



**United States Transportation Command
(USTRANSCOM)**

**Procedures for Transportation Review Boards
(TRBs) of Transportation Service Providers (TSPs)
within the Defense Personal Property Program (DP3)**

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1. Purpose

The following paragraphs prescribes the United States Transportation Command (USTRANSCOM) procedures governing disqualification and non-use of Transportation Service Providers (TSPs) and their affiliates contracting with USTRANSCOM for transportation or storage of Department of Defense (DoD) sponsored personal property. These procedures will be followed when USTRANSCOM takes action to disqualify or place a TSP in non-use or recommends that such action be taken. These procedures do not apply to contracts entered into pursuant to the Federal Acquisition Regulation (FAR), unless any such contract calls for its application. TRBs may consider a TSP services based on FAR contracts in determining appropriate corrective action, if any

2. Procedures for Transportation Review Board(s) (TRB)

2.1. USTRANSCOM may, at its election, continue to honor Government Bills of Lading (GBLs), rate tenders, service orders, or similar transportation arrangements that are in existence, at the time the TSP was placed in non-use or disqualified.

2.2. On receipt of information or a recommendation from a Transportation Officer (TO), Port Commander, USTRANSCOM representative, military headquarters service representative, Federal agency, or other source (i.e., claims office, Storage Management Office (SMO), TSP, etc.), the appropriate USTRANSCOM office will review the recommendation and related facts to determine if a Transportation Review Board (TRB or Board) should be convened, to ascertain if disqualification action is needed to protect the Government's interests. If it is determined that a TRB should be convened, the appropriate office will, with concurrence of USTRANSCOM Staff Judge Advocate (TCJA), promptly notify the TSP of such determination. A TSP will not be disqualified without an opportunity for a TRB hearing, unless done in accordance with other procedures set forth in this document.

2.3. USTRANSCOM may, at its election, continue to honor GBLs, rate tenders, service orders, or similar transportation arrangements that are in existence, at the time the TSP was placed in non-use or disqualified.

2.4. USTRANSCOM will forward to the TSP a written notice (notification letter) of a TRB hearing, along with a copy of this document, by electronic mail with receipt verification. The notice will state:

2.4.1. That the TRB is considering disqualification action and the specific violation(s) that form the basis of a possible disqualification action,

2.4.2. The date, time, and place the TRB will convene, and

2.4.3. That the TSP will have 14 calendar days from the date of the notice (notification letter) to do the following:

2.4.3.1. Respond in writing to the proposed disqualification action,

2.4.3.2. Request an extension, if necessary, for presenting information. Extensions may be granted to the TSP at the discretion of **TCJ9 Deputy Director of Operations or their designated representative**

2.4.3.3. Notify USTRANSCOM officials concerned of any intent to present information to the TRB, in person or by telephone conference. The TSP must provide names and position of attendees, no later than (NLT) seven days prior to the TRB, and

2.4.3.4. Submit four copies of all the information it wishes the Board to consider.

2.4.4. Failure to respond to a Board's notification letter will result in the TRB basing its decision upon the material before the TRB when it convenes.

2.4.5. If circumstances warrant, the notification letter may require the TSP to provide information identifying all of its affiliates.

2.4.6. For good cause, USTRANSCOM may prescribe a lesser period for the TSP to take the actions prescribed above. The TSP may waive the minimum response time and submit a written request that the TRB be convened at the earliest practicable date.

2.5. Any cause or condition supporting disqualification action, which comes to the attention of the Board, after scheduling a TRB, may be joined with the pending TRB. The TSP must be given written notification of the additional allegations and provided a minimum of seven calendar days to respond to the additional allegations.

2.6. TSP may present evidence, either in writing or through witness(es), which support any defense or mitigation of the allegations presented. TRB members or advisory members may question TSP witness(es) about their testimony or about other information presented by the TSP.

