

## DEPARTMENT OF DEFENSE

## Department of the Army

**Publication of Revision and Consolidation of Military Freight Traffic Rules Publications (MFTRP) 1C–R (Motor), 10 (Rail), 30 (Barge), 6A (Pipeline), 4A (Tank Truck), Military Standard Tender Instruction Publication (MSTIP) 364D, SpotBid Business Rules, and SDDC Military Class Rate Publication No. 100A to a Consolidation of Procurement Requirements for the Purchase of Commercial Transportation Services into the Military Freight Traffic Unified Rules Publication (MFTURP) NO. 1**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice; correction.

**SUMMARY:** In a notice published in the *Federal Register* on June 9, 2009, (74 FR 27294), comments received from various entities were erroneously omitted. To correct, the remaining comments will be listed below with responses from SDDC. Additionally, a notice published in the *Federal Register* on July 10, 2009, (74, FR 33219) indicated the effective date was no longer July 9, 2009 and that a new effective date would be announced at a later date. The new effective date is listed below.

**DATES:** This publication will be effective October 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dora J. Elias, (757) 878–5379.

**SUPPLEMENTARY INFORMATION:**

Corrections were made to the “Table of Contents” tables for each section to update page numbers and, when warranted, new item or paragraph numbers.

Corrections were made to all SDDC email addresses referenced throughout the publication to acknowledge SDDC’s compliance with the requirement that all agencies utilize a more uniform “.mil” address.

A summary of the comments and SDDC’s responses are as follows:

*Comment one (1):* The “Scope” should read that not every transportation situation can be accounted for and a provision allowing for negotiation with SDDC for clarified requirements and rates.

*Response one (1):* SDDC agrees with revised to read: This publication will not prevent different or additional requirements or terms or conditions to apply for a particular shipment if the TSP, SDDC, and the T.O. all agree to the specific change and the change is not prohibited by statute, regulation, executive order, case-law or other applicable legal authority. In those

instances, SDDC shall negotiate with the TSP to clarify requirements, rates structure, answer questions and resolve discrepancies. The TSP will submit a negotiated 500,000 series tender.

*Comment two (2):* The language in “Publication Update” is very confusing on how a regulation becomes inapplicable, yet govern. Is there not only one applicable rule at any point in time? How can one retreat to a prior rule if a current rule is cancelled?

*Response two (2):* SDDC understands the concern over how we are going to make a carrier comply with a regulatory requirement that is invalid. Added the following language for clarity to section A, page 6:

“Any change that results in a significant effect, significant cost or administrative impact will be published in the *Federal Register* in accordance with 41, U.S.C. § 418. The effective date of the change will be published on the SDDC’s Web site and if a significant change, it will be published in the *Federal Register*. On the effective date, all changes will become effective and bind the TSP. They are incorporated automatically into a carrier’s tender(s) and bills of lading issued from that date forward. TSP not canceling a tender prior to the effective date of the change is considered as concurring and accepting of the change in their tender.”

*Comment three (3):* The sentence in Section A, Part II, Paragraph A.1.a requires legal operating authority for both services “as offered” and “as provided” to DoD.

*Response three (3):* SDDC concurs with commenter and has revised sentence to read:

“TSP must have current valid legal operating authority to provide commercial transportation services as offered and as provided to DoD.”

*Comment four (4):* The sentence in Section A, Part II, Paragraph A.3 should be supplemented to explain how removal from the “program” is accomplished.

*Response four (4):* SDDC agrees and added the following verbiage for clarity to read:

“Terms of the [Freight Carrier Registration Program] will be in effect from the date of approval by SDDC and can only be terminated after removal from program. Removal from program can be accomplished by various means to include, but not limited to, DoD-wide disqualification, self-termination, suspension, and debarment.”

*Comment five (5):* The information presented in Section A, Part II, Paragraph B.4 needs clarification in regards to issuance and acceptance of cargo.

