



**Bill Wanamaker**  
Director, Government Traffic & Security Operations

October 20, 2009

Melvin Holland  
Director  
Strategic Business Office  
Surface Deployment & Distribution Command (SDDC)  
Ft. Eustis, VA 23606

Re: Military Freight Transportation Unified Rules Publication No. 1  
("Publication")  
*Federal Register, September 25, 2009; pages 48,936-48,939.*

Dear Mr. Holland:

The American Trucking Associations, Inc.<sup>1</sup> ("ATA") is writing in response to above cited Federal Register (FR) "Notice and correction" which includes 31 separate comments from unidentified sources and responses drafted, and apparently approved, by the Surface Deployment & Distribution Command (SDDC). The ATA Government Traffic Policy Committee (GTPC) has convened twice since the September 25 Notice to discuss these comments. We find that most comments are close to what the ATA and its members within the trucking and freight brokering industries have believed to be the positions ultimately adopted by SDDC. However, there are some which divert greatly from the status quo as codified in the Military Freight Rules Publication 1 CR, and previously have enjoyed neither public notice nor debate. The purpose of this letter is to communicate both general observations and specific concerns with new policies which, pursuant to a mutual agreement between SDDC and ATA, should be removed from the Publication when it becomes effective on October 26, 2009.

A. Assumption of the Publication Being Superior to Its Predecessor is Flawed

As cited more than five years ago, and often repeated since, the technical writing format and style of the original MFTRP is superior in its clarity, use of terms of art, and language with which the U.S. Army and the freight industry have been accustomed for several decades. ATA has yet to hear of a convincing rationale for merging four distinct freight mode rules books into one binder, with the expectation that such an act will produce a better and more efficient logistics process, or save any party any money.

While such goals are worthy, mode neutrality or other desired outcomes and efficiencies are not best achieved merely by compressing four binders into one. Each discrete mode has unique attributes that make it preferable under specific and mode-compatible circumstances. Recognizing that the value of each mode is inherent in its uniqueness, makes the task of making a given single rule produce a singular outcome when applied to these inherently different modes should cause a thoughtful logistician to pause and reevaluate the purpose of such a merger. To assume that one rule consistently will have the same effect, a neutral effect, or no ill effect across all modes is a colossal assumption, and has added to the enormity of the undertaking by both SDDC and industry.

Originally, the task was merely to update the MFTRP 1C with more recent Carrier Advisories and changes to the Defense Transportation Regulations (DTRs). Unfortunately, mission creep greatly expanded the scope to include merging the Publications for each mode. Whether intentional or not, numerous parties, including the Services, induced many changes to the growing texts, and the resulting process has become unmanageable, and transparency of sources and changes has been lacking.

For these reasons, ATA reiterates its request that when SDDC has a problem to be solved, or a goal to be achieved, that we begin a collaborative process in an effort to resolve it.

B. Informal Docketing Process Concurred by Both ATA and SDDC

The September 25 Notice is troubling to ATA because it announces some new and significant rules but does not solicit any comments on them, nor does it give any information as to the process for submitting comments, as is customary in the Federal Register.

ATA and SDDC had agreed to an informal process to petition, publish, debate, decide, and announce SDDC decisions. It did not include the Federal Register because that is a highly formal process. Once the informal process would be concluded, if it would include substantive changes, then the results of the informal process certainly could be published in the Federal Register at SDDC's discretion. The process to which we had agreed more than a year ago includes:

- Any party seeking change had to submit a written petition to SDDC;
  - a) Petitioner identified (name, title, organization and contact info included);
  - b) The problem and or goal to be addressed would be specified and explained.
  - c) Affected citations included
  - d) Language to be deleted would be ~~lined out in this fashion~~
  - e) Language to be added would be underlined in this fashion
  - f) c), d) and e) would be shown together in writing as the petitioner wishes the Publication or Regulation to read.

- SDDC would send the Petition to all stakeholders, using the same system/s it uses to publish Carrier Advisories;
  - a) SDDC would provide a minimum of 90 days for the process, and except for emergency actions, hard deadlines are generally not a priority. Transparency, quality decisions, and consensus-building are the priorities.
- SDDC would post the Petition and responses thereto on the SDDC web site;
- SDDC would host oral debates on each petition;
- SDDC would make its decision and publish it, and if it desired, also publish its decision in the Federal Register.

