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DEPARTMENT OF THE ARMY
HEADQUARTERS, MILITARY TRAFFIC MANAGEMENT COMMAND
200 STOVALL STREET HOFFMAN BUILDING II
ALEXANDRIA VA 22332-5000



December 6, 2001

Office of the
Staff Judge Advocate

Ms. Mary E. Peters
Administrator
Federal Highway Administration
400 7th Street, S.W.
Washington, D.C 20590

FHWA-2002-11819-3

DEPT. OF TRANSPORTATION
02A01-5 (11/1/01)

Dear Ms. Peters

The Military Traffic Management Command, US Army, requests that the FHWA issue an **Emergency Rule** temporarily **designating the use of dromedary equipment by MTMC carriers hauling Class I explosives and/or munitions related security materiel as designated by the US Department of Defense (DOD), for DOD, as specialized equipment.**

As explained in MTMC's petition for relief filed with the FHWA in June 2001, munitions carriers using dromedary equipment to comply with DOT regulations for hauling explosives (49 CFR § 177), are subject to differing individual State laws concerning overall combination length. DOT regulation requires that ammunition fuses be transported separately from the ammunition. The preferred method would transport the fuses in a dromedary box on the tractor, with the rest of the ammunition on the trailer. Unfortunately, loading the fuses on the tractor subjects the truck and semi-trailer combination to individual State laws on overall length. The only other option is to truck the fuses in a separate vehicle, doubling the number of trucks on the road and the number of drivers needed at considerable taxpayer expense, and negatively impacting MTMC's ability to deliver ammunition without mishap or delay. Current military contingencies require the relief now and for the foreseeable future.

Enclosed is suggested wording for the emergency rule, and we propose that it remain in effect for either 12 months from date issued or until final action on the June petition is taken, whichever occurs sooner.

If you have any questions, please call Mr. Gregory Ircink (703) 428-3206.

Sincerely,

William R. Lucas
William R. Lucas
Deputy to the Commander

Enclosure

Proposed Language

(6) Munitions carriers using dromedary equipment. "Dromedary" a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry part of a load when operating in combination with a semitrailer. A truck containing a dromedary box, deck, or plate and operating as part of a truck tractor semitrailer combination is considered to be specialized equipment on the National Network (NN) provided the combination vehicle pulled by the truck tractor containing the dromedary box, deck, or plate is transporting Class 1 explosives and/or any munitions related security material or equipment, as so specified by the United States Department of Defense, for the U.S. Department of Defense. In addition, the designation of "specialized equipment" will apply in transit between the NN and highway terminals, pick-up and delivery points, and other service locations. A State may not prescribe or enforce a regulation imposing a vehicle length limitation of less than 53 feet on a semitrailer operating in a truck tractor-semitrailer combination, and no State shall impose an overall length limitation of less than 75 feet on this type of specialized equipment when the dromedary-equipped truck tractor is transporting Class 1 explosives, and/or any munitions related security material, as so specified by the United States Department of Defense in compliance with 49 CFR § 177

CORRESPONDENCE TRACKING SYSTEM**CONTROL SHEET**

CONTROL NO.: 011211-007-2003

WRITER'S NAME: LUCAS, WILLIAM R

AFFILIATION(S): DEPARTMENT OF THE ARMY
HEADQUARTERS, MILITARY TRAFFIC MANAGEMENT
COMMAND

OTHER WRITER(S) :

ORIGINATOR: FEDERAL AGENCY

ADDRESSED TO: FEDERAL HIGHWAY ADMINISTRATOR

SUBJECT: USE OF DROMEDARY EQUIPMENT BY MTMC CARRIERS
HAULING CLASS ■ EXPLOSIVES

COMMENTS: FOR APPROPRIATE HANDLING

ASSIGNED TO: **TO ORGANIZATION ACTION DATE CHIEF**
COUNSEL ACTION ASSIGNED 12-11-2001

DUE DATE:

DISTRIBUTION:

ANALYST/ PHONE: ROSEMARY ZACCAGNINO / (202) 366-5655



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
901 NORTH STUART STREET
ARLINGTON, VA 22203-1837

June 22, 2001



Regulatory Law Office
U 4043

SUBJECT: Petition For Rulemaking Requesting 23 CFR Sec. 658.13 Be Amended To Include As "Specialized Equipment" Dromedary Equipped Truck Tractor-Semitrailer Combination Equipment Of Munitions Carriers When Transporting Class 1 Explosives For The U.S. Department Of Defense

Administrator
Federal Highway Administration
Attn: Truck Size And Weight Team
Mr. Tom Klimek
400 Seventh Street, SW
Washington, DC 20590

Dear Mr. Klimek:

Enclosed for consideration is the Petition for Rulemaking and supporting Verified Statement of Gregory F. Ircink (in duplicate) requesting that 23 CFR Sec. 658.13 be amended to include as "specialized equipment", dromedary equipped truck tractor semitrailer combination equipment of munitions carriers, when transporting Class 1 Explosives for the U.S. Department Of Defense. As stated therein, this Petition and Verified Statement is filed on behalf of the Department of Defense (DOD) and sets forth: the substance of the amendment proposed; the interest of the Petitioner; and the public interest rationale supporting the action proposed.

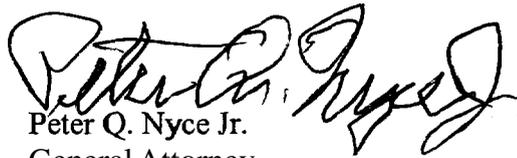
Please direct correspondence concerning this matter to:

Mr. Peter Q. Nyce Jr. and
General Attorney
Regulatory Law Office
US Army Legal Services Agency
901 N. Stuart Street, Suite 700
Arlington, VA 22203-1837

Mr. Gregory F. Ircink
Attorney Advisor
Office of the Staff Judge Advocate
Headquarters, Military Traffic Management
Command (MTMC),
200 Stovall Street, Hoffman II, Room 12N67
Alexandria, VA 22332-5000

Inquiries regarding this filing should be directed to the undersigned at (703) 696-1644. My Fax No is (703) 696-2960. In the event there are questions of a technical **nature** concerning the Verified Statement please feel free to contact Mr. Greg Ircink directly at (703) 428-2115. **His Fax No. is (703) 428-3322.**

Sincerely,



Peter Q. Nyce Jr.
General Attorney

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

_____)	
IN THE MATTER OF)	
)	
THE DEPARTMENT OF ARMY AND)	PETITION FOR RULEMAKING
THE MILITARY TRAFFIC MANAGEMENT)	
COMMAND ON BEHALF OF THE)	
DEPARTMENT OF DEFENSE)	23 CFR 658.13
)	
)	
Petitioners)	
_____)	

PETITION FOR RULEMAKING
TO AMEND 23 CFR 658.13

COMES NOW, the Secretary of *Army*, through duly authorized counsel, on behalf of the United States Department of Defense (DOD), and hereby petitions the Federal Highway Administration to enter into a Rulemaking Proceeding to amend **23 CFR 658.13** to include as “specialized equipment”, dromedary equipped truck tractor-semitrailer combination equipment of munitions carriers, when transporting Class 1 explosives for the **U.S.** Department of Defense.

In support of this request the DOD relies on the attached Verified Statement of Gregory F. Ircink which is incorporated herein by reference as though fully repeated.