*Response five (5):* SDDC agrees and has added the following revised language:

“All TSP who receive shipment awards shall be required to move and accept cargo under a non-negotiable standardized DOD generated commercial BL that conforms to the Defense Transportation Regulation (DTR) 4500.9R Part II, Cargo Movement, Chapter 206 and the U.S. Federal Bill of Lading Act. A TSP will utilize their own commercial BLs as a substitute document only during times when transportation systems are inoperable, during holiday or weekends when there is no access to transportation offices, or upon approval of SDDC, G9. DOD personnel other than authorized SDDC personnel lack actual or apparent authority to execute or otherwise agree to any TSP commercial BL differing from the DOD standard BOL terms.”

*Comment six (6):* The third sentence of Section A, Part II, Paragraph B.7 and Paragraph C.7 should be revised to ensure TSP are demonstrating how they are not liable for loss or damage to cargo.

*Response six (6):* SDDC agrees with commenter and has revised the third sentence to read as follows:

“To avoid liability for loss and damage to cargo, a TSP must show that it is free from negligence and that the loss or damage was caused solely by an act of God, the public enemy, the shipper, a public authority, or that the damage resulted from the nature of the goods or an inherent vice in the goods.”

*Comment seven (7):* In section A, Part II, Paragraph F, should remedies for non-compliance include any applicable remedies for breach of contract and who is responsible for imposing remedies for non-compliance in each specific mode?

*Response seven (7):* SDDC agrees this could be stated more clearly. Revised paragraph to read as follows:

“A TSP’s, their agent’s, subcontractor’s or employee’s failure to comply with any of the applicable terms and conditions could be a basis for taking administrative or judicial action against the TSP. The following is not an all inclusive list of possible actions:

1. Cancellation of a TSP’s approval to move DOD cargo;
2. Placement in nonuse status;
3. Placement disqualified status;
4. Government-wide debarment or suspension from future procurements;
5. Administrative claims or offsets;
6. Criminal or civil proceedings Before courts of competent jurisdiction.

*Comment eight (8):* In Section A, Part III, Paragraph A, there should be a subparagraph that provides that a TSP cannot certify delivery in PowerTrack until after they receive proof of actual delivery.

*Response eight (8):* Agree a TSP should not invoice POWERTRACK until they receive proof of delivery. SDDC has provided the following language for clarification in Section A, Part III, Paragraph A.3:

“Prior to submitting an invoice (e-bill) the TSP must have proof of delivery such as a

copy of the bill of lading (a signed bill of lading by the destination government representative). If they only have a verbal confirmation from the driver, then the TSP can call the destination verify delivery occurred and the cargo was delivered in good or and condition as proof of delivery.”

*Comment nine (9):* Language contained in the “Alternation of Rates” needs to clarify that Direct Procurement Method (DPM) shipments also do not alternate with Freight All Kinds (FAK) shipments.

*Response nine (9):* SDDC concurs with comment and added language in Section A, Part III, Paragraph D.2 that clarifies the intent of this alternation of rates rule.

“Rates that pertain to a specific commodity, to include DPM commodities 100250 and 100251, will not alternate with FAK rates.”

*Comment ten (10):* Need to add commodity codes for Direct Procurement Method (DPM) shipments to the “Commodity Code” appendix.

*Response ten (10):* SDDC concurs with this request and has added commodity codes 100250 and 100251 to Appendix B, Commodity Codes.

*Comment eleven (11):* Paragraph D.3 of Section A, Part III needs to read the same as the MFTRP 1C–R page 3–2, Item 60. SDDC cannot force TSP to have rates same or cheaper than “any” contractor.

*Response eleven (11):* SDDC agrees with comment and has reverted language for that particular subparagraph to that contained in the current Military Freight Traffic Rules Publication (MFTRP) 1C–R, 2nd Edition. New language reads:

“In no event shall charges submitted under any tender be in excess of charges based on the TSP’s lowest rate available to the general public in either common or contract rates, except 500,000 series tenders, or be in excess of charges based on rates otherwise tendered to the Government by the Contractor for the same type of service.”

*Comment twelve (12):* Under Section A, Part IV, Second Part I, Item 1, there should be more than the ability to remove improper items in a tender. The publication should state that improper items in a tender is inapplicable and of no effect.