3. TRB Composition and Functions

3.1. USTRANSCOM TRB will be composed of three voting members who possess the expertise and experience to take actions authorized under these procedures. Members shall ordinarily be senior military (O-4 or above) and civilians (GS-13 or above). The highest graded individual on the panel shall act as Chairperson, and may be one of the three voting members. The Chairperson shall be at least an O-5 (military) or above, or GS-14 (civilian) or above. Board members will receive a copy of this document, and are required to review it preceding every TRB. Board members must attend a Pre-Board review of allegations and Board procedures.

3.2. USTRANSCOM TRBs are conducted at:

United States Transportation Command
508 Scott Drive
Scott AFB, IL 62225

3.3. Advisory Members (non-voting) of TRB include: legal counsel, action officers, and functional experts, as appropriate. They will be invited to pre-TRB meeting(s) and the TRB.

3.4. The TRB will meet at the time and place designated by the TRB Chairperson. A TRB recorder will be provided by USTRANSCOM, and will be responsible for recording the minutes of TRB. Records may be summarized, and shall be maintained electronically for a minimum of three years following the TRB. Cases determined by the Staff Judge Advocate (SJA) as a significant legal precedent, will be permanently retained. At the conclusion of the hearing, the recorder will prepare a memorandum for record indicating the findings and decisions of the TRB. The memorandum will include a record of the number of votes for each decision made by the TRB.

3.5. Verbatim Records. Verbatim records will not normally be done for TRB. However, a verbatim record of the TRB may be taken at USTRANSCOM's discretion. If a verbatim record is taken, it will be maintained in the appropriate case file and a copy provided to the TSP, upon request and at the cost of the

TSP. TSP may make a verbatim record of the hearing at the TSP's expense. The TSP shall notify USTRANSCOM of its intent to take a verbatim record of the hearing, not less than 72 hours prior to the convening of the TRB.

3.6. Access. TRB may consider TSP proprietary business information, including overall business strategy, business relationship with USTRANSCOM, agents, and subcontractors. Therefore, TRB hearings shall be closed to all but the following persons:

3.6.1. Representative(s) of USTRANSCOM, or the military service/agency affected, including advisory members,

3.6.2. Representative(s) of the TSP,

3.6.3. Witness(es), and

3.6.4. Any other person(s) present with the consent of the TSP and USTRANSCOM. Any person(s) not meeting these criteria, must request permission to attend from the TRB Chairperson at least seven calendar days prior to the TRB. The Chairperson has the final approval for any request. TRB deliberations shall be closed to all those other than the TRB members and advisory members.

4. TRB Determination

4.1. If the TSP fails to respond to the notice letter within 14 calendar days after its issuance, or any approved extension, the TRB will make a decision based on the information available to the Board, when it convenes. However, if the TSP responds to the notification letter and provides information sufficient to eliminate the basis for the TRB, the Board Chairperson, in his/her discretion, may cancel the TRB at any time prior to the date of the TRB hearing.

4.2. If the TSP presents data within the prescribed time period, the determination of whether to disqualify the TSP will be made at the conclusion of the TRB proceedings. If the evidence presented requires further investigation, the TSP will be informed of when to expect a determination.

4.3. The TRB, in its discretion, will consider relevant information which may include, but is not limited to, the following:

4.3.1. Investigative reports provided by such entities as the police, safety officials, safety and security contractors, Defense Criminal Investigative Service, or the Criminal Investigation Command, etc.,

4.3.2. TSP written and oral presentation(s),

4.3.3. TSP past performance,

4.3.4. Special services provided by the TSP, which may be unavailable elsewhere,

4.3.5. TSP responsiveness to USTRANSCOM's concerns, and corrective action taken by the TSP to preclude similar incidents of poor performance from recurring to include appropriate disciplinary action against responsible individual(s),

4.3.6. Whether the TSP has had adequate time to eliminate the circumstances within the TSP organization, which led to the convening of a TRB,

4.3.7. The financial condition of the TSP and the economic impact of disqualification action,

4.3.8. Performance history of the TSP and its affiliate(s), and/or

4.3.9. Communication between the TSP and USTRANSCOM. USTRANSCOM is under no obligation to provide TSP with a record of the TSP prior communications, before the Board, although records may be obtained through the Freedom of Information Act. It is presumed, the TSP will already know what it has provided to USTRANSCOM.

