

Grants for Economic Development and Core Management Grants to Small Tribes. These rules are no longer necessary, as they are being replaced by the new 25 CFR part 900, which implements the Indian Self-Determination and Education Assistance Act. We received no comments in response to the proposed rule.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

This final rule has an effective date of less than 30 days after publication so that it may become effective as close as possible to the effective date of the new rule at 25 CFR part 900. Since part 900 replaces the parts eliminated by this rule, an earlier effective date will minimize the period during which two conflicting rules are in effect at the same time. This will minimize potential confusion among the users of the rules.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it affect private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and

that no detailed statement is required under the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information: The primary author of this document is Kimberly Toyekoyah, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in

25 CFR Part 271

Indians—tribal government, Indians—contracting.

25 CFR Part 272

Indians—tribal government, Indians—grants.

25 CFR Parts 274 and 277

Indians—school construction.

25 CFR Part 278

Indians—special grants for economic development—core management grants.

Under the authority of Executive Order 12866, and for the reasons stated above, the Parts 271, 272, 274, 277 and 278 are removed from 25 CFR Chapter I.

Dated: August 21, 1996.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying Department of Defense (DOD), Air Freight Forwarders

AGENCY: Military Traffic Management Command, DOD.

ACTION: Final rule.

SUMMARY: This final rule adds qualification standards for Air Freight Forwarders and establishes a change in the basic agreement between the Military Traffic Management Command and Air Freight Forwarders requirements.

EFFECTIVE DATE: September 18, 1996.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP-QQ, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Rick Wirtz, telephone: 703-681-6393.

SUPPLEMENTARY INFORMATION:

a. Background

Basic information on the Carrier Qualification Program was previously published in the Federal Register, 53 FR 17970, 54 FR 27667, 55 FR 7361, 55 FR 52976 and 56 FR 45895 and 57 FR 11376.

b. Comments and Responses

Comment: Carrier objected to providing a list of carriers with who they contract, as per paragraph 609.6 of the proposed rule.

Response: MTMC requires this information in the event the carrier abandons or frustrates the shipment in order to maintain the control to overrule negative decisions made by the forwarders, if the need should arise.

Comment: MTMC should not be able to direct forwarders as to which carriers they can and cannot use.

Response: MTMC is ultimately responsible for the safe and timely delivery of all DOD cargo. In that capacity this organization retains the authority to approve or disapprove all carriers hauling federal freight.

Comment: In general, Air Freight Forwarders do not operate vehicles and therefore do not normally carry Public Liability Insurance.

Response: Code of Federal Regulations 49 387.9 states carriers for hire in interstate or foreign commerce (property) must maintain a minimum limit of \$750,000. Due to the volume of carriers that forwarders do business with, MTMC requires \$1,000,000 in liability insurance. All carriers participating in the movement of DOD freight will provide this minimum.

Comment: Rules must reflect the fact that Air Freight Forwarders operate on a released-value basis and do not provide full-value protection, unless additional transportation charges are paid.

Response: MTMC requires \$250,000 per shipment cargo insurance. Again, due to the high volume of carriers providing transportation services for the forwarders.

Comment: Performance bonds are redundant since cargo losses and damages are covered under cargo insurance, and on-time delivery is covered by reduction in rates to service provided.

Response: The bond secures performance and fulfillment of the

carrier obligation to deliver DOD freight to destination. It will cover DOD procurement costs as a result of carrier default, abandoned shipments or bankruptcy. The bond will not be utilized for operational problems such as late pickup or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo.

Comment: If the forwarder changes his name, the SCAC code is nullified and the forwarder can no longer participate. All of the other requirements for notice are really not pertinent and place a paperwork burden on both the forwarder and the Government.

Response: The NMFTA will, in fact, allow a carrier to change their company name and still retain the original SCAC. However, HQMTMC does not allow this within the carrier qualification program.

Comment: Pursuit of claims under Interstate Commerce Act needs clarification as the Air Freight Forwarders Association is not familiar with these claims procedures.

