

SDDC Regulation 15-1

**Boards, Commissions, and
Committees:**

Procedure for Disqualifying and Placing Transportation Service Providers (TSP) in Non-Use

**Headquarters, Military Surface
Deployment and Distribution Command
1 Soldier Way
Scott AFB IL 62225-5006
10 January 2012**

UNCLASSIFIED

SUMMARY of CHANGE

SDDC Regulation 15-1

Procedure for Disqualifying and Placing Transportation Service Providers (TSP) in Non-Use

This administrative revision, dated 10 January 2012 –

- Revises format of command publication
- Replaces the term “carrier” with “TSP” where applicable
- Removes references to Passenger (PAX) and Ocean Cargo
- Updates addresses for appeal of determination
- Adds appendixes specific to Personal Property, Non-Temporary Storage, and Freight Shipments
- Adds requirement for TSP to provide names and position of TRB attendees
- Adds clarification that chairperson may also be a voting member of TRB
- Adds option to cancel TRB based on TSP response

DEPARTMENT OF THE ARMY
HEADQUARTERS, MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
1 SOLDIER WAY, SCOTT AIR FORCE BASE IL 62225-5006

SDDC REGULATION
NO. 15-1

Boards, Commissions, and Committees

PROCEDURE FOR DISQUALIFYING AND PLACING TRANSPORTATION SERVICE
PROVIDERS (TSP) IN NON-USE

	<u>Paragraph</u>	<u>Page</u>
Purpose.....	1.....	1
Authority.....	2.....	2
Policy.....	3.....	2
General.....	4.....	2
Procedures.....	5.....	2
Review Board Composition and Functions.....	6.....	3
TSP Notification of Disqualification Determination.....	7.....	6
Period of Disqualification.....	8.....	6
Appeal of Board Determination.....	9.....	7
Notice to DoD and Other Government Agencies.....	10.....	7
Referral to Other Agencies.....	11.....	7
Appendix		
A. References.....		9
B. Personal Property Shipments.....		10
C. Non-Temporary Storage (NTS).....		14
D. Freight Shipments.....		16
E. Glossary.....		23

1. Purpose. This regulation prescribes Military Surface Deployment and Distribution Command (SDDC) procedures governing disqualification and non-use of Transportation Service Providers (TSP) and their affiliates contracting with SDDC for transportation or storage of Department of Defense (DOD) sponsored freight or personal property. These procedures will be followed when SDDC takes action to disqualify or place a TSP in non-use or recommends that such action be taken.

2. Authority. The provisions of this regulation are based on the authority contained in 5 USC 301 and 10 USC 2311 as they relate to DOD transportation provided by qualified TSPs, and DOD Directive 5158.04, United States Transportation Command; DOD Directive 4500.09E, Transportation and Traffic Management; Defense Transportation Regulation Part II, Cargo Movement; Defense Transportation Regulation Part IV, Personal Property; and Military Surface Deployment and Distribution Command Military Freight Traffic Unified Rules Publication-1 (MFTURP-1). The military and public contracts exceptions of section 553(a)(2) of title 5 United States Code apply to this regulation.

3. Policy. Pursuant to DOD Directive 4500.9, it is the policy of DOD to obtain transportation services from responsive and responsible commercial TSPs providing satisfactory service to meet the needs of the DOD. The procedures contained herein are designed to ensure that the Government's best interests are served. This regulation is separate from any other authority of Installation Commanders and Transportation Officers (TO) to take administrative action against TSPs.

4. General. The following paragraphs explain SDDC procedures for placing in non-use or disqualifying TSPs from participating in the transportation of DOD shipments of personal property and freight under negotiated agreements, tariffs, tenders of service, service agreements, commercial or Government Bills of Lading (CBLs/GBLs) orders, and similar arrangements. Refer to appendixes for specific differences in procedures for Personal Property, Non-Temporary Storage (NTS), and freight. SDDCR 15-1 does not apply to contracts entered into pursuant to the Federal Acquisition Regulation (FAR), unless any such contract calls for its application. However, a Transportation Review Board (TRB) may consider a TSP's services based on FAR contracts in determining appropriate corrective action, if any. Disqualification or non-use will not apply for longer than necessary to protect the interests of the Government. SDDC may, at its election, continue to honor CBLs, GBLs, rate tenders, service orders or similar transportation arrangements that are in existence at the time the TSP was disqualified or placed in non-use.

5. Procedures.

a. On receipt of information or a recommendation from a TO, Port Commander, SDDC representative, military headquarters service representative, Federal agency, or other source (i.e. claims office, Regional Storage Management Office [RSMO], TSPs, etc.) the appropriate SDDC office will review the recommendation and related facts to determine if a TRB should be convened to ascertain if disqualification 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 the SDDC Staff Judge Advocate (SJA), promptly notify the TSP of such determination. A TSP will not be disqualified without an opportunity for a TRB hearing, unless noted, done in accordance with other procedures set forth in this regulation.

b. SDDC will forward to the TSP a written notice (notification letter) of a TRB hearing, along with a copy of this regulation, by certified mail, express air carrier, electronic mail, or similar means with receipt verification. The notice will state:

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

(2) The date, time, and place the TRB will convene.