4.4. After consideration of all relevant fact, and whether the allegation(s) cited are supported by a preponderance of the evidence, the TRB's decision may result in one of the following, but is not limited to:

4.4.1. A finding that none of the allegations cited in the notification are supported by a preponderance of the evidence, the proceeding will terminate with no further action taken;

4.4.2. A finding that the allegation(s) in the notification letter is supported by a preponderance of the evidence, the TRB will decide whether to:

4.4.2.1. Allow the TSP to continue participating in the transportation of DoD shipments, with or without conditions being imposed to ensure the TSP is in compliance with TSP qualifications and performance requirements, or

4.4.2.2. Disqualify the TSP for a designated period of time. The TRB may impose a total disqualification action or take any action less severe than total disqualification action. For example, a TRB may disqualify a TSP from specified geographic areas, traffic lanes, types of shipments, or disqualify the TSP and its affiliated TSP.

4.4.2.2.1. If the TRB imposes any type of disqualification action, it must decide whether to defer its decision or any part of a disqualification for a stated period, with or without probationary conditions as described in the following paragraph:

4.4.2.2.1.1. When the TRB imposes disqualification action, it may defer for a stated period of time the execution of all or any part of the disqualification period. This deferred action gives the TSP a probationary period during which the TSP can demonstrate that cited deficiencies have been corrected, and it is able to satisfactorily service DoD personal property or Non-Temporary Shipments (NTS). Additional, instances of failure to perform or unsatisfactory service, during this probationary period, and instances of failure to perform or unsatisfactory performance occurring before the TRB, but thereafter discovered during the probationary period, may provide a basis for vacating the deferred action, which will result in the immediate imposition of disqualification. Except when circumstances require otherwise, the TSP will be given seven (7) calendar days to respond to a proposal to vacate. Notice of proposal to vacate, will be sent electronically with receipt verification. Upon vacating, the entire period of a deferred disqualification action will become effective. In addition, incidents causing the vacated suspension may also give rise to a new basis for another TRB proceeding and additional disqualification action.

5. TSP Notification of Determination

5.1. USTRANSCOM will notify the TSP of the TRB decision by e-mail or similar means with receipt verification, normally within 15 calendar days of closing the TRB hearing. The notice will specify the reason(s) for the TRB decision, and will specifically describe the period and extent of disqualification, if any.

6. Period of Disqualification

6.1. A period of disqualification will begin on the date specified by the TRB, and will end at 2400 hours on the last day of the period, unless the TSP is sooner reinstated.

6.2. Unless otherwise indicated by the TRB, a TSP disqualified for six months or more will not be considered for requalification, until a minimum of two years from the disqualification end date. The TSP is required to re-qualify, if eligible, in accordance with the latest registration requirements through USTRANSCOM TSP Qualification Program, in order to participate in DoD transportation programs. Approval is contingent upon meeting the latest requirements.

7. Appeal of Determination

7.1. An appeal will fully document the reasons for requesting relief, which may include the submission of new material or bona fide change of management. The disqualification period may be terminated, deferred, or reduced, upon presentation of evidence that the cause(s) and condition(s) resulting in the initial disqualification action have been eliminated or corrected, or upon the execution of an agreement with the TSP outlining the terms and conditions upon which the original TRB decision is being modified.

7.2. TSP may appeal a TRB decision within 15 calendar days from the date of receipt of the TRB decision letter. The decision of the TRB will be in effect while the appeal is pending, except when the Appellate Authority grants the TSP written request to stay a decision. The appeal will be based only upon the documentation that was timely submitted to USTRANSCOM. The appeal must state the specific reason(s) why the appellant believes that USTRANSCOM's decision was wrong. USTRANSCOM will not consider appeals that lack specificity or merely seek to have USTRANSCOM reconsider its determination.