WHEREFORE, your Petitioner, the DOD requests that the Federal Highway Administration enter into a Rulemaking Proceeding, and after due consideration of the matters set forth in Mr. Ircink’s Verified Statement:

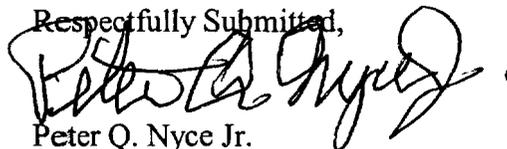
1.) That it amend 23 CFR Sec. 658.13 by inserting as the new 23 CFR Sec.658.13(e)(6),
the following language:

(6) Munitions carriers using dromedary equipment. “Dromedary”, a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry part of a load when operating in combination with a semitrailer. A truck containing a dromedary box, deck, or plate and operating as part of a truck tractor-semitrailer combination is considered to be specialized equipment of the National Network (NN) provided the combination vehicle pulled by the truck tractor containing the dromedary box, deck, or plate is transporting Class 1 explosives and/or any munitions related security material or equipment, as so specified by the United States Department of Defense, for the U.S. Department of Defense. In addition, the designation of “specialized equipment” will apply in transit between the NN and highway terminals, pick-up and delivery points, and other service locations. No State shall impose an overall length limitation of less than 75 feet on this type of specialized equipment when the dromedary-equipped truck tractor is transporting Class 1 explosives, and/or any munitions related security material, as so specified by the United States Department of Defense in compliance with 49 CFR § 177.

2.) That further, as suggested in footnote 45 of the Verified Statement, the DOD also recommends that 23 CFR Sec. 658.13(g) be deleted, and that 23 CFR Sec. 658.13(h) be renumbered 23 CFR Sec. 658.13(g).

3.) That, finally, it grant such other relief as is just and proper in the circumstances.

Respectfully Submitted,



Peter Q. Nyce Jr.
General Attorney
Regulatory Law Office
U.S. Army Legal Services Agency
Department of the Army
901 N. Stuart Street, Suite 713
Arlington, VA 22203-1837
For
THE DEPARTMENT OF DEFENSE

VERIFIED STATEMENT OF GREGORY F. IRCINK

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**VERIFIED STATEMENT
OF
GREGORY F. IRCINK**

My name is Gregory F. Ircink. My business address is Headquarters, Military Traffic Management Command (MTMC), 200 Stovall Street, Hoffman II, Room 12N67, Alexandria, Virginia, 22332-5000. I am an attorney with the Office of the Staff Judge Advocate of the Headquarters, MTMC of the Department of the Army. I have been a member of the Washington State Bar since 1986, and have been in my current position since November 1997. My specialties include contract law and transportation law.

I. INTRODUCTION AND SUMMARY

The responsibility of the MTMC as relates to this Petition is to provide global surface transportation to meet national security objectives in peace and war on behalf of the Department of Defense's (DOD). This Petition addresses an impediment that hinders MTMC's ability to discharge that responsibility. My purpose in filing this Verified Statement is to provide, in narrative form, the background, facts, history, and rationale for the relief requested in the DOD's Petition to the Federal Highway Administration. Specifically, the DOD is requesting 23 CFR Sec. 658.13 be amended to include as "specialized equipment" dromedary equipped truck tractor-semitrailer combination equipment of munitions carriers when transporting Class 1 explosives for the U.S. Department of Defense. In support of this request I offer the following.

II. BACKGROUND

A. Dromedary Operations are Vital to MTMC Munitions Movements

Department of Transportation regulations require Class A and B explosives, such as ammunition shells, to be transported separately from the fuses or detonators (49 CFR § 177.848). The most efficient way for MTMC munitions carriers to comply with this regulation is to use dromedary containers (located on the back of specially designed truck tractors) to carry ammunition-fuses, with the ammunition in the semitrailer. With dromedary equipment, a single shipment of fuses and ammunition requires one vehicle, but without dromedary equipment, the same shipment requires two vehicles. Shipping these non-compatible explosives in the same vehicle combination reduces the number of vehicles needed to transport munitions, increasing readiness and reducing the number of vehicles on the road.

