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§ 180.2010 [Removed and Reserved]

■ 3. Section 180.2010 is removed and reserved.

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102–117 and 102–118

[Change 2016–01; FMR Case 2015–102–2; Docket 2015–0014; Sequence 1]

RIN 3090–AJ59

Federal Management Regulation (FMR); Transportation Payment and Audit

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Management Regulation (FMR), Transportation Payment and Audit, to clarify agency and Department of Defense (DoD) transportation payment and audit requirements. GSA is also amending relevant definitions. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective:* September 22, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ron Siegel, Office of Government-wide Policy, at 202–357–9540 or by email at ron.siegel@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755. Please cite FMR Case 2015–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

Agencies are authorized to procure transportation services either through the Federal Acquisition Regulation (FAR) by utilizing a contract, or via 49 U.S.C. 10721 (for rail transportation), 49 U.S.C. 13712 (for surface transportation), and/or 49 U.S.C. 15504 (for pipeline transportation) by utilizing rate tenders. It is critical that agencies ensure that transportation services received are properly charged and that the payment made is correct.

Toward that end, the Travel and Transportation Reform Act of 1998 (Pub. L. 105–264) established agency statutory

requirements for prepayment audits of Federal agency and DoD transportation expenses. The Act also established GSA's statutory authority for audit oversight to protect the interests of the Government.

This final rule clarifies and strengthens agency and DoD compliance with regulations for transportation prepayment audits and postpayment audits. In addition, this final rule updates definitions in 41 CFR part 102–117, Transportation Management, as a result of the amendments to 41 CFR 102–118.

This final rule is the outcome of the first of a two phase review of FMR part 102–118, Transportation Payment and Audit, conducted by GSA and the Governmentwide Transportation Policy Council (GTPC). The GTPC is composed of representatives from civilian agencies and DoD and provides GSA with guidance in the planning and development of uniform transportation policies and procedures.

The first phase review focused on FMR part 102–118 Subparts A (General), D (Prepayment Audits of Transportation Services), and E (Postpayment Transportation Audits). The second phase review will focus on FMR part 102–118 Subpart A (General), as well as Subparts B (Ordering and Paying for Transportation and Transportation Services), C (Use of Government Billing Documents), and F (Claims and Appeals Procedures).

B. Public Comments and Responses

In the proposed rule published at 80 FR 59094 in the **Federal Register**, on October 1, 2015, GSA provided the public a 60-day comment period which ended on November 30, 2015. GSA received comments from the National Motor Freight Traffic Association, Inc. (NMFTA), and Relocation Management Worldwide Incorporated (RMW). This final rule reflects the following changes made as a result of some of these comments.

Comment: The definition in the proposed rule for *declared value* in FMR 102–117.25 and 102–118.35 contains reference to declared value and released value. However, NMFTA indicates that the “terms ‘declared value’ and ‘released value’ are neither synonymous nor recognized by the transportation industry. A carrier establishes released value provisions with the intent of the shipper agreeing to a lesser value for the cargo shipped in return for a lower rate for transportation. Declared value assigns a value to the cargo in order to authenticate loss and damage liability limitations on the cargo that was

shipped. Furthermore, it is inequitable to define declared value as a price that could be ‘more’ than the actual value of the cargo. In commercial practice, a transportation service provider (TSP) will not pay a loss or damage claim in excess of the actual value of the cargo transported.”

Response: GSA agrees with the recommendation and consequently has modified the definition *declared value* that is added to 41 CFR 102–117.25 so that it does not reference released value; included a definition for *released value* in 41 CFR 102–117.25; and has removed the definition *released value* from 41 CFR 102–118.

Comment: With regards to the definition *claim*, NMFTA indicates that in the transportation industry, the term *claim* is generally used in the context of claims for the payment of overcharges or claims for loss or damage. NMFTA recommends that any other terms for demands for payment by the TSP to the Government or amounts the TSP believes an agency owes them should not be included in this definition and would be better defined separately.

Response: GSA does not accept this recommendation. The definition of *claim* presented in this final rule is modeled after the definition of *claim* or debt found in 31 U.S.C. 3701(b)(1).

Comment: The Government Transportation Request (GTR) is defined, in part, as a Government document used to procure common carrier interstate transportation services. NMFTA indicates that as far as interstate motor carrier transportation is concerned, the term *common carrier* is no longer defined in 49 U.S.C. 13102. Former common carriers are now referred to as *motor carriers*. NMFTA suggests using the description *motor carrier* or *TSP* which is used elsewhere in these regulations. NMFTA also suggests that since the Government can procure intrastate transportation with a GTR, it does not make sense to include the word “interstate” in the final GTR definition.

Response: The term *common carrier* is used to define Government Transportation Request (GTR) in the Federal Travel Regulation (FTR). In response to the comment, GSA has revised the definition of GTR to clarify that the document is used to acquire passenger transportation.

Comment: Standard Carrier Alpha Code (SCAC) is defined, in part, as the unique four-letter code used to identify American-based motor transportation companies assigned by NMFTA. NMFTA indicates that the SCAC definition should be a two-to-four letter identification code assigned to all

modes of transportation companies worldwide by the NMFTA.

Response: GSA accepts this comment and has modified the definition of SCAC to a unique code, typically two to four characters, used to identify transportation companies.

Comment: NFMTA indicates that the Standard Carrier Alpha Code (SCAC) is a proper noun and should be capitalized.

Response: GSA agrees with this comment and has made the appropriate changes.

