

By the Commission.

Jean A. Webb.

Secretary to the Commission.

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DEPARTMENT OF DEFENSE

Department of the Army

Cargo Liability of Carrier

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: This is a final notice. Affected rules are MTMC Freight Traffic Rules Publication No. 1A (MFTRP No. 1A), Items 112, 113, 115, and 116, effective April 24, 1990. The new liability will be: "For all shipments weighing less than 15,000 pounds, the carrier's liability for lost and/or damaged cargo will be limited to the lowest dollar amount of either \$50,000 or the actual amount of the loss and/or damage to the article(s). Should a shipper desire to declare and establish a cargo liability for an amount greater than \$50,000, the carrier agrees to provide this increased liability coverage for \$____ per each \$100 increase in lost and/or damaged cargo liability over the maximum liability. For all shipments weighing 15,000 pounds and over, the carrier's liability for lost and/or damaged cargo will be limited to the lowest dollar amount of either \$150,000 or the actual amount of the loss and/or damage to the article(s). Should a shipper desire to declare and establish a cargo liability for an amount greater than \$150,000, the carrier agrees to provide this increased liability coverage for \$____ per each \$100 increase in lost and/or damaged cargo liability over the maximum liability."

DATES: This change will become effective February 1, 1997.

FOR FURTHER INFORMATION CONTACT: Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041-5050. Point of contact is Mr. Julian Jolkovsky, MTOP-T-SR, (703) 681-3440, or Ms. Crystal Hunter, MTOP-QER, (703) 681-6579.

SUPPLEMENTARY INFORMATION: Based on a careful and thorough review of comments received by MTMC, the policy change that was recommended on March 14, 1996, will become effective on February 1, 1997. The original proposal is in keeping with recommendations made in the General Accounting Office (GAO) report, "Defense Transportation: Ineffective

Oversight Contributes to Freight Losses" (GAO/NSIAD-92-96). GAO pointed out that under MTMC's current carrier liability limitations, recoveries on lost or damaged motor freight shipments average 30 cents for every dollar of actual value of the cargo and have been at or near this average for at least the previous three fiscal years (October 1992-September 1995). MTMC's own review of FY 96 claims data reveals that the Government is collecting less than 31 cents from carriers for every dollar of claims involving lost and/or damaged property. This is not a responsible use of tax dollars and serves to benefit only the carrier industry. The proposed change is expected to permit DOD to recover actual value on at least 90 percent of lost or damaged shipments.

Notices in the Federal Register (FR), March 14, 1996, and June 6, 1996, provided notice of MTMC's proposed change to motor carrier liability limitations for Freight All Kinds (FAK) shipments moving under motor carrier voluntary tenders, other than Guaranteed Traffic. Only one set of comments on this proposal was received from the carrier industry by the deadline date of August 5, 1996, from the legal representatives of the National Motor Freight Traffic Association, the Regular Common Carrier Conference, and the Transportation Loss Prevention and Security Council in a letter dated August 2, 1996. One comment alleged that MTMC is attempting to engage unilaterally in "rate making" practices and insisted that current released valuation policy, which is based on a per pound rate, should be maintained. Essentially, this comment misconstrues MTMC's intent. With few exceptions, rate making and rate submissions in response to MTMC movement requirements are carrier responsibilities. MTMC's intent in changing the level of carrier liability is to establish levels which will reasonably reimburse the Government for carrier-caused loss and/or damage to DOD-sponsored shipments. After careful review of information presented in the comments, MTMC's position is that to continue the use of released valuation limitations of \$1.75 or \$2.50 per pound is not a prudent use of tax dollars, severely restricts the Government's ability to obtain reasonable reimbursement for carrier-caused loss and/or damage to DOD sponsored shipments, and would be in direct conflict with the recommendations set forth in the June, 1992, GAO report. Furthermore, these low levels of valuation for loss and/or damage to Government property may induce carriers to offer less than a full

level of safety, security, care, and handling to these shipments.

As a matter of background information, beginning in December, 1994, MTMC implemented the same change in carrier liability limits for Guaranteed Traffic (G/T) shipments. This change raised no complaints from the carrier industry and has shown positive benefits for the Government in monetary recoveries from freight claims filed against G/T carriers for shipments which have incurred loss and/or damage. It is also noted that many motor freight carriers participate in both the G/T and voluntary programs; therefore, standardizing carrier liability levels between the two programs will enhance administrative shipment planning and movement procedures.

During FY 94, DOD tendered over 1 million freight shipments to motor carriers at a transportation cost in excess of \$400 million. The total value of goods moved by commercial carriers is indeterminable; however, the value represents a significant taxpayer investment in the equipment and supplies used to support the Armed Forces. On any given day, the motor carrier industry may be entrusted with providing transportation services for over 50,000 less-than-truckload and truckload shipments. The timely, damage-and loss-free movement of these supplies directly impact military readiness. Lost, partially damaged, or totally destroyed supplies and equipment provide little benefit to the military services and negatively impact readiness. Furthermore, the inability of DOD to recoup equitable monetary reimbursement from carriers because of artificially low carrier liability levels, to repair or replace damaged or lost supplies, substantially impacts budgetary and program funding. Increasing carrier liability levels will cure some of these shortfalls.