Response: An Air Freight Forwarder, whether domestic or international, is by statute and regulation, an indirect air carrier and hence is liable as a common carrier.

Executive Order 12219

This rule was reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non major. The effect of the rule on the economy will be less than \$100 million.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities. The objective of the program is to ensure that DOD obtains safe, dependable, and reliable transportation services. The requirements are not designed to preclude participation by small businesses. Rather, they are part of a mechanism designed to ensure that traffic offered to small businesses does not exceed their capabilities. The program's reporting and recordkeeping requirements are essentially administrative in nature and do not demand significant expenditures of resources such as personnel, computer equipment, or software. No professional or technical training is necessary to comply with these requirements. Alternatives to facilitate entry of small

businesses have been identified and implemented.

Paperwork Reduction Act

This rule is approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in CFR Part 619

Common carriers, Freight, Motor vehicle, Safety, Shipping, Trucks.

Accordingly, part 619 of title 32 of the Code of Federal Regulations is amended by the following changes:

1. The authority citation for part 619 continues to read as follows:

Authority: 49 U.S.C. 1801–1813, 2503, 2505, 2509.

2. Section 619.1 is amended by revising the first sentence to read as follows:

§ 619.1 Introduction.

Carriers, surface freight forwarders, shipper agents, and air freight forwarders interested in or remaining qualified will submit data described in §§ 619.2 through 619.6 to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the location of the carrier's headquarters. * * *

* * * * *

3. Section 619.4 is amended by revising paragraphs (a), (b), introductory text, and (b)(5) to read as follows:

§ 619.4 Insurance-public liability and cargo.

(a) *Public liability.* Motor carriers, surface freight forwarders, shipper agents and air freight forwarders will submit proof of public liability to MTMC on a certificate of insurance form issued by the insurance company. Expiration dates will not be reflected on the certificate, the policy must be continuous until canceled. However, the deductible portion will be shown on the certificate. The insurance underwriters must be rated in Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–QQ, will be notified, in writing, 30 days in advance of any change or cancellation. The public liability requirements are specified in 49 CFR 387.9. Surface freight forwarders and shipper agents will submit proof of \$1 million public liability (death and bodily injury, property damage, and environment restoration).

(b) *Cargo.* Motor common carriers, surface freight forwarders, shipper

agents and air freight forwarders must have their insurance company provide a certificate of insurance form. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies or specifically approved by HQMTMC. DOD's minimum cargo insurance requirements are listed below.

* * * * *

(5) Surface freight forwarders, shipper agents and air freight forwarders—\$250,000 per shipment.

4. Section 619.6 is amended by revising the introductory text and paragraph (k) as follows:

§ 619.6 Information.

Motor carriers, surface freight forwarders and shipper agents will provide HQMTMC the following information.

* * * * *

(k) In addition to information contained in (a) through (h) and (j) above, exempt surface freight forwarders, shipper agents and air freight forwarders must furnish a listing of the carriers which they have contract with and intend to use in the movement of government shipments. Information must include the complete company name, company officials to include their position and title, home office address, telephone number, 24-hour emergency point of contact for shipment status, and FHWA operating authority number of each carrier.

5. Section 619.7 is amended by revising paragraph (d) as follows:

§ 619.7 Performance bond.

* * * * *

(d) Surface Freight Forwarders, Shipper Agents and Air Freight Forwarders. Due to the volume of traffic handled by these modes and the area normally serviced, the bond amount is set at \$100,000.

* * * * *

6. Section 619.8 is revised to read as follows:

§ 619.8 Basic Agreement.

Motor carriers, surface freight forwarders, shipper agents and air freight forwarders meeting the qualification requirements of §§ 619.1 through 619.7 will be required to sign the appropriate Basic Agreement in the appendices to this part.