Comment: When an agency notifies a TSP of any adjustment to a TSP bill, the notice must reference the TSP's Standard Carrier Alpha Code (SCAC) or other agency identifier for the carrier, such as the Department of Defense Activity Address Code (DoDAAC) number. NMFTA suggests deleting the reference to the DoDAAC as the DoDAAC is not used to identify TSPs. NMFTA indicates that the Defense Logistics Agency defines a DoDAAC as “. . . a six-character, alpha-numeric code that uniquely identifies a unit, activity, or organization within the DoDAAD [Department of Defense Activity Address Directory]. A unit, activity, or organization may have more than one DoDAAC for different authority codes or purposes. Each activity that requisitions, contracts for, receives, has custody of, issues, or ships DoD assets, or funds/pays bills for materials and/or services is identified by a six-position alphanumeric DoDAAC.”

Response: GSA accepts this suggestion and has deleted the DoDAAC reference.

Comment: The rule indicates that “the prepayment audit cannot be conducted by the same firm providing transportation services for the agency, such as a move manager.” Relocation Management Worldwide, Incorporated (RMW) suggests that the term *move manager* is an incorrect example of a TSP and should be removed. RMW indicates that a TSP, being a carrier, could have a conflict of interest auditing their own files, but a move manager does not have to be a TSP.

Response: GSA agrees that the language may be confusing and has modified § 102–118.275(c) to explain that a *move manager* may not have any affiliation with or financial interest in the transportation company providing the transportation services for which the prepayment audit is being conducted.

Comment: RMW asks if the rule's intent is to eliminate a *move manager* from being a prepayment auditor.

Response: GSA has modified the rule to clarify the role of a *move manager* in

the prepayment process. GSA's intent is to clarify transportation payment and audit requirements for all agencies including DoD.

Comment: The rule indicates that agencies may choose to use a Third-Party Payment System or charge card company that includes prepayment audit functions, such as Syncada and Payport Express. RMW asks if GSA is allowed to promote specific companies and promote their own specific products in the Code of Federal Regulations.

Response: GSA agrees that the reference to Syncada may constitute an endorsement of a private enterprise and has removed the reference from the final rule. However, PayPort Express is a GSA Center for Transportation Management payment solution that is compliant with the rules established by GSA Transportation Audits Division. Being a GSA product, the acknowledgement of PayPort Express, or subsequent GSA payment solution, does not constitute the endorsement of a private enterprise.

Comment: The rule lists what information must be included in an agency's notice to a TSP when an agency is adjusting the TSP's bill. RMW points out that the list of required information excludes the reason for the adjustment and asks if this important element can be added to the list.

Response: The final rule accepts and incorporates the comment.

Comment: The rule indicates that the Administrator of General Services (GSA) has a congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bills. The GSA Transportation Audits Division accomplishes this oversight by conducting postpayment audits of all agencies' transportation bills. RMW suggests that GSA should confirm and identify that the audits are actually performed by contracted auditing companies and not by GSA Transportation Audits.

Response: GSA does not accept this recommendation. Information regarding the GSA Transportation Audits Division procedures, including reviewing transportation invoices in conjunction with audit contracting companies, is provided on the Division's Postpayment Audit homepage (www.gsa.gov/portal/content/100056).

Comment: RMW requests that GSA identify what safeguards are in place to prevent contracted auditing companies from providing both the prepayment and postpayment audit of the same bill.

Response: GSA has determined that this topic is outside the intended scope of this rule. GSA Transportation Audits Division's Dispute Resolution Branch

(<http://www.gsa.gov/portal/content/100753>) provides oversight and quality control evaluation of GSA audit contractors and ensures integrity in all audit processes.

Comment: This rule indicates that the GSA Transportation Audits Division does not charge agencies a fee for conducting the transportation postpayment audit and the expenses for such audits are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds. Since the GSA Transportation Audits Division or contracted auditing companies do not receive funding unless they find errors in TSP billings, RMW asks how this is not a conflict of interest?

Response: GSA has determined that this topic is outside the intended scope of this rule. The funding mechanism identified in this rule is established by statute, 31 U.S.C. 3726 Payment for transportation.

Comment: If the GSA Transportation Audits Division is overseeing the prepay audit to ensure it is being done properly, RMW asks who is overseeing the GSA Transportation Audits Division to determine if the prepay oversight and the postpayment audit are being done properly?

Response: While GSA has determined that this topic is outside the intended scope of this rule, the GSA Office of the Inspector General and the management of the Federal Acquisition Service (FAS) provide such oversight of the GSA Transportation Audits Division.

C. Substantive Changes

This final rule:

- Revises the definitions for “Agency”, “Bill of lading” (BOL), “Government bill of lading” (GBL), “Transportation document” (TD), and “Transportation Service Provider” (TSP), removes the definition “Release/declared value”, and adds the definitions “Declared value” and “Released value” in FMR part 102–117; and revises the definitions “Agency”, “Bill of lading” (BOL), “Document reference number”, “Government bill of lading” (GBL), “Government transportation request”, “Offset”, “Overcharge”, “Postpayment audit”, “Rate authority”, “Reparation”, “Standard Carrier Alpha Code” (SCAC), “Statement of difference”, “Supplemental bill”, “Transportation document (TD)”, and “Transportation Service provider” (TSP), removes the terms “Agency claim”, “Released value”, “Transportation service”, “Transportation service provider claim”, and “Virtual GBL (VGBL)”, and adds the terms “Claim” and

“Transportation” in FMR part 102–118 to ensure consistency.

- Strengthens agency requirements and responsibilities for transportation prepayment audits and transportation postpayment audit, submission requirements to the GSA Transportation Audits Division, and the required information on all transportation documentation.
- Updates and clarifies GSA Transportation Audits Division roles and responsibilities.

C. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action, and therefore, will not be subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

These revisions are not substantive, and therefore, this rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2), because it applies to agency management or personnel.

E. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

F. Small Business Regulatory Enforcement Fairness Act

This rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates to agency management or personnel.

List of Subjects in 41 CFR Parts 102–117 and 102–118

Accounting, Claims, Freight, Government property management, Moving of household goods, Reporting

and recordkeeping requirements, Transportation.

Dated: September 8, 2016.

Denise Turner Roth,
Administrator.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 102–117 and 102–118 as follows:

PART 102–117—TRANSPORTATION MANAGEMENT

- 1. The authority citation for 41 CFR part 102–117 continues to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.*; 46 U.S.C. 55305; 49 U.S.C. 40118.

- 2. Amend § 102–117.25 by—
 - a. Revising the definitions “Agency” and “Bill of lading (BOL)”;
 - b. Adding, in alphabetical order, the definition “Declared value”;
 - c. Revising the definition “Government bill of lading (GBL)”;
 - d. Removing the definition “Release/declared value”;
 - e. Adding, in alphabetical order, the definition “Released value”; and
 - f. Revising the definitions “Transportation document (TD)”, and “Transportation service provider (TSP)”.

The revisions and additions read as follows:

§ 102–117.25 What definitions apply to this part?

* * * * *

Agency means a department, agency, and independent establishment in the executive branch of the Government as defined in 5 U.S.C. 101 *et seq.*, and a wholly-owned Government corporation as defined in 31 U.S.C. 9101(3).

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), means the document used as a receipt of goods, a contract of carriage, and documentary evidence of title.

* * * * *

Declared value means the actual value of cargo as declared by the agency for reimbursement purposes or to establish duties, taxes, or other customs fees. The declared value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods, unless the declared value exceeds the carrier’s released value (see “Released value”). The statement of declared value must be shown on any applicable tariff, tender, contract, bill of lading, or other document covering the shipment.

* * * * *

Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see Bill of Lading (BOL) definition).

* * * * *

Released value means an assigned value of the cargo for reimbursement purposes that is not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo; however, in the event of loss or damage to the shipment, if the released value exceeds the actual value, reimbursement would be the lesser of the two values. When the released value is agreed upon as the basis of reimbursement and the actual value exceeds the released value, the released value is the maximum amount that could be recovered by the agency in the event of loss or damage to the shipments of freight or household goods. When negotiating for rates and the released value is proposed to be less than the actual value of the cargo, the TSP should offer a rate lower than other rates for shipping cargo at full value. The statement of released value may be shown in any applicable tariff, tender, contract, transportation document or other documents covering the shipment.

* * * * *

Transportation document (TD) means any executed document for transportation service, such as a bill of lading, a tariff, a tender, a contract, a Government Transportation Request (GTR), invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

* * * * *

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, household goods, or passenger transportation or related services to an agency.

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PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

- 3. The authority citation for 41 CFR part 102–118 is revised to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.*; 46 U.S.C. 55305; 49 U.S.C. 40118.

- 4. Revise § 102–118.10 to read as follows:

§ 102–118.10 What is a transportation audit?

A transportation audit is a thorough review and validation of transportation related documents and bills. The audit

must examine the validity, propriety, and conformity of the charges or rates with tariffs, quotations, contracts, agreements, or tenders, as appropriate.

§ 102–118.15 [Amended]

■ 5. Amend § 102–118.15 by removing “or people and/or” and adding “, people or” in its place.

■ 6. Revise § 102–118.20 to read as follows:

§ 102–118.20 Who is subject to this part?

This part applies to all agencies (including the Department of Defense (DoD)) and TSPs defined in § 102–118.35, and wholly-owned Government corporations as defined in 31 U.S.C. 101, *et seq.* and 31 U.S.C. 9101(3). Your agency is required to incorporate this part into its internal regulations.

■ 7. Revise §§ 102–118.25 and 102–118.30 to read as follows:

§ 102–118.25 What must my agency provide to GSA regarding its transportation policies?

As part of the evaluation of agencies’ transportation program and postpayment audit, GSA may request to examine your agency’s transportation prepayment audit program and policies to verify the performance of the prepayment audit. GSA Office of Government-wide Policy, Transportation Policy Division and GSA Transportation Audits Division may suggest revisions of agencies’ audit program or policies.

§ 102–118.30 Are Government-controlled corporations bound by this part?

This part does not apply to Government-controlled corporations and mixed-ownership Government corporations as defined in 31 U.S.C. 9101(1) and (2).

■ 8. Amend § 102–118.35 by-

■ a. Revising the definition “Agency”;

■ b. Removing the definition “Agency claim”;

■ c. Revising the definition “Bill of lading”;

■ d. Adding, in alphabetical order, the definition “Claim”;

■ e. Revising the definitions “Document reference number”, “Government bill of lading (GBL)”, “Government contractor-issued charge card”, “Government Transportation Request (GTR)”, “Offset”, “Overcharge”, “Postpayment audit”, “Prepayment audit”, and “Rate authority”;

■ f. Removing the definition “Released value”;

■ g. Revising the definitions “Reparation”, “Standard carrier alpha code (SCAC)”, “Statement of difference”, and “Supplemental bill”;

■ h. Adding, in alphabetical order, the definition “Transportation”;

■ i. Revising the definition “Transportation document (TD)”;

■ j. Removing the definition “Transportation service”;

■ k. Revising the definition “Transportation service provider (TSP)”;

■ l. Removing the definitions “Transportation service provider claim” and “Virtual GBL (VGBL)”;

■ m. Revising the “Note” at the end of the section. The revisions and additions read as follows:

§ 102–118.35 What definitions apply to this part?