The commentator also stated that MTMC was not negotiating with the carrier industry as required by DOD regulations. MTMC's view is that regular negotiations are conducted with industry at partnering meetings and other public forums. Under the Motor Carrier Act of 1980, the level of carrier liability is negotiable between the shipper and the carrier. However, at the same time, MTMC, as single transportation manager for DOD surface freight shipments, is well within its authority to determine the level of liability that best protects DOD shipments. Also, the carrier is free to offer any rate that it feels will adequately compensate it.

MTMC accomplishes "negotiation" of terms and conditions of service through

the FR, because it is impractical to deal with and discuss the nature of MTMC's business and its requirements individually with more than 500 approved carriers. Also, such negotiation does not mean that MTMC will allow carriers to dictate the terms of the program. Under 49 U.S.C. 13712, formerly 49 U.S.C. 10721, motor carriers may quote a reduced rate to the government; however, it does not provide that the Government must accept the rates offered. In any event, 49 U.S.C. section 13712 no longer applies to motor carrier freight. It only applies to household goods and certain water shipments. Carriers may now offer any freight rates they want to anyone.

MTMC's procurement authority is derived from the Armed Services Procurement Act (10 U.S.C. 2301, et seq.) MTMC has the authority to make its own arrangements, and has the right to contract on its own terms on behalf of its DOD customers. Accordingly, MTMC's proposed changes to carrier liability levels has been endorsed by major DOD shippers, MTMC's customers.

Because the policy change applies only to motor shipments of general cargo, Freight All Kinds, the motor carriers have the opportunity to offer whatever rates they hold to be reasonable for the level of liability that DOD requires. MRMC recognizes that increases in carrier liability may result in somewhat higher line haul charges. However, MTMC expects that those carriers which have aggressive safety, claims prevention, employee training, and quality control programs will have little or no difficulty in accommodating these changes and will continue to provide quality service at reasonable rates to the DOD. In addition, MTMC expects any increase in line haul charges to be offset by the beneficial aspects of corresponding increases in recoveries from carriers for lost and damaged freight and, as service improves, a decrease in administrative costs to process claims. Shifting a greater level of monetary responsibility to carriers for carrier-caused loss and damage removes the burden for these occurrences from DOD and the taxpayer and places them on the carrier. Maintaining artificially low levels of liability for loss and damage acts as a distinctive to promoting and maintaining a safe, damage- and loss-free Defense Transportation System.

An effective date for these changes of February 1, 1997, will afford carriers an opportunity to adjust their rates, if necessary, to accommodate any forecasted increases or decreases in their operating-costs based on their

historical incidences of loss and/or damage to shipments.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 96-29427 Filed 11-15-96; 8:45 am]
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Movement of Foreign Military Sales Material Under Department of Defense Standard Tender of Freight Services MT Form 364-R—Policy Change (Required Use of Standard Tender of Freight Services MT Form 364-R for the Movement of Foreign Military Sales Material)

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing to change its rate verification procedure by requiring that carriers file tenders of service to participate in Foreign Military Sales (FMS) traffic, as follows:

Carriers who want to participate in FMS movements will submit a voluntary Standard Tender(s) of Freight Services MT Form 364-R numbered in the 300000 series (300001 through 349999) applicable to FMS material only. Tenders will be consecutively numbered and prepared according to instructions contained in MTMC Standard Tender Instruction Publication No. 364A. Rules and accessorial services governing movement will be MTMC Freight Traffic Rules Publication (MFTRP) No. 1A for motor transportation and MFTRP No. 10 for rail transportation. The applicable publication must be shown as a governing publication in Section B of the tender for the tender to be considered for routing.

DATES: The policy change is effective no earlier than 60 days after publication of this notice.

ADDRESSES: Interested parties are requested to submit comments on this proposal. The comments should be addressed to Headquarters, Military Traffic Management Command, Room 117, 5611 Columbia Pike, Falls Church, VA 22041-5050, ATTN: MTTM-D (Barbara McGinnis).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGinnis, MTTM-D, (703) 681-6103, or e-mail MCGINNIB@BAILEYS-EMH5.ARMY.MIL.

SUPPLEMENTARY INFORMATION: MTMC's procedural change supports the Office of the Secretary of Defense's initiative to

automate the Government Bill of Lading payment process for the Department of Defense. This notice supersedes the April 3, 1996, Federal Register notice pertaining to "Tender Filing Instructions for the Movement of Foreign Military Sales (FMS) Material," 61 FR 14760.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 1997. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871, as amended, (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective December 18, 1996 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-43, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act) ¹ requires that DOE prescribe test procedures for the determination of the estimated annual

¹ References to the "Act" refer to the Energy Policy and Conservation Act, as amended. 42 U.S.C. §§6291-6309.