7.3. All appeals must be:

7.3.1. Submitted on company letterhead;

7.3.2. Signed by the TSP president or CEO;

7.3.3. Include, in detail, all factual and legal bases for the appeal, and

7.3.4. Should be emailed to transcom.scott.tcj5j4.mbx.pp-perf@mail.mil or mailed to:

United States Transportation Command
TCJ9 Director
508 Scott Drive
Scott AFB, IL 62225-5006

7.4. Appeals will be independently reviewed and processed by personnel not substantially involved in the initial TRB decision.

7.5. A determination to grant or deny an appeal will be considered administratively final. The TSP will be promptly notified electronically with receipt verification of the determination.

8. Notice to DoD, Other Government Agency(s), and/or the Public

8.1. The TRB chairperson will notify DoD shippers, Military Claims Offices and Government agencies, of any determination to disqualify or to reinstate a TSP. Findings of the TRB and any action taken against a TSP, may be published on USTRANSCOM's public website.

8.2. Referral to Other Agencies. When cause for debarment or suspension action specified in 48 CFR Subpart 9.4 is present, the USTRANSCOM SJA will coordinate with appropriate executive agency(s) for consideration of Government-wide debarment, or suspension action against the TSP and its officers and affiliates.

9. Non-TRB Actions(s)

9.1. The following revocation actions may be taken without a TRB:

9.1.1. TSP has gone out of business;

9.1.2. NTS TSP has lost its approved warehouse facility;

9.1.3. Upon the initiation of a Chapter 7 Bankruptcy, where the trustee has directed or concurred with the removal of the stored NTS property;

9.1.4. TSP requests to be removed from the program; and

9.1.5. Revocation actions for failure to maintain TSP qualification requirements listed in Chapter 1.

9.2. SMO(s) may place a NTS TSP in immediate non-use without a TRB for up to 90 days, or until corrective actions, acceptable to the SMO, have been implemented and verified.

9.2.1. Certain administratively required partial disqualifications, where no new NTS lots are awarded, but the existing stored property remains with the NTS TSP until normal attrition removes them, do not require a TRB. Examples of some of these are, but are not limited to:

9.2.1.1. Failure to have a currently accepted rate in effect for the award of NTS lots;

9.2.1.2. Failure to provide the required annual review documentation and information;

9.2.1.3. Request by the NTS TSP to no longer participate in the program for new storage lots; and

9.2.1.4. Failure or inability to correct a noted deficiency over an extended period of time.

10. Other Incidents That May Cause Disqualification/Non-Use

10.1. USTRANSCOM may direct the non-use of a TSP for a definite or indefinite period of time. Disqualification/non-use action may be taken when authorized by the **TCJ9 Deputy Director of Operations**, based on operational or administrative deficiencies so severe as to immediately threaten safety or security of HHG shipment(s) or for specific incidents of unsatisfactory service or failure to perform, or a record or trend of unsatisfactory service or failure to perform, in accordance with the terms of the Tenders of Service, service orders, governing USTRANSCOM rules, publications, or other regulations.

10.2. No traffic will be awarded to a TSP in non-use. Examples of such failures or violations include, but are not limited to, the following:

10.2.1 Nonpayment of debts owed to the government (Federal Claims Collection Act of 1966) or to other entities (i.e., unpaid claims to the Service Claims Offices, or other entities exposing Government shipments to actual and/or potential delay, frustration, seizure or detention);

10.2.2. Failing to pick up, deliver, or release a storage lot on the required day;

10.2.3. Exceeding the warehouse weight limitation;

10.2.4. Improper packing, wrapping, or storage of the personal property;

10.2.5. Fire and security violations;

10.2.6. Overall performance. Includes but is not limited to: not meeting the MPS, repeated service failures, or repeated violations of its contractual agreement;

