

AMSA HOUSEHOLD GOODS DISPUTE SETTLEMENT PROGRAM

ADMINISTERED BY THE NATIONAL ARBITRATION FORUM

**PROGRAM INFORMATION FOR AMSA MEMBER CARRIERS – HERE’S WHAT YOU
NEED TO KNOW TO COMPLY WITH THE ARBITRATION REGULATIONS**

As Amended and Effective October 1, 2010



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DISPUTE SETTLEMENT (ARBITRATION) PROGRAM

COMPLIANCE WITH FEDERAL STATUTORY REQUIREMENTS –

Beginning in 1996, interstate movers were required, as a condition of maintaining their registration, to offer neutral binding arbitration on interstate shipments for individual shippers as a means of resolving certain types of disputed claims. Beginning in 2006, pursuant to the Household Goods Movers Oversight and Reform Act, the requirements were expanded to include both: 1) **Disputed loss and damage claims**, and 2) Disputes regarding **additional charges that are billed to the shipper after the shipment was delivered**.

Under these regulations, two types of disputes fall within the statutory requirements for arbitration for interstate household goods movers:

Disputed Claims for Loss & Damage To the Articles Transported In the Shipment	A dispute regarding the settlement of a claim for loss or damage to the articles contained in the shipment. This type of dispute is subject to the mandatory arbitration requirement if the amount of the dispute is \$10,000 or less.
Disputes Regarding Additional Charges Billed to the Shipper by the Mover AFTER THE DELIVERY Of the Shipment	A dispute regarding additional charges that you billed to the shipper after the shipment was delivered. This type of dispute is subject to the mandatory arbitration requirement if the amount of the dispute is \$10,000 or less.

To help you meet these requirements, AMSA provides our members with an arbitration program that satisfies the Government's mandatory provisions. This program is included as a member service for all members with interstate authority.

The governing statute establishes a variety of provisions under the authority of the Department of Transportation that define the program. One that you should take special note of is the requirement that **shippers must be provided with a pre-move description of the arbitration program** that the carrier is offering, specifying any costs and a disclosure of the legal effects of electing to arbitrate. This information must be provided to the shipper before the shipment is tendered to the carrier.

Also, under the statute, you can be held liable for the shipper's attorney fees if you do not inform the shipper during the claim settlement process that arbitration is available, and as a result, the case is resolved in court instead of through arbitration. In other words, if you are denying the claim or offering a compromise settlement, **be sure to mention the arbitration program and include an arbitration brochure** in your claims correspondence to the shipper to make sure that the shipper is fully apprised of your arbitration program.

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Or, in place of a separate brochure, carriers may also elect to include this information in their own company pre-move materials. If you elect to develop your own brochures, please take care to accurately describe the program to avoid shipper confusion and potential legal exposure.

ARBITRATION THRESHOLD –

The regulations require that disputes of **\$10,000 or less** on interstate shipments **must be submitted to binding arbitration** at the shipper's request if no settlement can be reached. Arbitration is not mandatory for claims of more than \$10,000. If the claim involves a dispute of more than \$10,000, binding arbitration can be used to settle the dispute (it's probably cheaper and easier than going to court), but you are under no statutory obligation to do so.

TYPES OF DISPUTES SUBJECT TO ARBITRATION –

While most disputed claims for loss and damage are eligible for consideration under the mandatory arbitration provisions, **only certain types of disputed charges fall within the mandatory provisions**. Disputes regarding charges that you collected from the shipper when the shipment was delivered are not subject to mandatory arbitration (although you may elect to use arbitration on a voluntary basis to resolve such disputes). However, **disputes regarding additional charges that you billed to the shipper after the shipment was delivered are subject to the mandatory arbitration provisions**.

Under the regulations, you are authorized to collect the following charges when the shipment is delivered:

- 100% of the binding estimate amount **or** 110% of the non-binding estimate amount, **plus**
- Charges applicable for any services (i.e. waiting time, extra pickup or delivery, storage-in-transit) that the shipper requested after the contract was executed that were not included in the estimate, **and**
- In the event that shuttle service is required, you may also collect for the shuttle charges at delivery – provided that the shuttle charges collected at delivery do not exceed fifteen (15%) percent of the total charges due at delivery.