(3) That the TSP will have 14 calendar days from the date of the written notice (Notification Letter) to do the following:

(a) Respond in writing to the proposed disqualification.

(b) Request an extension, if necessary, for presenting information. Extensions may be granted to the TSP at the discretion of Domestic Business Division (AMSSD-SBD) or Personal Property Division (AMSSD-PP).

(c) Notify SDDC officials concerned of any intent to present information to the TRB in person or by telephone conference. If the TSP will be participating in the TRB either telephonically or in person, the TSP must provide names and position of attendees NLT 7 days prior to the TRB.

(d) Submit four copies of all the information it wishes the board to consider.

(4) Failure to respond to a board notice letter will result in the TRB basing its decision upon the material before the TRB when it convenes.

(5) If circumstances warrant, the notice may also require the TSP to provide information identifying all affiliates.

c. For good cause, SDDC may prescribe a lesser period of time 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.

d. Any cause or condition supporting disqualification which comes to the attention of the board after scheduling a TRB may be joined with the pending TRB if the TSP is provided written notification of the additional allegations, and is provided a minimum of 7 calendar days to respond to the additional allegations prior to the commencement of the TRB.

e. TSPs may present evidence either in writing or through witnesses, which support any defense or mitigation of the allegations presented. TRB members or advisory members may question a TSP's witnesses about their testimony or about other information presented by the TSP.

6. Review Board Composition and Functions.

a. SDDC TRBs will be composed of three voting members who shall ordinarily be senior military and civilians at the level of O-4 (military) or GS-13 (civilian) or greater to ensure its members possess the needed expertise and experience to take actions authorized under this regulation. 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 at the level of O-5 (military) or GS-14 (civilian). Board members will receive a copy of SDDCR 15-1 and are required to review it preceding every board on which he/she is a member. Board members must attend a pre-board review of allegations and board procedures. A representative from the SJA will be invited to attend pre-board meetings, as well as the TRB. The SJA representative will advise the Chairman and the Board members as necessary. The SJA representative will not be a voting member.

b. SDDC TRBs are conducted at SDDC, Scott AFB, IL 62225-5006.

c. Advisory Members (non-voting) of TRBs include legal counsel (per paragraph 6(a)), and will also include action officers and functional experts, as appropriate.

d. The TRB will meet at the time and place designated by the TRB Chairperson. A TRB recorder will be provided by SDDC and will be responsible for recording the minutes of TRB hearings, and keeping necessary records. Records may be summarized and shall be maintained (hard copy or electronically) by the activity convening the TRB for a minimum of 3 years following the TRB. Cases determined by the SJA to establish a significant legal precedent will be permanently retained. At the conclusion of the hearing, the recorder will prepare a memorandum for record indicating the finding(s) and decisions(s) of the board. The memorandum will include a record of the number of votes for each decision made by the TRB.

(1) Verbatim Records. A verbatim record of the TRB hearing may be taken at SDDC's discretion and expense. Normally, it is not the TRB's business practice to record or transcribe board proceedings. 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. TSPs may make a verbatim record of the hearing at the TSP's expense. The TSP shall notify SDDC of its intent to take a verbatim record of the hearing not less than 72 hours prior to the convening of the TRB.

(2) Access. TRBs may consider a TSP's proprietary business information, overall business strategy and business relationship with SDDC, agents, and subcontractors. Therefore, TRB hearings shall be closed to all but the following persons:

(a) Representative(s) of SDDC or the military service/agency affected, including advisory members;

(b) Representative(s) of the TSP;

(c) Witnesses; and,

(d) Any other persons present with the consent of the TSP and SDDC. Any person not meeting the criteria of subparagraphs 6a through c, above, must request permission to attend from the TRB Chairperson at least 7 calendar days prior to the convening of 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.

e. TRB Determination.

(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's response to the notice letter 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.

(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, unless the evidence presented requires further investigation, in which case the TSP will be informed of when to expect a determination.

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

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

(b) TSP's written and oral presentation(s).

(c) TSP's past performance.

(d) Special services provided by the TSP, which may be unavailable elsewhere.

(e) TSP's responsiveness to SDDC's concerns, and corrective action taken by the TSP to preclude similar incidents of poor performance from recurring, including appropriate disciplinary action against responsible individuals.

(f) Whether the TSP has had adequate time to eliminate the circumstances within the TSP's organization that led to the convening of a TRB.

(g) The financial condition of the TSP and the economic impact of disqualification.

(h) Performance history of TSP and affiliates.

(i) Communication between the TSP and SDDC. SDDC is under no obligation to provide TSPs with a record of the TSPs 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 they have provided to SDDC.

(4) After consideration of all relevant factors, the TRB decision may result in one of the following, but is not limited to:

(a) The TRB must first decide whether the allegation(s) cited are supported by a preponderance of the evidence. The TRB shall vote on each allegation listed in the notification

letter. A “preponderance of the evidence” refers to the legal standard of proof, meaning “more probable than not.”

(b) If the TRB finds 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.

(c) If the TRB finds that any allegation in the notification letter is supported by a preponderance of the evidence, the TRB will decide whether to:

(i) Allow the TSP to continue participating in the transportation of DOD shipments with or without conditions being imposed to ensure the TSP's compliance with TSP qualification and performance requirements.