10.2.7. Failure to meet or maintain any of the DP3 program requirements;

10.2.8. Failure to disclose a CFAC relationship. A TSP failing to disclose CFAC may be removed from the program and prosecuted for filing a false official statement in violation of 18 USC 1001;

10.2.9. Failure to meet ordered packing/pickup dates for personal property shipments;

10.2.10. Failure to communicate changes to pick up or delivery date(s) and time(s), with the property owner(s) and shipping office(s);

10.2.11. Selective refusal to accept personal property shipments;

10.2.12. Failure to meet time-in-transit standards, agreed upon delivery date and/or required delivery dates;

10.2.13. Mishandling of personal property shipments (e.g., improper loading, packing, blocking or bracing, and improper conduct at an installation or customer's residence);

10.2.14. Failure to adequately protect DoD shipment(s) from loss and/or damage;

10.2.15. Failure to furnish proper or adequate equipment, facilities, or improper substitution of mode;

10.2.16. Employees who in the performance of DoD-related duties;

10.2.16.1. Use intemperate, vulgar, or abusive language;

10.2.16.2. Exhibit evidence of illegal drug use or possession or alcohol use;

10.2.16.3. Engage in other offensive conduct;

10.2.17. Failure to settle loss and damage claims promptly, within established timelines;

- 10.2.18. Failure to comply with applicable federal, state, and local laws and regulations, governing the movement of personal property;
- 10.2.19. Accidents involving DoD-sponsored shipments, serious injury, or fatalities, which indicate a lack of TSP responsibility to perform in a safe manner;
- 10.2.20. Use of equipment, facilities, or personnel that fail to meet applicable safety and/or security standards;
- 10.2.21. Failure to respond to a USTRANSCOM request for financial data, operational data, or other information subject to request under the Tender of Service or similar agreement;
- 10.2.22. Suspension, debarment, or proposed debarment by any federal agency under the authority of FAR and Defense Federal Acquisition Regulation Supplement (DFARS);
- 10.2.23. Indictment or conviction of a criminal offense indicating a lack of business integrity or honesty that affects the responsibility of the TSP;
- 10.2.24. Failure to timely provide requested documentation or information, where the failure brings into question the suitability of the TSP to provide transportation services to the DoD;
- 10.2.25. Failure of a TSP employee(s), subcontractor(s), or agent(s), to meet requirements for driving privileges on a DoD installation, or other failure to gain timely entry to a DoD installation (e.g., apprehension, detention or arrest under a warrant or other authority);
- 10.2.26. A demonstrated lack of business integrity concerning DoD-sponsored shipment(s), or any other unethical act by one or more representative(s);
- 10.2.27. Repeated failure to meet the Minimum Performance Score;
- 10.2.28. Utilizing a warehouse not approved by the DoD for NTS or Storage in Transit, as applicable
- 10.2.29. The use of abusive, intemperate, disparaging, and/or vulgar language or written correspondence from a TSP (including all employees), its agent(s) or representative(s), directed towards the government, USTRANSCOM, USTRANSCOM components, or DoD components, that deal with the movement and storage of personal property, and the personnel working in those organizations; or
- 10.2.30. Any other cause or condition of a serious or compelling nature, that affects the present responsibility of a TSP providing transportation services to the DoD.

Appendix A - Terms

Affiliate: Business concerns, organizations, or individuals are considered affiliates if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, non-use, suspension, debarment, or proposed debarment of a TSP which has the same or similar management, ownership, or principal employees as that TSP.

Appeal: A request for review of a TRB decision or action.

Common Financial and/or Administrative Control (CFAC): The power, actual as well as legal, to influence the management, direction or functioning of any other TSP or Freight Forwarder. Circumstances surrounding organization or operation, which may, but do not always result in a common financial and/or administrative control relationship, include the following:

- Majority or Minority Ownership
- Familial Relationships
- Voting Securities
- Common Director, Officers and/or Stockholders
- Voting or Holding Trusts
- Associated Companies
- Corporate ownership/control
- Contract or Debt Relationships

Continental United States (CONUS): All 48 contiguous states and the District of Columbia.