* * * * *

Agency means a department, agency, or instrumentality of the United States Government (31 U.S.C. 101).

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), means the document used as a receipt of goods, a contract of carriage, and documentary evidence of title.

* * * * *

Claim means—

(1) Any demand by an agency upon a transportation service provider (TSP) for the payment of overcharges, ordinary debts, fines, penalties, administrative fees, special charges, and interest; or

(2) Any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which is believed to be owed; and any subsequent bills from the TSP resulting from a transaction that was prepayment or postpayment audited by the GSA Transportation Audits Division.

Document reference number (DRN) means the unique number on a bill of lading, Government Transportation Request (GTR), or transportation ticket used to track the movement of shipments and individuals.

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Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see Bill of lading (BOL) definition).

Government contractor-issued charge card means the charge card used by authorized individuals to pay for official travel and transportation related expenses for which the contractor bills the employee. This is different than a centrally billed account paying for

official travel and transportation related expenses for which the agency is billed.

Government Transportation Request (GTR) (Optional Form 1169)—means a Government document used to procure passenger transportation services from a TSP. The document obligates the Government to pay for transportation services provided and is used when a Government contractor issued charge card is not.

Offset means something that serves to counterbalance or to compensate for something else. These are funds owed to a TSP that are not released by the agency but instead used to repay the agency for a debt incurred by the TSP.

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Overcharge means those charges for transportation that exceed those applicable under the executed agreement for services such as bill of lading (including a GBL, contract, rate tender or a GTR).

Postpayment audit means an audit of transportation billing documents, and all related transportation documents after payment, to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit process may also include subsequent adjustments and collection actions taken against a TSP by the Government (31 U.S.C. 3726).

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders (31 U.S.C. 3726).

* * * * *

Rate authority means the document that establishes the legal charges for a transportation shipment. Charges included in a rate authority are those rates, fares, and charges for transportation and related services contained in tariffs, tenders, contracts, bills of lading, and other equivalent documents.

Reparation means a payment to or from an agency to correct an improper transportation billing as determined by a postpayment audit involving a TSP. Improper routing, overcharges, or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

Standard Carrier Alpha Code (SCAC) is a unique code, typically two to four characters, used to identify transportation companies.

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when they determine

that a TSP has billed the agency for more than the proper amount for the services. This statement tells the TSP on the invoice, the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference for each transportation transaction.

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Supplemental bill means the bill for services that the TSP submits to the agency for additional payment of the services provided.

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Transportation means service involved in the physical movement (from one location to another) of people, household goods, and freight by a TSP or a Third Party Logistics (3PL) entity for an agency, as well as activities directly relating to or supporting that movement. These activities are defined in 49 U.S.C. 13102.

Transportation document (TD) means any executed document for transportation services, such as a bill of lading, a tariff, a tender, a contract, a GTR, invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, household goods, or passenger transportation or related services to an agency.

Note to § 102–118.35: 15 U.S.C. 96, *et seq.*, 49 U.S.C. 13102, *et seq.*, and 41 CFR Chapter 302 Federal Travel Regulation defines additional transportation terms not listed in this section.

■ 9. Revise Subpart D to read as follows:

Subpart D—Prepayment Audit of Transportation Services

Sec.

Agency Requirements for a Transportation Prepayment Audit Program

- § 102–118.265 What is a prepayment audit?
- § 102–118.270 Must my agency establish a transportation prepayment audit program, and how is it funded?
- § 102–118.275 What must my agency consider when developing a transportation prepayment audit program?
- § 102–118.280 Must all transportation payment records, whether they are electronic or paper, undergo a prepayment audit?
- § 102–118.285 What must be included in my agency's transportation prepayment audit program?

Agency Requirements With Transportation Service Providers

- § 102–118.290 Must my agency notify the TSP of any adjustment to the TSP bill?
- § 102–118.295 Does my agency transportation prepayment audit program need to establish appeal procedures?
- § 102–118.300 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?
- § 102–118.305 What information must be on all transportation payment records that have completed my agency's prepayment audit?
- § 102–118.310 What does the GSA Transportation Audits Division consider when verifying an agency prepayment audit program?
- § 102–118.315 How does my agency contact the GSA Transportation Audits Division?
- § 102–118.320 What action should my agency take if the agency's transportation prepayment audits program changes?

Agency Certifying and Disbursing Officers

- § 102–118.325 Does establishing an agency Chief Financial Officer-approved transportation prepayment audit program change the responsibilities of the certifying officers?
- § 102–118.330 Does a transportation prepayment audit waiver change any liabilities of the certifying officer?
- § 102–118.335 What relief from liability is available for the certifying official under a transportation postpayment audit?
- § 102–118.340 Do the requirements of a transportation prepayment audit change the disbursing official's liability for overpayment?
- § 102–118.345 Where does relief from transportation prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Exemptions and Suspensions of the Mandatory Transportation Prepayment Audit Program

- § 102–118.350 What agency has the authority to grant an exemption from the transportation prepayment audit requirement?
- § 102–118.355 How does my agency apply for an exemption from a transportation prepayment audit requirement?
- § 102–118.360 How long will GSA take to respond to an exemption request from a transportation prepayment audit requirement?
- § 102–118.365 Can my agency renew an exemption from the transportation prepayment audit requirements?
- § 102–118.370 Are my agency's prepayment audited transportation documentation subject to periodic postpayment audit oversight from the GSA Transportation Audits Division?
- § 102–118.375 Can GSA suspend my agency's transportation prepayment audit program?