(ii) Disqualify the TSP for a designated period of time. The TRB may impose a total disqualification or take any action less severe than total disqualification. For example, a TRB may disqualify a TSP from specified geographic areas, traffic lanes, types of shipments, or disqualify the TSP and its affiliated TSPs and prospective new affiliated entrants, when an employee’s personal actions warrant, which include but are not limited to, offensive conduct or unethical actions.

(iii) If the TRB imposes any type of disqualification it must decide whether to suspend for a stated period of time any part of a disqualification with or without probationary conditions as described in the following paragraph.

(5) When the TRB imposes disqualification, it may suspend for a stated period of time the execution of all or any part of the disqualification period. This suspended 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 transport DOD personal property, NTS, or freight shipments. 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 suspended action. Except when circumstances require otherwise, the TSP will be given 7 days to respond to a proposal to vacate. Notice of proposal to vacate will be sent by certified mail, express air carrier, or similar means with receipt verification. Upon vacation, the entire period of a suspended disqualification 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.

7. TSP Notification of Disqualification Determination. SDDC will notify the TSP of the TRB decision by certified mail, express air carrier, or similar means with receipt verification. The notice will specify the reasons for the TRB decision and will specifically describe the period and extent of disqualification, if any. The TSP will be notified of the TRB decision in a timely manner, normally within 15 calendar days of the TRB hearing.

8. Period of Disqualification.

a. 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.

b. A TSP disqualified for 6 months or more is required to re-qualify in accordance with the latest registration requirements, through the appropriate SDDC TSP Qualification Program, prior to regaining its eligibility to participate in DOD transportation programs. Approval is contingent upon meeting the latest requirements. A TSP may not file rates with SDDC while disqualified.

9. Appeal of Determination.

a. TSPs may appeal a TRB decision within 15 calendar days from the date of receipt of the TRB decision letter. The decision(s) of the TRB will be in effect while the appeal is pending, except when the appellate authority grants the TSPs written request to stay a decision.

b. An appeal of a freight action will be forwarded to the Deputy Commanding General, HQ Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott AFB, IL 62225-5006. An appeal of a personal property or NTS TRB will be forwarded to the Chief of Staff, HQ Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott AFB, IL 62225-5006. Appeals will be independently reviewed and processed by personnel not substantially involved in the initial TRB decision.

c. 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, suspended, or reduced upon presentation of evidence that the causes and conditions resulting in the initial disqualification 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.

d. A determination to grant or deny an appeal will be considered administratively final. The TSP will be promptly notified in writing of the determination.

10. Notice to DOD, Other Government Agencies and the Public. The TRB chairperson will notify DOD shippers and Government agencies of any determination to disqualify or place a TSP in immediate non-use status, or to reinstate a TSP. Findings of the TRB and any action taken against a TSP may be published on SDDC's public website.

11. Referral to Other Agencies. When cause for debarment or suspension action specified in FAR Subpart 9.4 is present, the SJA, HQSDDC, will coordinate with the Procurement Fraud Division, Office of The Judge Advocate General, Department of the Army, or any other appropriate executive agency for consideration of Government-wide debarment or suspension action against the TSP and its officers and affiliates.

The proponents of this regulation are the Military Surface Deployment and Distribution Command, Deputy Chief of Staff, G-9, and Director, Personal Property Division. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to HQSDDC, Attn: AMSSD-IMP-RR (Publications Manager), 1 Soldier Way, Scott AFB, Illinois 62225-5006. Supplements to this regulation are not authorized.

FOR THE COMMANDER:

//Signed//
MICHAEL C. SNYDER
COL, GS
Chief of Staff

Appendix A
References

DTR Part II, Cargo Movement

DTR Part IV, Personal Property

5 USC 301, Departmental Regulations

18 USC 18, Crimes and Criminal Procedures

10 USC 2311, Assignment and Delegation of Procurement Functions and Responsibilities

CFR 49, Code of Federal Records Title 49

FAR, Federal Acquisition Regulation

MFTURP-1, Military Freight Traffic Unified Rules Publication-1

DODD 5158.04, Transportation and Traffic Movement

DODD 4500.09E, United States Transportation Command

SDDC Regulation 5506, Personal Property Movement and Storage Program

SDDC Pamphlet 55-4, Transportation Service Provider (TSP) Qualification (Personal Property)

Appendix B Personal Property Shipments

1. Purpose. Appendix B has been established to outline SDDC procedures for placing TSPs in non-use or disqualifying TSP in according with DTR Part IV, Attachment U.Q from participating in the DOD personal property shipments.
2. General. The following paragraphs explain SDDC procedures for placing in non-use or disqualifying TSPs from participating in the transportation of DOD personal property shipments under negotiated tenders of service, commercial or Government Bills of Lading (CBLs/GBLs) orders, and similar arrangements. This regulation does not apply to contracts entered into pursuant to the Federal Acquisition Regulation (FAR), unless any such contract calls for its application. However, a TRB may consider a TSP's services based on FAR contracts in determining appropriate corrective action if any. Disqualification or non-use will not apply for longer than necessary to protect the interests of the Government. SDDC may, at its election, continue to honor CBLs, GBLs, rate tenders, service orders or similar transportation arrangements that are in existence at the time the TSP was disqualified or placed in non-use.
3. Processes that may be utilized without TRB. SDDC may direct the nonuse of a TSP for a definite or indefinite period of time for a (1) market (iUB, iHHG, dHHG), (Note 1), or (2) channel (DP3 Phase II Business Rule Attachment D, Rate Filing Document), (Note 2), or BLOC(s).