*Response twelve (12):* SDDC has no issue with this comment and has revised sentence to read as follows:

“Any Tender that omits any required data containing special annotations or exceptions will be considered inapplicable and have no effect to any contract for carriage. Tenders inadvertently accepted and distributed by SDDC, which are subsequently determined to not meet or comply with the DOD tender filing instructions, or the applicable SDDC

rules and/or rate publication, shall be subject to immediate removal. The issuing TSP will be advised when tenders are removed under these circumstances.”

*Comment thirteen (13):* The proposed publication incorrectly indicates that TSP with questions about Air Mode K, L, and M shipments should contact United States Transportation Command (USTRANSCOM).

*Response thirteen (13):* SDDC agrees and has removed references to submittals of air tenders to Headquarters, USTRANSCOM.

*Comment fourteen (14):* Recommend referencing throughout the publication that brokers, freight-forwarders, shippers agents and associations are prohibited from participating in shipments requiring a Transportation Protective Service (TPS).

*Response fourteen (14):* SDDC concurs and references, when applicable, that brokers, freight forwarders, and logistics companies are prohibited from having any dealings with shipments that require a TPS.

*Comment fifteen (15):* Specifically mention that a separate Standard Carrier Alpha Code (SCAC) for the type of service offered must be used.

*Response fifteen (15):* SDDC concurs with commenter and has added to Section A, Part IV, Specific Instructions for Completing Sections A, B, and C (of the 364 Tender), “Modes”:

“Enter the single character code from the following list that describes the mode of service offered by the tender. For each type of service offered, the TSP must provide a unique SCAC applicable to their authority to operate and for the mode transportation offered. For example, if a TSP offers to provide indirect air carrier and indirect motor carrier service, then they will need at least two SCACs: one for the air and a different SCAC for the motor. If a TSP will only provide motor service under their carrier authority and property freight forwarder authority, then they will also need two SCACs: one for the direct carrier service offered and another SCAC for indirect carrier services offered”

*Comment sixteen (16):* As it now reads, the TSP fills in the applicable rule or portion of the rule publication. This instruction is incomplete. There should be some explanation of how the TSP selects the applicable rule or portion of the rule publication.

*Response sixteen (16):* SDDC agrees and revised wording contained in Section A, Part IV, Part B—General Terms and Conditions on Tender Instructions to read:

“TSP tenders list this publication as the only governing publication. If a TSP lists another governing publication, then any application of that publication if it conflicts with the tender or bill of lading is void.

Additionally, the tender is subject to removal by SDDC as an improper tender.”

*Comment seventeen (17):* In Section A, Part VI, Paragraph D.1, the Carmack defenses may require a TSP to show that it is free from negligence in addition to a specific situation.

*Response seventeen (17):* SDDC agrees and has revised verbiage to read:

“The TSP shall not charge any detention, demurrage or storage charges against any DoD sponsored shipment when the delay is caused by acts or omissions beyond DoD’s, its contractor’s, or its agent’s control.”

*Comment eighteen (18):* In Section A, Part VI, Paragraph F, the proposed rule has coverage for “multi-modal service” defined as transportation by a mode other than the mode used to pick up the shipment. This is different than mode neutral as defined in Public Law 110–417 [Oct 14 2008]. Section 355 (b) is titled “MODE–NEUTRAL APPROACH DEFINED.” For purposes of this Public Law, “the term ‘mode-neutral approach’ means a method of shipment that allows a shipper to choose a carrier with a time-definite performance standard for delivery without specifying a particular mode of conveyance and carrier to select the mode of conveyance using best commercial practices as long as the mode of conveyance can reasonably be expected to ensure the time-definite delivery requested by the shipper.”

*Response eighteen (18):* SDDC concurs that this is not mode neutral. Multimodal is when more than one mode is used to transport the freight. However, this is really mode substitution because of events beyond the TSP’s and shipper’s control that the original mode is not able to transport the cargo. SDDC will change title to “Emergency Mode Substitution” and insert “with TO concurrence” to ensure TSP will provide this service when required. The following language has been inserted for clarity:

“Multi-modal service is transportation of a shipment by a mode (motor, rail, air, water) other than that used to pick up the shipment. This service is to be provided at the option of the TSP, with TO concurrence, when multi-modal service is necessary due to circumstances set forth in paragraph 2 below.”