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.*; 46 U.S.C. 55305; 49 U.S.C. 40118.

Subpart D—Prepayment Audit of Transportation Services

Agency Requirements for a Transportation Prepayment Audit Program

§ 102–118.265 What is a prepayment audit?

Prepayment audit means a review of transportation documentation before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. Prepayment auditing by your agency will detect and eliminate billing errors before payment (31 U.S.C. 3726).

§ 102–118.270 Must my agency establish a transportation prepayment audit program, and how is it funded?

(a) Yes, under 31 U.S.C. 3726, your agency is required to establish a transportation prepayment audit program. Your agency's Chief Financial Officer (CFO) must approve the prepayment audit program.

(b) Your agency must pay for the prepayment audit program from those funds appropriated for transportation services.

(1) Agencies are encouraged to consider using a GSA Transportation Audits Division approved third party electronic payment processor for transportation invoice processing, payment, and prepayment audit. These electronic payment processors are no cost to the agency and are fully compliant with GSA Transportation Audits Division prepayment audit requirements.

(2) Use of these third party payment processors generally means your agency will not have to provide any additional prepayment or postpayment documentation to GSA Transportation Audits Division.

§ 102–118.275 What must my agency consider when developing a transportation prepayment audit program?

(a) Your agency's transportation prepayment audit program must consider all of the methods that your agency uses to order and pay for passenger, household goods, and freight transportation to include Government contractor-issued charge cards (see § 102–118.35 for definition Government contractor-issued charge cards).

(b) Each method of ordering transportation and transportation services for passenger, household goods, and freight transportation may require a different kind of prepayment audit process. The manner in which your agency orders or procures transportation services determines how and by whom

the bill for those services will be presented. Your agency should ensure that each TSP bill or employee travel voucher contains enough information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated.

(c) The prepayment audit cannot be conducted by the same firm providing the transportation services for the agency. If a move manager is being utilized, the move manager may not have any affiliation with or financial interest in the transportation company providing the transportation services for which the prepayment audit is being conducted. Contracts with charge card companies that provide prepayment audit services are a valid option. The agency can choose to—

- (1) Create an internal prepayment audit program;
 - (2) Contract directly with a prepayment audit service provider;
 - (3) Use the services of a prepayment audit contractor under GSA's multiple award schedule covering audit and financial management services (*SIN 520.10 Transportation Audits*); or
 - (4) Use a Third-Party Payment System or charge card company that includes prepayment audit functions, such as the GSA Center for Transportation Management's PayPort Express.
- (d) An appeals process must be established for a TSP to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim.

(e) A process to ensure that all agency transportation procurement and related documents including contracts and tenders are submitted electronically to GSA Transportation Audits Division.

(f) Use of GSA Transportation Audits Division's Prepayment Audit Program template is recommended (contact Audit.Policy@gsa.gov for a copy of the template). If the template is not used, provide the same information listed on the template to GSA Transportation Audits Division.

§ 102–118.280 Must all transportation payment records, whether they are electronic or paper, undergo a prepayment audit?

Yes, all transportation bills and payment records, whether they are electronic or paper, must undergo a prepayment audit with the following exceptions:

- (a) Your agency's prepayment audit program uses a statistical sampling technique of the bills. If your agency

chooses to use statistical sampling, all bills must be

- (1) At or below the Comptroller General specified limit of \$2,500.00 (31 U.S.C. 3521(b)); and

(2) In compliance with the U.S. Government Accountability Office Using Statistical Sampling (GAO/PEMD–10.1.6), Rev. 1992, Chapter 7 Random Selection Procedures obtainable from <http://www.gao.gov>; or

(b) The Administrator of General Services grants your agency a specific exemption from the prepayment audit requirement which may include bills determined to be below your agency's threshold, mode or modes of transportation, or for an agency or subagency.

§ 102–118.285 What must be included in an agency's transportation prepayment audit program?

The agency prepayment audit program must include—

- (a) The agency's CFO approval of the transportation prepayment audit program with submission to GSA Transportation Audits Division;

(b) Compliance with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(c) Assurance that each TSP bill or employee travel voucher contains appropriate information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated;

(d) Verification of all transportation bills against filed rates and charges before payment;

(e) A process to forward all transportation documentation (TD) monthly to the GSA Transportation Audits Division.

(1) GSA Transportation Audits Division can provide your agency a Prepayment Audit Program with a monthly reporting template upon request at Audit.Policy@gsa.gov (see § 102–118.35 for definition TD).

(2) In addition to the requirements for agencies to maintain transportation records, GSA will store paid transportation bills in accordance with the General Records Schedule 9, Travel and Transportation (36 CFR 1228.22). GSA will arrange for storage of any document requiring special handling, such as bankruptcy and court cases. These bills will be retained pursuant to 44 U.S.C. 3309 until claims have been settled;

(f) Establish procedures in which transportation bills not subject to prepayment audit, such as bills for unused tickets and charge card billings, are handled separately and are also forwarded monthly to the GSA Transportation Audits Division;

(g) A minimum dollar threshold for transportation bills subject to audit;

(h) A statement in a cost reimbursable contracts contract or rate tender that the contractor shall submit to the address and in the electronic format identified for prepayment audit, transportation documents which show that the United States will assume freight charges that were paid by the contractor. Cost reimbursable contractors shall only submit for audit bills of lading with freight shipment charges exceeding \$100.00. Bills under \$100.00 shall be retained on-site by the contractor and made available for on-site Government audits (Federal Acquisition Regulation (FAR) 52.247–67);

(i) Require your agency's paying office to offset, if directed by GSA's Transportation Audits Division, debts from amounts owed to the TSP within the 3 years (31 U.S.C. 3726(b));

(j) A process to ensure complete and accurate audits of all transportation bills and notification to the TSP of any adjustment within 7 calendar days of receipt of the bill;

(k) An appeals process as part of the approved prepayment audit program for a TSP to appeal any reduction in the amount billed. Refer to § 102–118.295 for details regarding the appeals process.