NOTE 1: If a TSP has more than three suspensions for shipment refusals at different PPSOs but in the same market, SDDC may suspend the TSP in that market at the worldwide level for an additional 30 days.

NOTE 2: A channel is a combination of origin and destination rate areas where rates are filed in DPS.

a. No traffic can be offered to a TSP in nonuse. Nonuse of a TSP maybe directed by SDDC, as a result, but not limited to, the following:

(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).

(2) Overall performance. (Includes but is not limited to: not meeting the MPS, repeated violations of its contractual agreement (see paragraph C).

(a) No active Cargo Liability Insurance. If a lapse in coverage occurs, DOD TSP approval will be revoked.

(b) Failure to meet or maintain the requirements in DPS Phase II Business Rules Attachment C TSP Qualifications or the SDDC Pamphlet 55-4.

(c) Failure to disclose a CFAC relationship.

b. Any outstanding claims against a TSP that has been placed in permanent, worldwide non-use status by SDDC can be transferred by the customer to their Service Claims Office and still be eligible for FRV.

c. SDDC-initiated suspension may include removal from OTO/Volume Move/Special solicitation.

d. A TSP failing to disclose CFAC may be removed from the program for a period of up to 2 years and prosecuted for filing a false official statement in violation of 18 USC 1001.

4. Causes and conditions for Disqualifications or Non-Use.

a. Disqualification and Non-Use. Disqualification or non-use action may be taken for specific incidents of unsatisfactory service or failure to perform, or a record or trend of satisfactory service or failure to perform in accordance with the terms of negotiated agreements tenders of service, commercial or GBLs, service agreements, governing SDDC rules publications, or other similar arrangements. Examples of such failures or violations include, but are not limited to, the following:

(1) Failure to meet ordered packing/pickup dates for personal property shipments.

(2) Selective refusal to accept personal property shipments.

(3) Failure to meet time-in-transit standards agreed upon delivery date and/or required delivery dates.

(4) Mishandling of personal property shipments (e.g., damaged or missing transportation seals, improper loading, packing, blocking, or bracing; and improper conduct at an installation or member's residence).

(5) Failure to adequately protect DOD shipment(s) from loss and/or damage.

(6) Failure to furnish proper or adequate equipment, facilities or improper substitution of mode.

(7) Employees who in the performance of DOD-related duties:

(a) Use intemperate, vulgar, or abusive language;

(b) Exhibit evidence of illegal drug use or possession or alcohol use; or,

(c) Engage in other offensive conduct.

(8) Failure to settle loss and damage claims promptly within established timelines.

(9) Failure to comply with applicable federal, state and local laws and regulations governing the movement of personal property.

(10) Accidents involving DOD-sponsored shipments, serious injury or fatalities, which indicate a lack of TSP responsibility to perform in a safe manner.

(11) Use of equipment, facilities, or personnel that fail to meet applicable safety and/or security standards.

(12) Failure to maintain qualification requirements for doing business with the DOD (e.g., failure to maintain required liability insurance coverage).

(13) Failure to respond to a SDDC request for financial data, operational data or other information subject to request under the Tender of Service or similar agreement.

(14) Suspension, debarment, or proposed debarment by any federal agency under the authority of Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS).

(15) Indictment or conviction of a criminal offense indicating a lack of business integrity or honesty that affects the responsibility of the TSP.

(16) Failure to timely provide requested documentation or information, such as Certificates of Independent Pricing or financial reports, where the failure brings into question the suitability of the TSP to provide transportation services to the DOD.

(17) Failure of a TSP's employees, subcontractors or agents 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).

(18) A demonstrated lack of business integrity concerning DOD-sponsored shipments by one or more representatives.

(19) 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.

(20) Non-use action may be taken when authorized by the Deputy Chief of Staff for Personal Property based on operational or administrative deficiencies so severe as to immediately threaten safety or security of HHG shipments. Before undertaking non-use action, officials will consult with the SJA. A TSP in non-use for 6 months or more is required to re-qualify through the appropriate SDDC TSP Qualification Program prior to regaining its eligibility to participate in DOD transportation programs. A TSP may not file rates with SDDC while in non-use status.

(21) Failure to disclose CFAC, which may lead to prosecution for filing a false official statement in violation of 18 USC 1001.

(22) The use of abusive, intemperate, disparaging, vulgar language or written correspondence from a TSP (including all employees), their agent or representative, directed towards the government, SDDC, SDDC components or DOD components that deal with the movement and storage of personal property, and the personnel working in those organizations.

Appendix C
Non-Temporary Storage (NTS)

1. Purpose. This appendix establishes procedures to govern non-use, disqualifications and TRB procedures for TSPs participating in the DOD Non-Temporary Storage (NTS) Program. Additional NTS TSP performance guidance is located in DTR, Part IV and SDDC Regulation 55-6.