Any remaining charges must be billed to the shipper – it is these additional charges that are billed to the shipper (and are not collected at delivery) that are subject to arbitration.

For example, if you provided a non-binding estimate to the shipper for \$7,000, you would be authorized to collect no more than 110% of this amount (or \$7,700) at delivery for the services and quantities listed on the estimate. If the shipment weighs more than the estimated amount, you must bill the shipper for the additional amount after the shipment has been delivered. The amount of the additional billing is the amount subject to arbitration.

PROGRAM COSTS –

The basic cost of participating in the program is included in your AMSA membership dues. The cost for processing arbitration requests is \$25 each for 2-5 requests (the first request each year is free), \$20 each for 6-29 requests, and \$15 each for 30 or more requests processed on a yearly basis. In addition to these AMSA fees, the National Arbitration Forum (FORUM) charges an administrative fee for each arbitration case, the cost of which, unless otherwise agreed to by both parties, is divided as follows:

Amount of Disputed Claim	Total Forum Administrative Fee	Consumer's Share of Administrative Fee	Carrier's Share of Administrative Fee (See Note)
\$10,000 or less	\$650	\$300	\$350
Over \$10,000 up to \$20,000	\$700	\$325	\$375
Over \$20,000 up to \$30,000	\$750	\$350	\$400
Over \$30,000 up to \$40,000	\$800	\$375	\$425
Over \$40,000 up to \$50,000	\$850	\$400	\$450
Over \$50,000	\$850 plus one (1%) of the amount over \$50,000	\$400 plus one-half of 1% of the amount over \$50,000	\$450 plus one-half of 1% of the amount over \$50,000

Note – To encourage the use of the program, the consumer pays a smaller portion of the fee than does the carrier.

The arbitrator can elect to re-apportion the cost of the fee in the final decision depending on the circumstances of the case.

MORE INFORMATION –

If you have questions, AMSA administrative staff are always available to provide information and counseling to shippers and carriers on all aspects of the program.

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Remember, under the governing statute, arbitration is always optional and voluntary for the shipper (consumer) but may be mandatory for you as the mover. As the mover, you must agree to the shipper's request for arbitration of disputed claims of \$10,000 or less, if no settlement can be reached. If the shipper requests arbitration of a disputed claim over \$10,000, you may elect to use the program if you choose to do so (it's probably cheaper and easier than going to court), but it is not mandatory for claims over \$10,000.

When you do use the program, the arbitrator's decision is legally binding on both parties and can be enforced in any court having jurisdiction over the dispute.

ARBITRATION PROGRAM PROCEDURES –

1. Prior to the move, before the Order for Service is executed, the carrier provides each shipper (consumer) with a notice of the availability of an arbitration program, including a summary of the arbitration procedures, the applicable costs and a disclosure of the legal effects of electing arbitration to resolve a dispute. Carriers may use pre-printed brochures available from AMSA or they may incorporate the information into their own pre-move information furnished to the shipper.

Also, under the statute, you can be held liable for the shipper's attorney fees if you do not inform the shipper during the claim settlement process that arbitration is available, and as a result, the case is resolved in court instead of through arbitration. In other words, if you are denying the claim or offering a compromise settlement, **be sure to mention the arbitration program and include an arbitration brochure** in your claims correspondence to the shipper to make sure that the shipper is fully apprised of your arbitration program.

2. After the move, if a dispute arises that cannot be resolved through the carrier's own claims process, a shipper can request arbitration by writing to AMSA within 90 calendar days after the carrier's final offer of settlement or denial of the claim. In accordance with the terms of the statute, disputes involving 1) **loss and damage claims** and 2) **additional charges billed after delivery** are subject to mandatory binding arbitration.

The arbitrator's decision may cover repair, replacement, refund of charges, reimbursement for expenses and/or compensation for damages. The program rules however, and the interstate statutes upon which they are based, do not provide for refunds in excess of the disputed additional charges or for claims that go beyond the carrier's liability for loss or damage to the goods, which includes but is not limited to: punitive damages, loss of wages, or other special damages, such as emotional distress or mental anguish.