7. A new Appendix G is added to part 619 of the appendices as follows:

Appendix G to Part 619—Agreement Between the Military Traffic Management Command and Air Freight Forwarders Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of:

I, _____
(Name of forwarder, typed or legibly printed)

hereinafter referred to as the Forwarder, as a prerequisite for consideration for participation in the transport of general commodities as an exempt Air Freight Forwarder, for the U.S. Department of Defense (DOD), agree to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of the forwarder's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, an Air Freight Forwarder is defined as a person or company who acts as a common carrier. That is, a carrier who holds itself out to the general public to provide transportation of property for compensation, assembles and consolidates less-than-truckload freight, as defined in the Instruction for Preparation of Department of Defense Standard Tender of Freight Services, MT form 364-4 (and revisions thereto), Part II, uses for the whole or any part of the line-haul transportation the services of regulated motor or air carriers, break bulk and delivers the less-than-truckload freight holding out in its own name and under its own responsibility a through transportation service from point of receipt to destination.

2. Approval and Revocation.

a. Forwarder understands that its initial approval and retention of approval are contingent upon establishing and maintaining to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle traffic anticipated by DOD/MTMC under the Forwarder's proposed scope of operations in accordance with the service requirements of the shipper.

b. The Forwarder understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification.

c. In addition to the initial evaluation, the forwarder agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. Forwarder agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC Carrier Review Board (CRB), or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Forwarder agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges, or assessments for overloaded

vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

b. The Forwarder agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president/vice president's name(s), operating authority number, corporate office address, telephone number and a designated 24-hour on call point of contact in the event of an accident or emergency situation. MTMC can direct the Forwarder not to use specific carriers in the movement of DOD freight shipments.

c. Forwarder further agrees and certifies that it will only use carriers that are approved through the Carrier Qualification Program (CQP) to transport DOD freight, and will not use any carrier that had been debarred, suspended by the Government or which has been placed in nonuse or disqualified any MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. Operations. Forwarder agrees and certifies that it is operating as a forwarder as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed, Articles of Incorporation, listing all the officers of the corporation is attached and certified to be true, correct and current.

5. Insurance.

a. The Forwarder agrees to maintain a minimum of \$1 million public liability insurance and \$250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be on file with MTMC, ATTN: MTOP-QQ prior to any performance of service by the forwarder.

b. The insurance, carried in the name of Forwarder, will be in force at all times while this Agreement is in effect or until such time as the Forwarder cancels all tenders. Forwarder agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, ATTN: MTOP-QQ, Falls Church, VA 22041-5050, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate.

c. The insurance underwriter must have a policy holder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety companies. Self-Insurance will not be accepted.

6. Performance Bond.

a. Forwarder agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the Forwarder's obligation to deliver DOD freight to destination. It will cover default, abandoned shipments, bankruptcy and repossession costs. The bond will not be utilized for operational problems such as late pickup or delivery, excessive transit time, refusals, no shows, improper or inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety

company listed in the Fiscal Service Treasury Department Circular No. 570. The sum of the bond shall be no less than \$100,000. The bond must be completed on the form provided by MTMC and will be continuous until cancelled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent (LOI), by the surety company, is required with the initial application. Upon MTMC approval, the Forwarder will submit the performance bond before the Tender of Service will be accepted.

7. Safety.

a. Forwarder agrees not to use any carrier that has an "unsatisfactory" safety rating with the Federal Highway Administration (FHWA), Department of Transportation (DOT), and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the Government Bill of Lading (GBL) unless consignor or consignee directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. Forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movement of any movement of shipment tendered to it.

d. The Forwarder agrees to notify, within 24-hours, the consignor and consignee named by GBL or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent details. Upon request, the Forwarder agrees to furnish MTMC a copy of accident reports submitted to the DOT on Form MCS 50-T (property).

e. Forwarder agrees to have in place a company-wide safety management program. Forwarder safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The Forwarder further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. [Reserved.]