2. General. The following paragraphs explain the Regional Storage Management Office (RSMO) procedures for placing in non-use or disqualifying NTS TSPs from participating in the storage of DOD lots under Tenders of Service, service orders, and similar arrangements. Disqualification or non-use will not apply for longer than necessary to protect the interests of the Government. The RSMO may, at its election, continue to honor Tenders of Service, service orders or similar transportation arrangements that are in existence at the time the NTS TSP was disqualified or placed in non-use.

3. Processes that May be Utilized Without TRB.

a. The RSMO may place an NTS TSP in immediate non-use without a TRB for up to 90 days or until corrective actions, acceptable to the RSMO, have been implemented and verified. Examples of failures or violations qualifying for such action include, but are not limited to:

- (1) Failing to pick up, deliver, or release a storage lot on the required day.
- (2) Exceeding the warehouse weight limitation.
- (3) Improper packing, wrapping or storage of the personal property.
- (4) Failure to provide required administrative information and documentation.
- (5) Fire and security violations.

b. The NTS TSP can respond to the non-use action by requesting the RSMO review the following:

- (1) NTS TSP's written response explaining the discovered infraction(s).
- (2) NTS TSP's written notice of actions taken to correct the infraction(s).
- (3) NTS TSP's written procedures to be implemented to prevent future recurrences.

c. The RSMO shall:

- (1) Review NTS TSP's explanation of how the infraction occurred.
- (2) Determine if NTS TSP has corrected the infraction(s).

(3) Determine if NTS TSP has implemented procedures to prevent future recurrences.

d. The RSMO will have deciding authority on placing the NTS TSP back into the NTS Program. When placed in non-use, the NTS TSP must re-qualify to participate in the NTS Program.

4. Causes and Conditions for Disqualification or Non-Use.

a. The RSMO may issue a letter requesting further information on the violation(s) discovered prior to issuing a non-use action. The letter will request that the NTS TSP provide additional information on the incident for further review by the RSMO.

b. Upon receipt of an acceptable response outlining the NTS TSP corrective actions, the NTS TSP may be monitored to ensure no further infractions are incurred. If no or insufficient response is received from the NTS TSP, disqualification/non-use action may be initiated against the NTS TSP.

c. Disqualification/non-use action may be taken 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 SDDC/RSMO rules, publications, or other regulations. Examples of such failures or violations include, but are not limited to, the following:

(1) Failure to meet ordered packing/pickup dates for NTS lots.

(2) Failure to meet scheduled release or delivery dates for NTS lots.

(3) Selective refusal to accept NTS lots.

(4) Failure to communicate changes to pickup or delivery dates and times with the property owners and shipping offices.

(5) Mishandling of NTS lots (e.g., improper loading, packing, blocking, or bracing; and improper conduct at a residence or installation).

(6) Failure to adequately protect DOD shipment(s) from loss and/or damage.

(7) Utilizing a warehouse not approved for the NTS program.

(8) Failure to furnish proper or adequate equipment or improper substitution of equipment.

(9) Employees who in the performance of DOD-related duties:

(a) Use intemperate, vulgar, or abusive language;

- (b) Exhibit evidence of illegal drug use or possession or alcohol use; or,
 - (c) Engage in other offensive conduct.
- (10) Demonstrate a lack of financial responsibility so as to subject NTS lots to actual and/or potential delay, frustration, seizure, or detention.
- (11) Failure to settle loss and damage claims promptly.
- (12) Failure to comply with applicable federal, state and local laws and regulations governing the storage and movement of household goods.
- (13) Use of equipment, facilities, or personnel that fail to meet applicable safety and/or security standards.
- (14) Failure to maintain qualification requirements for doing business with the DOD (e.g., failure to maintain required liability insurance, permits or intra/interstate authorities).
- (15) Failure to respond to a RSMO request for financial data, operational data or other information subject to request under the Tender of Service or regulation.
- (16) Suspension, debarment, or proposed debarment by any federal agency under the authority of Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS).
- (17) Indictment or conviction of a criminal offense indicating a lack of business integrity or honesty that affects the responsibility of the NTS TSP.
- (18) Failure to timely provide requested documentation or information, such as Certificates of Independent Pricing or financial reports, where the failure brings into question the suitability of the NTS TSP to provide storage services to the DOD.
- (19) Failure of a NTS TSP's employees, subcontractors or agents 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).
- (20) A demonstrated lack of business integrity concerning NTS lots by one or more employees, agents, or representatives.
- (21) Any other cause or condition of a serious or compelling nature that affects the present responsibility of a NTS TSP providing storage services to the DOD.
- (22) The use of abusive, intemperate, disparaging, vulgar language or written correspondence from a NTS TSP (including all employees), their agent or representative, directed towards the government, SDDC, SDDC components or DOD components that deal with

the movement and storage of personal property, and the personnel working in those organizations.

d. **Non-Use.** Non-use action may be taken when authorized by the RSMO Regional Program Manager, Deputy Regional Program Manager or designated representative based on operational or administrative deficiencies so severe as to immediately threaten safety or security of NTS lots. A NTS TSP may not file rates with RSMO while in a non-use status.

e. **Disqualification.** An NTS TSP may be disqualified by the RSMO without a TRB when the disqualification is not an adversarial action. Examples are:

- (1) When the NTS TSP requests to be removed from the NTS program.
- (2) The NTS TSP has gone out of business or has lost their approved warehouse facility.
- (3) Upon the initiation of a Chapter 7, Bankruptcy, where the trustee has directed or concurred with the removal of the stored NTS property.

f. 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;

- (1) Failure to have a currently accepted rate in effect for the award of NTS lots.
- (2) Failure to provide the required annual review documentation and information.
- (3) Request by the NTS TSP to no longer participate in the program for new storage lots.
- (4) Failure or inability to correct a noted deficiency over an extended period of time.

g. Those disqualification actions which are adversarial or based on the failure of the NTS TSP to perform the services as required by the Tender of Service or other regulation, and which have caused damage to the stored lots or have placed the NTS lots where damage or loss is eminent, may require a TRB. In these instances the RSMO will, with prior coordination with the SJA and PPP-PA, issue a Show Cause letter to the NTS TSP which will identify the unacceptable services or conditions and advise the NTS TSP that they have 10 working days to correct the situation to the satisfaction of the RSMO.

h. The NTS TSP will also be advised that they will be disqualified if they fail to correct the identified deficiencies and will give them the opportunity to appeal this decision to a TRB. If the NTS TSP fails to respond or does not respond adequately the RSMO, again with coordination with SJA and PPP-PA, will disqualify the NTS TSP and re-procure the necessary services. If the NTS TSP appeals the RSMO's disqualification decision the RSMO will advise PPP-PA and the SJA that a TRB is necessary following the procedures located in this regulation. TRBs for the NTS program should have RSMO representation to ensure the necessary level of expertise for the proceedings.

Appendix D Freight Shipments

1. Purpose. This attachment establishes procedures to govern Letters of Concern, Letters of Warning, Non-Use, Disqualifications, and TRB procedures specifically for TSPs participating in Freight Movement. Additional cargo TSP performance guidance is located in DTR Part II, Cargo Movement, Chapter 207 and the Military Freight Traffic Unified Rules Publication-1 (MFTURP-1).

2. Causes and Conditions for Letter of Concern, Letter of Warning, Non-Use, or Disqualification. Letter of Concern (LOC), Letter of Warning (LOW), Non-Use, or Disqualification may be based on the following causes and conditions to include, but not limited to, the following:

- a. Failure to meet scheduled packing/pickup dates for freight shipments.
- b. Failure to meet scheduled arrival/delivery times for freight movements.
- c. Selective refusal to accept voluntary freight shipments, negotiated traffic, or refusal of SPOTBID shipments.
- d. Failure to meet time-in-transit standards and/or required delivery dates.
- e. Mishandling of freight shipments (e.g., damaged or missing transportation seals, improper loading, packing, blocking, or bracing; and improper conduct at an installation).
- f. Failure to adequately protect DOD shipment(s) from loss and/or damage.
- g. Improper routing (as applicable to mode).
- h. Failure to furnish proper or adequate equipment or improper substitution of equipment.
- i. Employees who in the performance of DOD-related duties:
 - (1) Use intemperate, vulgar, or abusive language;
 - (2) Exhibit evidence of illegal drug use or possession or alcohol use; or,
 - (3) Engage in other offensive conduct.
- j. Failure to pay just debts or complaints from subcontractors that the TSP failed to pay for services contracted or otherwise demonstrates lack of financial responsibility so as to subject government shipments to actual and/or potential delay, frustration, seizure, or detention.
- k. Failure to settle loss and damage claims promptly.

l. Failure to comply with applicable federal, state and local laws and regulations governing the movement of freight.

m. Accidents involving DOD hazardous materials shipments.

n. Use of equipment, facilities, or personnel that fail to meet applicable safety and/or security standards.

o. Failure to maintain qualification requirements for doing business with the DOD (e.g., failure to maintain required cargo insurance/bond coverage/DOT authority).

p. Brokers will be held responsible for subcontractor performance, to include but not limited to: on time pickup and delivery; conduct; and CSA scores.

q. Failure to respond to a SDDC request for financial data, operational data or other information subject to request under the Tender of Service or similar agreement.

r. Suspension, debarment, or proposed debarment by any federal agency under the authority of Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS).

s. Indictment or conviction of a criminal offense indicating a lack of business integrity or honesty that affects the responsibility of the TSP.

t. Failure to timely provide requested documentation or information, such as Surety Bonds, Cargo Insurance, Certificates of Independent Pricing, or financial reports, where the failure brings into question the suitability of the TSP to provide transportation services to the DOD.

u. Failure of a TSP's employees, subcontractors or agents 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).

v. A demonstrated lack of business integrity concerning DOD freight by one or more employees, agents, or representatives.

w. Failure to maintain acceptable Behavior Analysis and Safety Improvement Categories (BASICS) threshold scores within the Department of Transportation Compliance, Safety, and Accountability (CSA) Program.

x. Serious injury or fatalities, which indicate a lack of TSP responsibility to perform in a safe manner.

y. Falsifying Power Track payments.

z. 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.

aa. The use of abusive, intemperate, disparaging, vulgar language or written correspondence from a TSP (including all employees), their agent or representative, directed towards the government, SDDC, SDDC components or DOD components that deal with the movement of freight, and the personnel working in those organizations.