Debarment (FAR § 9.403): The action taken by a debarring official excluding a contractor from Government contracting and Government: approved subcontracting for a specified period. Actions taken under this instruction do not constitute debarment.

Defense Personal Property Program (DP3): The worldwide movement and storage of Department of Defense personal property through a Best Value process managed by the USTRANSCOM.

Deferred Action: The act of withholding the TRB action and placing the TSP into a probationary status for up to two years.

Disqualification: The act by a Transportation Review Board (TRB) of excluding a TSP from participating in DoD transportation programs. Only the TRB may disqualify a TSP. Disqualification may be taken by USTRANSCOM as a result of the TRB findings and determination. Disqualification action may be taken independently by USTRANSCOM, or a TO may request USTRANSCOM disqualify a TSP if a TSP or its representative commits a violation that is so egregious that the TO believes it warrants a disqualification action. The TO will provide all pertinent documentation to support its request for placing a TSP in disqualification. A TSP may be disqualified based on operational or administrative deficiencies so severe as to threaten safety or security of DoD personal property shipments or where a TSP fails to meet the requirements necessary to be an approved participant in USTRANSCOM transportation programs. Disqualification may be issued when a rule or regulation is violated on a shipment, or shipments, which warrants a performance action greater than non-use or immediate non-use, or when a TSP repeatedly violates any provision, rule or regulation. The TRB's decision shall in no way

limit USTRANSCOM's right to recommend the TSP for debarment. A TSP may not file rates with USTRANSCOM while in a disqualified status. If a TSP is placed in a disqualified status, all SCAC(s) affiliated with that TSP may also be disqualified. A TSP is required to re-qualify through the USTRANSCOM TSP Qualification Program during an open season prior to regaining eligibility to participate in the DoD transportation program.

Market: Programs listed in this document, which define areas where a TSP can move DP3 shipments, including domestic interstate, intrastate, mobile home/boats, international household goods, and international unaccompanied baggage.

Non-Use: The act of temporarily removing a TSP from all or specified parts of DoD transportation programs. Non-use action may be taken immediately after receipt of information indicating there is a threat to the safety or security of government shipments (in transit or storage) or where a TSP fails to meet the requirements necessary to be an approved participant in Defense Personal Property programs. Non-use actions may also be taken in accordance with DTR Part IV or this document. When a TSP disputes the accuracy of the information on which non-use is based they may appeal to USTRANSCOM. If required, a TRB hearing will normally be held within 30 day after the TSP is placed in non-use

Revocation: The process of removing a TSP from the Defense Personal Property Program. USTRANSCOM has the authority to revoke DoD Personal Property Transportation Service Provider's (TSP) approval for any reason deemed necessary. The TSP may re-apply for DoD approval again during the next open season.

Storage Management Office (SMO): An office set up to manage the storage program.

Tender of Service (TOS): The basic document which specifies the terms and conditions of participation in DP3. The TOS is found in Defense Travel Regulations Part IV provides details concerning, mutual agreements and understandings, service and performance requirements.

Transportation Service Provider (TSP): All references in this document to TSP shall be given broad application and shall include any company, individual, or other legal entity offering or providing transportation, household goods storage services, and other related services to DoD, including motor carriers, brokers, forwarders, logistics companies, and where warranted, the agents of TSP. This definition specifically includes Non-Temporary Storage (NTS) providers.

Transportation Review Board (TRB): The TRB is an administrative body comprised of voting members, advisory members, and fact-finding presenters using an informal, non-adversarial fact-finding administrative procedure to consider the information from the government and the TSP to determine what action, if any, needs to be taken to protect DoD interests. The TRB affords TSP an opportunity to present evidence and rebut allegations of inadequate or improper performance, or other matters.