(l) Accurate notices and agency procedures for notifying the TSPs with a detailed description of the reasons for any full or partial rejection of the stated charges on the invoice. Refer to § 102–118.290 for notice requirements; and

(m) A unique agency numbering system to handle commercial paper and practices (see § 102–118.55 for information on administrative procedures your agency must establish).

Agency Requirements With Transportation Service Providers

§ 102–118.290 Must my agency notify the TSP of any adjustment to the TSP bill?

(a) Yes, your agency must notify the TSP of any adjustment to the TSP bill either electronically or in writing within seven calendar days of the agency receipt of the bill.

(b) This notice must include:

- (1) TSP's bill number;
- (2) Agency name;
- (3) TSP's TIN;
- (4) SCAC;
- (5) DRN;
- (6) Date invoice submitted;
- (7) Amount billed;
- (8) Date invoice was approved for payment;
- (9) Date and amount agency paid;
- (10) Payment location number and agency organization name;

(11) Payment voucher number;
(12) Complete contract, tender or tariff authority, including item or section number;

(13) Reason for the adjustment; and
(14) Complete information on the agency appeal process.

(c) A TSP must submit claims to the agency within three years under the guidelines established in subpart F, Claims and Appeals Procedures, of this part.

§ 102–118.295 Does my agency transportation prepayment audit program need to establish appeal procedures?

Yes, your agency must establish, in the approved prepayment audit program, an appeals process for a TSP to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim. Your agency must complete the review of the appeal and inform the TSP of the agency determination within 30 calendar days of the receipt of the appeal, either electronically or in writing.

§ 102–118.300 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?

(a) If your agency is unable to resolve the disputed amount with the TSP, your agency must submit, within 30 calendar days, all relevant transportation documentation associated with the dispute, including a complete billing history and the appropriation or fund charged, to GSA Transportation Audits Division by email at *Audit.Policy@gsa.gov*, or by mail to: U.S. General Services Administration, 1800 F St. NW., 3rd Floor, Mail Hub 3400, Washington, DC 20405.

(b) The GSA Transportation Audits Division will review the appeal of an agency's final, full, or partial denial of a claim and issue a decision within 30 calendar days of receipt of appeal.

(c) A TSP must submit claims to the agency within three years under the guidelines established in subpart F of this part.

§ 102–118.305 What information must be on all transportation payment records that have completed my agency's prepayment audit?

(a) The following information must be annotated on all transportation payment records, electronically or on paper, that have completed your agency's prepayment audit and for submission to GSA Transportation Audits Division:

(1) The date the bill was received from a TSP;

(2) A TSP's invoice number;

(3) Your agency name;

(4) DRN;

(5) Amount billed;

(6) Date invoice was approved for payment;

(7) Date and amount agency paid;

(8) Payment location code number and office or organization name;

(9) Payment voucher number;

(10) Complete contract, tender or tariff authority, including item or section number;

(11) The TSP's TIN;

(12) The TSP's SCAC;

(13) The auditor's authorization code or initials; and

(14) A copy of any statement of difference and the date it was sent to the TSP.

(b) Your agency can find added guidance in the "U.S. Government Freight Transportation Handbook." This handbook is located at *www.gsa.gov/transaudits*.

§ 102–118.310 What does the GSA Transportation Audits Division consider when verifying an agency prepayment audit program?

GSA Transportation Audit Division bases verification of agency prepayment audit programs on objective cost-savings, paperwork reductions, current audit standards, and other positive improvements, as well as adherence to the guidelines listed in this part.

§ 102–118.315 How does my agency contact the GSA Transportation Audits Division?

Your agency may contact the GSA Transportation Audits Division at *Audit.Policy@gsa.gov*.

§ 102–118.320 What action should my agency take if the agency's transportation prepayment audit program changes?

(a) If your agency's transportation prepayment audit program changes in any way to include changes in prepayment auditors, your agency must submit the CFO-approved revised transportation prepayment audit program to GSA Transportation Audits Division via email at *Audit.Policy@gsa.gov*, Subject line: Agency PPA-Revised.

(b) If GSA determines the agency's approved plan is insufficient, GSA will contact the agency CFO to inform of the prepayment audit program deficiencies and request corrective action and resubmission to GSA Transportation Audits Division.

Agency Certifying and Disbursing Officers

§ 102–118.325 Does establishing an agency Chief Financial Officer-approved transportation prepayment audit program change the responsibilities of the certifying officers?

No, in a prepayment audit program, the official certifying a transportation voucher is held liable for verifying transportation rates, freight classifications, and other information provided on a transportation billing instrument or transportation request undergoing a prepayment audit (31 U.S.C. 3528).

§ 102–118.330 Does a transportation prepayment audit waiver change any liabilities of the certifying officer?

Yes, a certifying official is not personally liable for verifying transportation rates, freight classifications, or other information provided on a bill of lading or passenger transportation request when the Administrator of General Services or designee waives the prepayment audit requirement and your agency uses postpayment audits.

§ 102–118.335 What relief from liability is available for the certifying official under a transportation postpayment audit?