Given these parameters, it is difficult for ATA to see how the September 25 Federal Register Notice serves the intent of the informal petitioning process. This process won broad and solid support from the full panorama of industries serving SDDC, as well as SDDC's Commander and senior leadership. ATA asks that SDDC make the establishment of this process a top priority because it is a means by which future changes may occur in a transparent and productive manner.

#### SPECIFIC COMMENTS ON THE FEDERAL REGISTER OF SEPTEMBER 25

##### Comment Eight      Disallowing Driver Confirmations

This is the first time industry has heard of disallowing drivers as a source of proof to a carrier that service has been completed. Driver notifications to their dispatcher is the industry standard practice for reporting progress. The driver is an agent of the company for these purposes. ATA is not aware of what problem is sought to be resolved by this newly proposed prohibition, nor do we know who is proposing it. Moreover, there has been no discussion of this subject with industry, let alone any informal petition or oral debate among stakeholders. The starting point was posting a decision in the Federal Register. This is a good example of why industry asked for the informal petitioning process. Because it has not gone through this process, this is reason alone to strike it from the publication due to become effective on October 26. It should be remanded to the party seeking the change. They should submit a petition to SDDC per the informal process.

Even if only e-bills are involved, the proposed new idea should be vetted by all stakeholders. Specifically, it is our understanding that an e-bill is simply a message to the payer of freight charges, from the TSP, seeking

- An adjustment in the freight charges posted by the shipper, or

- A request to be paid for some accessorial service performed, and
- That it is not requested on the bill of lading, detention, or storage etc.

ATA is not sure whether this change is intended for rail only? If yes, then we are not sure why drivers are referenced. This confusion further sustains the need for SDDC to expeditiously establish the informal docketing process.

#### Comment 22 New Proposal for Calculating Free Time and Detention Time

This is also a new proposal that has not been vetted with industry. The ATA GTPC convened on October 6, 2009 no participating motor carrier had heard that detention would be prorated in 15 minute increments. Many of these persons also attended the Surface Committee meeting of the National Defense Transportation Association where SDDC staff and leaders participated in that event. Placing information in the Federal Register requires significant lead time by the agency posting a Notice. Knowing that this subject was pending in the Federal Register, we do not understand why or how such significant changes could have been omitted from the agenda of that timely meeting.

ATA is concerned that the Department of Defense (DoD) imposes onerous detention requirements on carriers. We believe DoD demands more “free time” than any other shipper. Moreover, before detention begins, DoD will have run out more allowed time (no accessorial charge applicable) time than any other shipper. The industry standard is one hour.

Mincing the first hour of chargeable detention into quarters further reduces DoD’s and the shipping facility’s incentive to rid itself of glaring inefficiencies that have plagued the DoD enterprise for decades. This has the effect of protracting current levels of “free time” by allowing an additional 14 minutes. It also begs the question of who is tracking the lapsed time to such a degree. ATA urges DOD not to mince partial hours of chargeable detention into 15-minute segments.

The SDDC response to 22 reads, “The following revisions were made to these items...” ATA requests that these changes to “free time” and detention policies be removed from the new Publication and remanded to the party asking for the changes. Such party has an obligation to submit an informal petition pursuant to the criteria stated above.

#### Comment #23- Expedited service.

Expedited Service appears in the current draft MFTURP as Item 35 and ATA believes it fairly represents the concurrence between SDDC and industry. As such, it provides an option to charge for expedited service either as an additional charge per mile or a percentage increase of the basic transportation charge. The MFTURP rule is a change from the MFTRP but was a negotiated change between SDDC and industry, and

we find that acceptable. ATA is very concerned this subject appears in the Federal Register with new language that deviates from this recently resolved policy. It should not be included in the October 26 issue of the Unified Publication. ATA requests that only the text as found in the current MFTURP and includes both methods of applying charges for expedited service.

\* \* \* \* \*

ATA believes that by remanding the above stated unvetted changes to the party offering them, and requiring transparency through the informal documenting process, SDDC will make great strides in the successful launch of the Unified Publication, as well as changing the culture of how such changes are processed.

If you have any questions concerning these comments, I welcome hearing from you by my office line at (703) 838-1997 or on my cell phone at (703) 328-1476.

Sincerely,

A handwritten signature in cursive script that reads "Bill Wanamaker" followed by a horizontal flourish.

Bill Wanamaker

Director, Government Traffic & Security Operations