3. Processes that May be Utilized Without Conducting a TRB.

a. Letter of Concern (LOC). A LOC may be issued by HQ SDDC for TSP performance issue(s) that may be determined by SDDC as not meeting minimum performance standards. A LOC gives the TSP an opportunity to make corrective action prior to HQ SDDC issuing a Letter of Warning (LOW) or non-use action. A LOC may be issued based on the following incidents to include, but not limited to: minor infractions; possible concerns raised by the DOD community; or downward trends in TSP's performance (i.e., rising CSA scores).

b. Letter of Warning (LOW). A LOW is issued by a TO or by HQ SDDC to a TSP for unacceptable performance. A LOW serves as notice to a TSP that if violations or performance problems continue, non-use action may follow. The LOW may request TSP provide additional information on the incident for review. A LOW prepared by the TO must be forwarded to HQ SDDC for retention with the TSPs file. Three LOWs for the same violation from one single GBLOC in a 180-day period may result in a non-use action. The LOW must include, as a minimum:

- (1) The TSP name and SCAC.
- (2) The BL number.
- (3) The rule or regulation indicating the violation that resulted in the LOW.

c. Upon receipt of an acceptable response from the TSP in response to LOW outlining corrective actions, the TSP may be placed in a probationary status of up to 90 days to ensure no further infractions are incurred.

d. If no response or an insufficient response is received in response to the LOW from the TSP, then the below procedures may be initiated.

(1) Non-use or disqualification action may be taken 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 negotiated agreements, tariffs, tenders of service, commercial or GBLs, service agreements, governing SDDC rules publications, or other similar arrangements.

(2) Disqualification action may be taken against individuals and affiliates of a TSP(s) for conduct or action which is inappropriate, unethical, or violates any provision of SDDC regulations and policies.

(3) Duration of non-use or disqualification actions is at the discretion of SDDC based on severity of violation, number of infractions, and TSP response.

e. HQ SDDC may place a TSP in nationwide non-use for up to 90 days without conducting a TRB. Examples of such failures or violations qualifying for such action include, but are not limited to, the following:

(1) Loss of DOT authority.

(2) Exceeding DOT CSA mandated threshold safety scores.

(3) Accepting and moving shipments or providing services for which the TSP does not have DOD approval.

(4) Failure to pay just debts or complaints from subcontractors that the TSP failed to pay for services contracted.

(5) Pattern of refusing SPOTBID shipments.

(6) Falsifying Power Track inputs.

(7) The use of abusive, intemperate, disparaging, vulgar language or written correspondence from a TSP, their agent or representative, directed towards the government, SDDC, SDDC components or DOD components that deal with the movement of freight, and the personnel working in those organizations.

f. A TSP must respond within 14 calendar days of receipt of the non-use notification by providing the following information:

(1) The explanation of the discovered infraction(s).

(2) Notice of actions taken to correct the infraction(s).

(3) A copy of procedures being put into place to prevent future reoccurrence.

g. HQ SDDC shall review the TSP response and will have final authority for reinstating a TSP back into FCRP based on TSP's response and actions:

(1) SDDC shall review TSP explanation of how the infraction happened.

(2) SDDC will determine if TSP has corrected the infraction(s).

(3) SDDC will determine if TSP has put into place procedures to prevent future occurrences.

(4) TSP must provide sufficient substantiated verification to SDDC that corrective measures have been implemented.

h. If a TSP does not provide or make corrective actions during the non-use period, then SDDC has the authority to extend the non-use or disqualify a TSP until such time as SDDC approved corrective measures have been implemented by the TSP.

i. Upon notification to SDDC that corrective measures have been put into place and SDDC has approved such measures, the TSP is required to re-qualify within the FCRP in accordance with the latest registration requirements.

Appendix E Glossary

Section I. Abbreviations

BASICS	Behavior Analysis and Safety Improvement Categories
BLOC	Bill of Lading Office Code
CBL	Commercial Bill of Lading
CFAC	Common Financial and Administrative Control
CSA	Compliance, Safety, and Accountability
DFARS	Defense Federal Acquisition Regulation
dHHG	Domestic Household Goods
DOD	Department of Defense
DOT	Department of Transportation
DTR	Defense Transportation Regulation
FAR	Federal Acquisition Regulation
FCRP	Freight Carrier Registration Program
FRT	Freight
GBL	Government Bill of Lading
iHHB	International Household Goods
iUB	International Unaccompanied Baggage
MPS	Minimum Performance Score
NTS	Non-Temporary Storage
RSMO	Regional Management Storage Office
OTO	One-Time Only
SDDC	Military Surface Deployment and Distribution Command
SJA	Staff Judge Advocate
SPOTBID	Spot Bid
TO	Transportation Officer
TRB	Transportation Review Board
TSP	Transportation Service Provider
USTRANSCOM	United States Transportation Command

Section II. Terms

PP=Personal Property Specific
FRT=Freight Specific
NTS=Non Temp Storage (see Appendix C)

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 or process for review of a previous decision or action.