*Comment nineteen (19):* Returned/Refused/Rejected Shipment changes the formula Transportation Service Providers (TSP) are compensated. Respectfully request that this subparagraph be stricken.

*Response nineteen (19):* SDDC understands the confusion with this new verbiage. In agreement with requestor, SDDC incorporated it under “Reconsignment/Diversion” paragraph.

*Comment twenty (20):* Clarification is needed regarding the phrase “security clearance equal to the commodity being handled.” Is a clearance other than “Secret” needed? May non-driver employees (or contractors/subcontractors) be in process (submitted E-QIP) and have access to information regarding SECRET, PSS or AA&E shipments or not?

*Response twenty (20):* SDDC clarified language so intent of security requirements to remove any confusion. Verbiage now mirrors Defense Transportation Regulation (DTR), Part II, Chapter 205. Removed “security clearance equal to the commodity being handled” and replaced with “SECRET (interim or final).”

*Comment twenty-one (21):* The language for trailer security is missing from the MFTURP.

*Response twenty-one (21):* SDDC agrees and added language currently residing in the MFTRP 1C–R, 2nd edition, Item 329, Hinge and Hasp on Trailers or Containers, which can be found at: <http://www.sddc.army.mil/sddc/Content/Pub/45526/MFTRP1C-R%202nd%20ed%201%20March%2009.pdf>.

*Comment twenty-two (22):* Item 21, Detention: Vehicles with Power Units (DEP) and Item 23 Detention: Vehicles without Power Units (DET) is confusing because it could be interpreted to mean a TSP gets the same charge for an hour of detention as they would receive for a minute of detention. However, it seems the charge should be prorated.

*Response twenty-two (22):* The intent of these Items is for detention time should be based on actual time equipment is detained and charges should be prorated to reflect the actual time of detention. The following revisions were made to these items Item 21, subparagraph 5, 6, and 7 is changed to the following:

5. If loading or unloading extends beyond the allowable free time, then the carrier can assess a detention charge based on a charge of DEP(1)\$\_\_\_\_\_ for each sixty minutes of delay that occurs during normal shipping and receiving hours, which is known as detention time. If the delay is less than sixty minutes or exceeds sixty minutes, then the charge is prorated based on the actual minutes of detention time incurred.

6. Detention time starts when a vehicle is delayed by the shipper, consignor, destination or consignee beyond the allowable free time and ends when the vehicle is released by the shipper, consignor or consignee to either by notifying the driver or the TSP representative that the vehicle is ready for pickup.

7. Detention time only includes the time the vehicle is delayed during normal shipping and receiving hours. If the vehicle

is delayed beyond the shipper's, consignee's or consignor's normal shipping or receiving hours, then the only delay time included in the detention time is the time occurring during normal shipping and receiving hours. Item 23, Detention: Without Power Unit, Paragraph 6:

a. For each of the first and second 24-hour period when the vehicle is detained beyond the free time the detention charge will be DET(1)\$\_\_\_\_\_. If the period is less than an hour but longer than 14 minutes, then that would equate to a fraction of an hour and the charge will be prorated at one fourth of the charge for each 15 minutes of detention incurred. There is no charge for time less than 15 minutes.

b. For each of the third and fourth 24-hour period when the vehicle is detained beyond the free time the detention charge will be DET(1)\$\_\_\_\_\_. If the period is less than an hour but longer than 14 minutes, then that would equate to a fraction of an hour and the charge will be prorated at one fourth of the charge for each 15 minutes of detention incurred. There is no charge for time less than 15 minutes.

c. For each of the fifth and succeeding 24-hour period when the vehicle is detained beyond the free time the detention charge will be DET(1)\$\_\_\_\_\_. If the period is less than an hour but longer than 14 minutes, then that would equate to a fraction of an hour and the charge will be prorated at one fourth of the charge for each 15 minutes of detention incurred. There is no charge for time less than 15 minutes.

*Comment twenty-three (23):* Expedited Service (EXP) does not match current, agreed upon verbiage as listed in the Military Freight Traffic Rules Publication (MFTRP) 1C–R, 2nd Edition.

