
9. SHIPMENT, BILLING, AND RECEIPT DATA				10. DISCREPANCY DATA				11. AC <sup>2</sup> TION CODE
NSN/PART NUMBER AND NOMENCLATURE (a)	UNIT OF ISSUE (b)	QUANTITY SHIPPED/BILLED (c)	QUANTITY RECEIVED (d)	QUAN- TITY (a)	UNIT PRICE (b)	TOTAL COST (c)	CODE <sup>1</sup> (d)	
12. REMARKS (Continue on separate sheet of paper if necessary)								
<sup>1</sup> DISCREPANCY CODES					<sup>2</sup> ACTION CODES			
<b>CONDITION OF MATERIAL</b> C1 — In condition other than that indicated on release/receipt document C2 — Expired shelf life C3 — Damaged parcel post shipment <b>SUPPLY DOCUMENTATION</b> D1 — Not received D2 — Illegible or mutilated D3 — Incomplete improper or without authority (Only when receipt cannot be properly processed) <b>MISDIRECTED MATERIAL</b> M1 — Addressed to wrong activity <b>OVERAGE/DUPLICATE SHIPMENTS</b> O1 — Quantity in excess of that on receipt document O2 — Quantity in excess of that requested (Other than unit of issue pack) O3 — Quantity duplicates shipment <b>PACKING DISCREPANCY</b> P1 — Improper preservation P2 — Improper packing P3 — Improper marking P4 — Improper utilization			<b>PRODUCT QUALITY DEFICIENCIES</b> Q1 — Deficient material (Applicable to Grant Aid and FMS shipments only) <b>SHORTAGE OF MATERIAL</b> S1 — Quantity less than that on receipt document S2 — Quantity less than that requested (Other than unit of issue pack) S3 — Non-receipt of parcel post shipments <b>ITEM TECHNICAL DATA MARKINGS (i.e., Name Plates, Log Books, Operating Handbooks, Special Instructions, etc.)</b> T1 — Missing T2 — Illegible or mutilated T3 — Precautionary operational markings missing T4 — Inspection data missing or incomplete T5 — Serviceability operating data missing or incomplete T6 — Warranty data missing <b>WRONG ITEM (Identify requested item as a separate copy in Item 9 above)</b> W1 — Incorrect item received W2 — Unacceptable substitute <b>OTHER DISCREPANCIES</b> Z1 — See remarks			1A — Disposition instructions requested (Reply on reverse) 1B — Material being retained (See remarks) 1C — Supporting supply documentation requested 1D — Material still required expedite shipment (Not applicable to FMS) 1E — Local purchase material to be returned at supplier's expense unless disposition instructions to the contrary are received within 15 days (Reply on reverse) (Not applicable to FMS) 1F — Replacement shipment requested (Not applicable to FMS) 1G — Reshipment not required. Item to be re-requisitioned. 1H — No action required. Information only 1Z — Other action requested (See remarks)		
13. FUNDING AND ACCOUNTING DATA								
14a. TYPED OR PRINTED NAME, TITLE, AND PHONE NUMBER OF PREPARING OFFICIAL				14b. SIGNATURE				
15. DISTRIBUTION ADDRESSEES FOR COPIES								
364-103		7540-00-159-4442		(Previous edition is obsolete.)			STANDARD FORM 364 (REV. 2-80) Prescribed by GSA FPMR 101-26.8	

Figure 211-5. SF 364, Report of Discrepancy (ROD)

**Table 211-1. Supporting Documentation for TDR Development**

Supporting Document	Shortage Discrepancy	Damage Discrepancy
<b>Minimum Documentation Needed To Support a TDR for a Claim</b>		
Copy of the BL or TCMD. For commercial air shipments, a copy of both the front and back of the airbill is required.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Copy of the TSPs delivery/interchange receipt with discrepancy noted, signed and dated by the TSPs driver and the consignee.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Copy of the completed shipping document i.e. DD Form 1348-1, DD Form 250, DD Form 1149, DD Form 1155, packing list etc. with associated cost	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Additional Documentation, as Needed/Applicable</b>		
When there is a consolidation of requisitions in a carton covered by one TCN, a completed copy of each document in the consolidation is required to establish the actual loss.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
When property is shipped in reparable (F) condition, a reparable value statement is required, citing the actual preshipment value.		<input checked="" type="checkbox"/>
For prepaid FOB origin shipments, a copy of the contractor's paid invoice is required.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Confirmation from the consignee that the item was not received i.e. email, fax	<input checked="" type="checkbox"/>	
A copy of the shipper's reply to the Request for Information confirming whether or not shipment was shipped as billed and condition of property when tendered to the TSP.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Shipper must show if packing, loading, blocking, bracing were properly performed		<input checked="" type="checkbox"/>
Copy of tally-out and tally-in records when TSP is determined responsible for the shortage.	<input checked="" type="checkbox"/>	
For concealed loss and damage, a signed statement(s) by person(s) who first discovered the discrepancy, showing time, place, circumstances of delivery, and explanation as to why shortage or damage was not noted at time of delivery. If the property was moved from the original delivery point, also include signed and dated statement(s) or affidavit(s) by person(s) who moved the property, showing distance, method of movement, time, and circumstances of movement.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Copy of the TSP's inspection/survey report signed by the TSP's representative and consignee. If TSP declined inspection of damaged property, then provide a copy of the Government's inspection, signed and dated by a technically qualified person.		<input checked="" type="checkbox"/>
Photographs of the damaged property. If pilferage/theft has occurred photograph possible ways of entry or damage to the container or cargo, photograph seals if they are still intact, and photograph the inside of the container and its contents or lack thereof. Additional photographic examples: MSL, data plates, packaging, Vehicle Identification Number, container number, conveyance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Itemized actual or estimated repair cost statement, signed and dated by a technically qualified person. For commercial repair, a copy of the contractor's paid invoice. (Include labor separate from parts)		<input checked="" type="checkbox"/>
Copy of the TSP's receipt for release of salvaged property, showing the preshipment value as the amount of the Government's loss. The TSP or its authorized agent must sign the receipt.		<input checked="" type="checkbox"/>
Copy of the official accident report initiated by law enforcement personnel for loss or damage due to aircraft, rail, or highway accidents.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Security and law enforcement reports for loss , pilferage, theft, suspected forgery or vandalism	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Supporting Document	Shortage Discrepancy	Damage Discrepancy
If damaged property was sent to a repair facility, a copy of the BL or freight bill for transportation costs to and from the repair facility.		<input checked="" type="checkbox"/>
For small package express shipments, a copy of the pickup record (e.g., manifest, bar code number, or BL). Include the documentation to support transportation charges paid on shipment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
For small package express shipments, a copy of the tracer or loss and damage investigation report/number. <b>The TSP will not honor claims failing to cite this number.</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Appropriation to be credited for replacement or repair costs.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Statements from eye witnesses and/or other involved parties (signed and dated).	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Any Certificate of Destruction, Veterinary Inspection Report, or Temperature Readings for temperature controlled shipments that are applicable to the TDR file.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Cargo Declarations, Tracking Reports, Shipping Documents, Inspection Reports, Weather and Sea State Reports	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Information for replacement costs and depreciation amounts e.g. FEDLOG, WEBFLIS, etc.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
E-mail correspondence relevant to TDR/claim e.g., initial notification to TSP.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>