Broker (FRT) - CFR 49 382.2 defines “broker” as a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker within the meaning of this section when it arranges or offers to arrange the transportation of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport. Brokers never take possession of the freight; brokers are transportation intermediaries who procure the services of motor carriers to transport freight.

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 SDDC Regulation 15-1 do not constitute debarment.

Disqualification (FRT) - The act by HQ SDDC of excluding a TSP or TSP employee from participating in DOD transportation programs. Only SDDC has disqualification authority. Disqualification may be taken by SDDC as a result of no or insufficient response on a non-use action and/or a result of TRB findings and determination. Disqualification action may be taken independently by SDDC, or a TO may request SDDC 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 operation or administrative deficiencies so severe as to threaten safety or security of DOD cargo shipments or where a TSP fails to meet the requirements necessary to be an approved participant in SDDC 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 when a TSP repeatedly violates any provision, rule, or regulation. A TSP may not file rates with SDDC while in a disqualified status. If a TSP is placed in a disqualified status, all SCACs affiliated with that TSP may also be disqualified. A TSP disqualified for 6 months or more is required to re-qualify within the Freight Carrier Registration Program (FCRP) in accordance with the latest registration requirements, in order to be approved. Disqualification will not exceed a period of 24 months. The TRB's decision shall in no way limit SDDC's right to recommend the TSP for debarment.

Disqualification (PP) - The act by a Transportation Service Provider Review Board (TRB) of excluding a TSP from participating in DOD transportation programs. Only SDDC may disqualify a TSP. Disqualification may be taken by SDDC as a result of the TRB findings and determination. Disqualification action may be taken independently by SDDC, or a TO may request SDDC 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 operation or administrative deficiencies so severe as to threaten safety or security of DOD cargo shipments or where a TSP fails to meet the requirements necessary to

be an approved participant in SDDC 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 SDDC's right to recommend the TSP for debarment. A TSP may not file rates with SDDC while in a disqualified status. If a TSP is placed in a disqualified status, all SCACs affiliated with that TSP will also be disqualified. A TSP is required to re-qualify through the SDDC TSP Qualification Program prior to regaining eligibility to participate in the DOD transportation program.

Letter of Concern (LOC) (FRT) - A LOC may be issued by HQ SDDC for TSP performance issue(s) that may be determined by SDDC as not meeting minimum performance standards. A LOC gives the TSP an opportunity to make corrective action prior to HQ SDDC issuing a LOW or non-use action.

Letter of Warning (LOW) (FRT) - A LOW is issued by a TO or by HQ SDDC to a TSP for unacceptable performance. A LOW serves as notice to a TSP that if violations or performance problems continue, or non-use action may follow. A LOW prepared by the TO must be forwarded to SDDC for retention with the TSPs file. Three LOWs for the same violation from one single BLOC in a 180-day period may result in non-use action. See Appendix, paragraph 3b.

Motor Carrier - 49 U.S.C. 13102 defines “motor carrier” as a person providing motor vehicle transportation for compensation. Motor carriers take possession of the freight.

Non-Use (FRT) - Non-use may be taken by either the TO or by HQ SDDC when sufficient information indicates that operation or administrative deficiencies are so severe as to threaten safety or security of DOD cargo shipments. A TO may place a TSP in non-use from their activity and provide a copy to HQ SDDC for retention in the TSP's file. SDDC may place a TSP in non-use for all of the U.S. (i.e., nationwide non-use). A TSP may be placed in non-use by HQ SDDC without conducting a TRB. Non-use action may be taken by HQ SDDC when a TSP fails to meet the requirements necessary to be an approved participant in SDDC transportation programs. Non-use may be issued when a rule or regulation is violated on a shipment, or shipments, which warrants a performance action greater than a LOW, or when a TSP repeatedly violates any provision, rule, or regulation. TOs will provide all pertinent documentation to support HQ SDDC placing a TSP in non-use. A TSP will be placed in non-use for a period of up to 90 calendar days, effective date and period of non-use will be determined by HQ SDDC and based on severity of action(s). A TSP may not file rates with SDDC while in a non-use status. No traffic may be offered to a TSP in non-use. To be removed from a period of non-use, the TSP must provide acceptable proof of corrective action. Non-use may remain in effect until HQ SDDC is satisfied that the TSP has taken necessary action to preclude the recurrence of those problems which gave rise to the suspension. If the TSP does not provide or make corrective actions during a period of non-use, then SDDC has the authority to extend the non-use action or place the TSP in disqualification without holding a TRB, until such time as corrective measures are satisfactorily implemented by the TSP. A TSP who is reinstated after a period of non-use may receive a 90-day probationary period. Consultation with the SDDC JA may be required prior to initiating the actions.

Non-Use (PP) - The act of temporarily suspending 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) and where a TSP fails to meet the requirements necessary to be an approved participant in SDDC transportation programs. When a TSP disputes the accuracy of the information on which non-use is based a TRB hearing will normally be held within 30 day after the TSP is placed in non-use.

Suspended Action - The act of withholding the TRB punitive action and placing the TSP into a probationary status for up to 2 years.

Transportation Service Provider (TSP) - All references in this regulation 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 TSPs. This definition specifically includes Non Temporary Storage (NTS) providers.

TSP 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 TSPs an opportunity to present evidence and rebut allegations of inadequate or improper performance, or other matters.