The agency counsel relieves a certifying official from liability for transportation overpayments in cases where—

(a) Postpayment is the approved method of auditing;

(b) The overpayment occurred solely because the administrative review before payment did not verify transportation rates; and

(c) The overpayment was the result of using improper transportation rates or freight classifications or the failure to deduct the correct amount under a land grant law or agreement.

§ 102–118.340 Do the requirements of a transportation prepayment audit change the disbursing official's liability for overpayment?

No, the disbursing official has a liability for overpayments on all transportation bills subject to prepayment audit (31 U.S.C. 3322).

§ 102–118.345 Where does relief from transportation prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Your agency's counsel has the authority to relieve liability and give advance opinions on liability issues to certifying, accountable, and disbursing officers (31 U.S.C. 3527).

Exemptions and Suspensions of the Mandatory Transportation Prepayment Audit Program

§ 102–118.350 What agency has the authority to grant an exemption from the transportation prepayment audit requirement?

Only the Administrator of General Services or their designee has the authority to grant an exemption for a specific time period from the prepayment audit requirement. The Administrator may exempt bills, a particular mode or modes of transportation, or an agency or subagency from a prepayment audit and verification and in lieu thereof require a postpayment audit, based on cost effectiveness, public interest, or other factors the Administrator considers appropriate (31 U.S.C. 3726(a)(2)).

§ 102–118.355 How does my agency apply for an exemption from a transportation prepayment audit requirement?

Your agency must submit a request for an exemption from the requirement to perform transportation prepayment audits by email to *Audit.policy@gsa.gov*, Subject Line: Prepayment Audit Exemption Request. The agency exemption request must explain in detail why the request is submitted based on cost effectiveness, public interest, or other factors the Administrator considers appropriate, such as transportation modes, dollar thresholds, adversely affecting the agency's mission, or is not feasible (31 U.S.C. 3726(a)(2)).

§ 102–118.360 How long will GSA take to respond to an exemption request from a transportation prepayment audit requirement?

GSA will respond to the exemption from the transportation prepayment audit requirement request within 180 calendar days from the date of receipt.

§ 102–118.365 Can my agency renew an exemption from the transportation prepayment audit requirements?

It may be possible for your agency to be granted a prepayment audit exemption extension. Your agency must submit a request for the extension to GSA Transportation Audits Division at least six months in advance of the current exemption expiration.

§ 102–118.370 Are my agency's prepayment audited transportation documentation subject to periodic postpayment audit oversight from the GSA Transportation Audits Division?

Yes. All your agency's prepayment audited transportation documents are subject to the GSA Transportation Audits Division postpayment audit

oversight. Upon request, GSA Transportation Audits Division will provide a report analyzing your agency's prepayment audit program.

§ 102–118.375 Can GSA suspend my agency's transportation prepayment audit program?

(a) Yes. The Director of the GSA Transportation Audits Division may suspend your agency's transportation prepayment audit program until the agency corrects their prepayment audit program deficiencies. This suspension may be in whole or in part. If GSA suspends your agency's transportation prepayment audit and GSA assumes responsibility for auditing an agencies prepayment audit program, the agency will reimburse GSA for the expense.

(b) This suspension determination is based on identification of a systematic or frequent failure of the agency's transportation prepayment audit program to—

(1) Conduct a prepayment audit of your agency's transportation bills; and/or

(2) Abide by the terms of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(3) Adjudicate TSP claims disputing prepayment audit positions of the agency regularly within 30 calendar days of receipt;

(4) Follow Comptroller General decisions, Civilian Board of Contract Appeals decisions, the Federal Management Regulation and GSA instructions or precedents about substantive and procedure matters; and/or

(5) Provide information and data or to cooperate with on-site inspections necessary to conduct a quality assurance review.

■ 10. Revise Subpart E to read as follows:

Subpart E—Postpayment Transportation Audits

Sec.

§ 102–118.400 What is a transportation postpayment audit?

§ 102–118.405 Who conducts a transportation postpayment audit?

§ 102–118.410 If agencies perform the mandatory transportation prepayment audit, will this eliminate the requirement for a transportation postpayment audit conducted by GSA?

§ 102–118.415 Can the Administrator of General Services exempt the transportation postpayment audit requirement?

§ 102–118.420 Is my agency allowed to perform a postpayment audit on our transportation documents?

§ 102–118.425 Is my agency required to forward all transportation documents to the GSA Transportation Audits Division,

and what information must be on these documents?

§ 102–118.430 What is the process the GSA Transportation Audits Division employs to conduct a postpayment audit?

§ 102–118.435 What are the transportation postpayment audit roles and responsibilities of the GSA Transportation Audits Division?

§ 102–118.440 Does my agency pay for a transportation postpayment audit conducted by the GSA Transportation Audits Division?

§ 102–118.445 How do I contact the GSA Transportation Audits Division?

Subpart E—Postpayment Transportation Audits

§ 102–118.400 What is a transportation postpayment audit?

Postpayment audit means an audit of transportation billing documents after payment to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit may also include subsequent adjustments and collection actions taken against a TSP by the Government (31 U.S.C. 3726).

§ 102–118.405 Who conducts a transportation postpayment audit?

The Administrator of General Services (GSA) has a congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bills. The GSA Transportation Audits Division accomplishes this oversight by conducting postpayment audits of all agencies' transportation bills.

§ 102–118.410 If agencies perform the mandatory transportation prepayment audit, will this eliminate the requirement for a transportation postpayment audit conducted by GSA?

No, agency compliance to the mandatory transportation prepayment audit does not eliminate the requirement of the transportation postpayment audit conducted by GSA (31 U.S.C. 3726).

§ 102–118.415 Can the Administrator of General Services exempt the transportation postpayment audit requirement?