3. After receipt, AMSA informs the carrier of the shipper's request for arbitration. The carrier then has 15 working days to review the disputed claim and the request for arbitration. Upon affirmation by the carrier that the dispute meets the criteria for arbitration, AMSA forwards the required forms and program rules to the shipper. The shipper has 30 calendar days to complete the forms and return them, along with his or her portion of the administrative fee, directly to FORUM to initiate the arbitration process.

The initial 15-day review period, during which AMSA advises the carrier of the shipper's request for arbitration and before the necessary forms and program rules are sent to the shipper, provides the carrier and the shipper with an additional opportunity to reach a settlement before the forms are completed and the dispute is submitted to the Forum for resolution.

4. FORUM then opens the case by sending a copy of the forms and shipper's supporting materials to the carrier along with an invoice for the carrier's share of the administrative fee. The carrier must respond to the FORUM within 30 calendar days by returning a **completed and signed Submission to Arbitration Form, its share of the arbitration fee, and the relevant materials from its claim and administrative file in support of its position.**

5. FORUM forwards a copy of the carrier's materials to the shipper and then refers the matter to an Arbitrator who begins the review process under the standard written or the optional oral procedures. The standard written review process is generally completed within 30 days after the materials are sent to the arbitrator with any awards to the parties made at that time. The arbitrator's decision is binding on both parties.

UNITED STATES CODE OF FEDERAL REGULATIONS – TITLE 49

§ 14708. Dispute Settlement Program for Household Goods Carriers (as amended)

- (a) OFFERING SHIPPERS ARBITRATION – As a condition of registration under section 13902 or 13903, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 must agree to offer in accordance with this section to shippers of household goods arbitration as a means of settling disputes between such carriers and shippers of household goods concerning damage or loss to the household goods transported and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods.
- (b) ARBITRATION REQUIREMENTS –
- (1) PREVENTION OF SPECIAL ADVANTAGE – The arbitration that is offered must be designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business.
 - (2) NOTICE OF ARBITRATION PROCEDURE – The carrier must provide the shipper an adequate notice of the availability of neutral arbitration, including a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and disclosure of the legal rights of election to utilize arbitration. Such notice must be given to persons for whom household goods are to be transported by the carrier before such goods are tendered to the carrier for transportation.
 - (3) PROVISION OF FORMS – Upon request of a shipper, the carrier must promptly provide such forms and other information as a necessary for initiating an action to resolve a dispute under arbitration.
 - (4) INDEPENDENCE OF ARBITRATOR – Each person authorized to arbitrate or otherwise settle disputes must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously. The carrier must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decision-making process.

- (5) APPORTIONMENT OF COSTS – No shipper may be charged more than half of the cost of instituting an arbitration proceeding that is brought under this section. In the decision, the arbitrator may determine which party shall pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.
- (6) REQUESTS – The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for \$10,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than \$10,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.
- (7) ORAL PRESENTATION OF EVIDENCE – The arbitrator may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute (or a party's representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time and location of such presentation.
- (8) DEADLINE FOR DECISION – The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered; except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and an order requiring the payment of additional carrier charges.
- (c) LIMITATION ON USE OF MATERIALS – Materials and information obtained in the course of a decision-making process to settle a dispute by arbitration under this section may not be used to bring an action under section 14905.
- (d) ATTORNEY'S FEES TO SHIPPERS – In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney's fees if –

- (1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;
- (2) the shipper prevails in such court action; and
- (3) (A) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;
- (B) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or
- (C) the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

(e) ATTORNEY'S FEES TO CARRIERS – In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, such carrier may be awarded reasonable attorney's fees by the court only if the shipper brought such action in bad faith –

- (1) after the resolution of such dispute through arbitration under this section; or
- (2) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section, but before –
 - (A) the period provided under subsection (b) (8) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and
 - (B) a decision resolving such dispute is rendered.

(f) LIMITATION OF APPLICABILITY TO COLLECT-ON-DELIVERY TRANSPORTATION – The provisions of this section apply only in the case of collect-on-delivery transportation of household goods.

(g) REVIEW BY SECRETARY – Not later than 18 months after the effective date of this section, the Secretary shall complete a review of the dispute settlement program established under this section. If, after notice and opportunity for comment, the Secretary determines that changes are necessary to such program to ensure the fair and equitable resolution of disputes under this section, the Secretary shall implement such changes and transmit a report to Congress on such changes.