*Response twenty-three (23):* SDDC agrees and added language currently residing in the MFTRP 1C–R, 2nd edition, Item 110, Expedited Service (EXP), which can be found at: <http://www.sddc.army.mil/sddc/Content/Pub/45526/MFTRP1C-R%202nd%20ed%201%20March%2009.pdf>

*Comment twenty-four (24):* The verbiage in Section B, Item 55, paragraph 2 is confusing.

*Response twenty-four (24):* SDDC agrees and has revised to read:

“Hourly charges shall commence when the TSP's driver reports to shipper/consignee/destination and consignee representative with the proper equipment ordered for loading or unloading, and terminates when driver(s) is/are released by the representative. The pickup and/or delivery time shall be annotated on BL by the representative, the consignor or consignee.”

*Comment twenty-five (25):* Request that clarification of Item 75, Towaway Service, Mode “T” does not alternate with any other carrier tender or rate.

*Response twenty-five (25):* SDDC concurs and makes reference to portion of publication that indicates Mode “T”

for Towaway does not alternate with any other carrier tender or rate.

*Comment twenty-six (26):* There should be an allowance to break seals on dromedaries during emergencies in Section B, Item 97.

*Response twenty-six (26):* SDDC agrees and added language so TSP can break seals during emergencies.

*Comment twenty-seven (27):* It should be clarified what constitutes a “situation” and whether drivers moving shipment with Satellite Monitoring should be required to make emergency contact with SDDC for every “situation.” It is requested that the first sentence in the definition of “EMERGENCY” be stricken.

*Response twenty-seven (27):* SDDC concurs and removed verbiage.

*Comment twenty-eight (28):* Request that the Extra Driver (EXD) accessorial be added to Appendix C, Accessorial Codes.

*Response twenty-eight (28):* SDDC concurs and has added the EXD accessorial to Appendix C.

*Comment twenty-nine (29):* Request that verbiage be added to Appendix D, Definitions, “Transloading” that indicates movements of dromedary equipment.

*Response twenty-nine (29):* SDDC concurs, yet merely refers readers to Item 97, Transloading, for more information.

*Comment thirty (30):* Request that definitions be added for air carrier/air TSP; air freight forwarder; direct air carrier/direct air TSP; Late; Normal Business Hours/Normal Business Day; and Required Delivery Date.

*Response thirty (30):* SDDC non-concurs with adding definitions for air carrier/TSP, air freight forwarder, direct air carrier/TSP because currently, the MFTURP does not govern air transport so there is no need for these definitions at this time.

SDDC did add definitions for Late and Long-Term Lease. The MFTURP already contained definitions for Required Delivery Date and Normal Business Hours so it did not see a reason to add the same verbiage. New definitions are provided below:

“LATE—Unexcused failure to deliver the shipment by the Required Delivery Date (RDD).”

“LONG TERM LEASE—Leasing a company's vehicle to another transportation service provider for a duration of more than 30 days. TSP must abide by lease provisions of 49 CFR, Part 376.”

*Comment thirty-one (31):* Need CIS, DDP, PSS, and TFG listed in Appendix E, Explanation of Abbreviations.

*Response thirty-one (31):* SDDC agrees and has added Constant Surveillance and Custody Service (CIS), Dual Driver Protective Service (DDP), Protective Security Service (PSS), and Transportation Facilities Guide (TFG) in Appendix E.

**Miscellaneous:**

- This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: <http://www.sddc.army.mil/Public/Global%20Cargo%20Distribution/Domestic/Publications/>.

**C.E. Radford, III,**

*Division Chief, G9, Strategic Business Directorate.*

[FR Doc. E9-23174 Filed 9-24-09; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 24, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and

frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 22, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title:* Report of Children and Toddlers Receiving Early Intervention Services in accordance with Part C, Report of Program Settings Where Early Intervention Services are Provided to Children with Disabilities and Their Families in Accordance with Part C; Report on Infants and Toddlers Exiting Part C.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

*Responses:* 56.

*Burden Hours:* 6,569.

*Abstract:* This package provides instructions and forms necessary for States to report the number of children receiving early intervention services under Part C of IDEA, the settings in which these children are provided services, and the reasons by which these children exit Part C of IDEA. The form satisfies reporting requirements and is used to monitor State agencies and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4144. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed

to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-23207 Filed 9-24-09; 8:45 am]

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