Yes. The Administrator of General Services or designee may exempt, for a specified time, an agency or subagency from the GSA transportation postpayment audit oversight requirements of this subpart. The Administrator can also exempt modes (31 U.S.C. 3726).

§ 102–118.420 Is my agency allowed to perform a postpayment audit on our transportation documents?

No. Your agency may not perform a transportation postpayment audit unless granted an exemption and specifically

directed to do so by the Administrator in lieu of a prepayment audit. Whether such an exemption is granted or not, your agency must forward all transportation documents (TD) to GSA for postpayment audit (see § 102–118.35 for definition TD).

§ 102–118.425 Is my agency required to forward all transportation documents to GSA Transportation Audits Division, and what information must be on these documents?

(a) Yes, your agency must provide all TDs to GSA Transportation Audits Division (see § 102–118.35 for definition TD).

(b) The following information must be annotated on all TDs and bills that have completed your agency's prepayment audit for submission to GSA Transportation Audits Division:

- (1) The date the bill was received from a TSP;
 - (2) A TSP's invoice number;
 - (3) Your agency name;
 - (4) A DRN;
 - (5) Amount billed;
 - (6) Date invoice was approved for payment;
 - (7) Payment date and amount agency paid;
 - (8) Payment location code number and office name;
 - (9) Payment voucher number;
 - (10) Complete contract, tender, or tariff authority, including item or section number;
 - (11) The TSP's TIN;
 - (12) The TSP's SCAC;
 - (13) The auditor's full name, email address, contact telephone number, and authorization code; and
 - (14) A copy of any statement of difference sent to the TSP.
- (c) Your agency can find additional guidance in the "U.S. Government Freight Transportation Handbook." This handbook is located at www.gsa.gov/transaudits.

§ 102–118.430 What is the process the GSA Transportation Audits Division employs to conduct a postpayment audit?

The GSA Transportation Audits Division

- (a) Audits select TSP bills after payment;
- (b) Audits select TSP bills before payment as needed to protect the Government's interest;
- (c) Examines, settles, and adjusts accounts involving payment for transportation and related services for the account of agencies;
- (d) Adjudicates and settles transportation claims by and against agencies;
- (e) Offsets an overcharge by any TSP from an amount subsequently found to be due that TSP;

(f) Issues a Notice of Overcharge stating that a TSP owes a debt to the agency. This notice states the amount paid and the basis for the proper charge for the document reference number (DRN), and cites applicable contract, tariff, or tender, along with other data relied on to support the overcharge; and

(g) Issues a GSA Notice of Indebtedness when a TSP owes an ordinary debt to an agency. This notice states the basis for the debt, the TSP's rights, interest, penalty, and other results of nonpayment. The debt is due immediately and is subject to interest charges, penalties, and administrative cost under 31 U.S.C. 3717.

§ 102–118.435 What are the transportation postpayment audit roles and responsibilities of the GSA Transportation Audits Division?

(a) The GSA Transportation Audits Division role is to perform the oversight responsibility of transportation prepayment and postpayment granted to the Administrator. The GSA Transportation Audits Division will—

- (1) Examine and analyze transportation documents and payments to discover their validity, relevance and conformity with tariffs, quotations, contracts, agreements, or tenders and make adjustments to protect the interest of an agency;
- (2) Examine, adjudicate, and settle transportation claims by and against the agency;
- (3) Collect from TSPs by refund, setoff, offset, or other means, the amounts determined to be due the agency;
- (4) Adjust, terminate, or suspend debts due on TSP overcharges;
- (5) Prepare reports to the Attorney General of the United States with recommendations about the legal and technical bases available for use in prosecuting or defending suits by or against an agency and provide technical, fiscal, and factual data from relevant records;

(6) Provide transportation specialists and lawyers to serve as expert witnesses; assist in pretrial conferences; draft pleadings, orders, and briefs; and participate as requested in connection with transportation suits by or against an agency;

(7) Review agency policies, programs, and procedures to determine their adequacy and effectiveness in the audit of freight or passenger transportation payments, and review related fiscal and transportation practices;

(8) Furnish information on rates, fares, routes, and related technical data upon request;

(9) Inform an agency of irregular shipping routing practices, inadequate

commodity descriptions, excessive transportation cost authorizations, and unsound principles employed in traffic and transportation management; and

(10) Confer with individual TSPs or related groups and associations presenting specific modes of transportation to resolve mutual problems concerning technical and accounting matters, and providing information on requirements.

(b) The Administrator of General Services may provide transportation audit and related technical assistance services, on a reimbursable basis, to any other agency. Such reimbursements may be credited to the appropriate revolving fund or appropriation from which the expenses were incurred (31 U.S.C. 3726(j)).

§ 102–118.440 Does my agency pay for a transportation postpayment audit conducted by the GSA Transportation Audits Division?

The GSA Transportation Audits Division does not charge agencies a fee for conducting the transportation postpayment audit. Transportation postpayment audits expenses are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds. However, if a postpayment audit is conducted in lieu of a prepayment audit at the request of an agency, or if there are additional services required, GSA may charge the agency.

§ 102–118.445 How do I contact the GSA Transportation Audits Division?

You may contact the GSA Transportation Audits Division by email at Audit.Policy@gsa.gov.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16–182; RM–11770; DA 16–1007]

Radio Broadcasting Services; Eagle Butte, South Dakota

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of the Cheyenne River Sioux Tribe, the Audio Division amends the FM Table of Allotments, by allotting Channel 228C1 at Eagle Butte, South Dakota, as the first local Tribal-owned service. A staff engineering analysis indicates that