9. Equipment.

a. Forwarder agrees to ensure equipment is spotted for loading at the time and place requested. Civil Reserve Air Fleet (CRAF) carriers will be utilized to the maximum extent possible for the movement of DOD freight. The Government reserves the right to reject the utilization of any equipment placed for loading by the Forwarder if it does not, upon inspection meet the specifications and requirements for the particular shipment involved (sizes, cube, cleanliness, mechanical condition, etc.).

10. Shipment.

a. Further, the Forwarder agrees to not indulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. Forwarder agrees to accept GBLs and CBLs on which freight charges will be paid

by the Government, and be bound by all terms stated thereon.

b. Forwarder agrees to comply with documentation prelodging procedures in effect at military terminals in which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents that identify the shipments to the military terminals prior to arrival of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignors to furnish certain data at least 24-hours in advance of cargo arrival at the terminal.

12. Loss and Damage.

a. The Forwarder agrees to be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by an Act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. Forwarder agrees to settle promptly, claims for loss or damage. Forwarder also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender of Service.

a. The Forwarder agrees to comply with the preparation and filing instructions in applicable freight traffic rules publications issued by MTMC. Forwarder understands that MTMC will reject tenders not in compliance with these instructions.

b. The Forwarder agrees to publish a street address where the company office is located in lieu of post office box number. MTMC must be advised of any change in address. Failure to do so is grounds to discontinue use of the Forwarders.

c. Forwarder understands that tenders inadvertently accepted and distributed for use and not in compliance with this Agreement, the provisions continued in the Standard Tender of Freight Services MT Form 364-R, or the application MTMC Freight Rules Publication, and supplements thereof, will be advised when tenders are removed under these circumstances.

14. Rates.

a. Forwarder agrees to transport Government shipments at the lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the GBL.

b. The Forwarder agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with USTRANSCOM. The rates for movement of DOD cargo by air will be filed with the Air Mobility Command (AMC). The Forwarder must publish all rates, changes, and accessorial services on a DOD Standard Tender of Freight Services, MT Form 364-R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The Forwarder agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the Forwarder.

d. The Government reserves the right to pursue administrative claims directly with Forwarders under the Interstate Commerce Act (ICC) or other authorities.

15. Carrier Performance.

a. The Forwarder agrees that its equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Regulation (DTR) and this Agreement. The Forwarder fully understands its obligation to remain current in its knowledge of service standards. The Forwarder accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the Forwarder for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs and tenders. Rules governing the Carrier Performance Program (CPP) are found in MTMC Regulation 15-1, and Army Regulations 55-355 DTMR. If a Forwarder is removed or disqualified for 6 months or more, it will have to be requalify.

b. Failure or nonperformance by the Forwarder with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the Forwarder for unsatisfactory service until such time as the Forwarder establishes, to the satisfaction of DOD that the operating or other deficiency(ies) have been corrected.

16. General Provisions. That the Forwarder must have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the Forwarder. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by the MTMC, until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee, by the Government, of any volume traffic.

d. The Forwarder agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and forwarder name. Forwarder understands that failure to notify MTMC shall be grounds for immediate revocation of the Forwarder's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent

different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to Commander, MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041-5050, ATTN: MTOP-QQ.

20. Forwarder Acknowledgment and Acceptance.

a. The undersigned forwarder official, by affixing signature hereto, states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Any information found to be falsely represented in the Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

Forwarder's Acknowledge/Acceptance

I, _____
(Typed name and title of carrier official)
verify under penalty of perjury, under the laws of the United States of America, that the information contained in the forwarder qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense. Further, I understand the requirements of this Agreement and on behalf of:

(Name of forwarder, typed or legibly printed)
comply with the terms and conditions contained herein.

(Signature of carrier official and title)

(Signature of agent official and title)

Date: _____

Address: _____

Telephone Number: _____

24-Hr. Emergency Number: _____

Military Traffic Management Command
Acknowledgment/Acceptance Signature and Title:

Date Approved: _____

Frederick G. Wirtz,

Traffic Management Specialist, Qualification Division.

[FR Doc. 96-23874 Filed 9-17-96; 8:45 am]

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