B. MTMC Munitions Carriers are Inadvertently Removed from Surface Transportation Assistance Act

Unfortunately, although the use of dromedary equipment does not necessarily increase the length of the entire truck tractor and semitrailer combinations, the fact that any part of the load is transported on the truck tractor portion of the combination takes the munitions

carrier out of the regulatory scheme established by Congress.¹ There does not appear to be a safety concern behind this result; it occurs **only** because the definition for “**truck tractor and semitrailer combination**” uses the words “noncargo carrying” to distinguish between the tractor and the trailer:

Tractor or Truck Tractor. The noncargo carrying power unit that operates in combination with a semitrailer **or** trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles **may** transport motor vehicles on part of the power unit.²

In other words, the fact that a truck tractor (in a truck tractor and semitrailer combination) has a dromedary does not remove the truck tractor and semitrailer combination from the operation of 23 CFR § 658; it is only when cargo **is** placed in the dromedary container that the provision at 23 CFR § 658.5 comes into play because the tractor or truck tractor is no longer considered “noncargo carrying.”

C. Individual States are Hindering MTMC Operations

Typically states have no authority to restrict the **length of** truck tractor and semitrailer combinations on the National Network for **purposes** of setting vehicle length restrictions. This is, however, a consequence of the protection **of** the Surface Transportation Assistance Act (STAA) which **is** implemented by 23 CFR § 658. Because the definition of “tractor or truck tractor³ appears to exclude dromedary equipment, states have **begun** issuing overlength citations to munitions carriers using dromedaries.⁴ The citing state trooper determines that the dromedary box (carrying ammunition fuses) changes the status of the tractor from “nonload bearing” to “load bearing,” bringing the entire vehicle combination within state (as opposed to federal) jurisdiction for overlength **purposes**. While the munitions carrier’s equipment can exceed the 55’ and 65’ authorized by most states (because of the STAA), once the trooper determines that the fuses in the dromedary box makes the truck a “cargo carrying” vehicle, **an** overlength citation is issued.

D. MTMC Munitions Carriers Face a Patchwork of State Regulation

Without the protection of the S T M munitions carriers are subject to each state’s regulatory schemes. Some states have limits consistent with the limits needed by MTMC

¹ Surface Transportation Assistance Act of 1982 (STAA), (49 USC 3111, formerly 49 USC App. 2311(f)(1)).

² 23 CFR § 658.5. It is interesting that the drafter **of** the regulation recognized that the description would have an unintended consequence for automobile transporters; it is this unintended consequence that now impedes MTMC and its munitions carriers.

³ 23 CFR § 658.5.

⁴ **As** is explained below, the precursor to the Federal Motor Carrier Safety Administration (FMCSA) has attempted to solve this problem by approaching each individual state. Unfortunately, the same states that stopped issuing citations in the early **1990s** are beginning **to** issue the citations again.

munitions carriers;’ some states do not give fines for **overlength**;⁶ and some states fluctuate between fining and not fining for **overlength**.⁷ Some states that previously issued fines have been approached by the MTMC munitions carriers individually and persuaded to pass special legislation granting them relief.’

111. IMPACT ON MTMC OPERATIONS

A. Dromedary Equipment Allows Safer Transportation of Explosives

The spate of stops and heavy fines levied at the state level against MTMC munitions carriers using dromedary-type equipment to haul ammunition and ammunition-fuses (with dromedary-type equipment) negatively impacts MTMC’s ability to transport ammunition in peacetime or contingencies, impacting not only MTMC and its munitions carriers, but also the public at large. Using dromedary equipment **to** transport ammunition in compliance with **49 CFR § 177.848** is safer than the alternative while enhancing readiness. Without the use of dromedary equipment **the** munitions carriers must use two separate vehicles, doubling the chances that one of **the two** ammunition or ammunition-fuse laden vehicles will get into an accident. It benefits MTMC, the affected states, and the general public when MTMC is able to reduce by one-half the number of vehicles necessary to move the same amount of cargo on the US’s increasingly congested highways. And again, the use of the dromedary equipment does not necessarily increase the length of the truck tractor **and** semitrailer combination.

B. Dromedary Equipment Helps Alleviate Growing Shortage of Drivers

A growing shortage of truck drivers negatively **impacting** the entire trucking industry is especially troublesome for MTMC and its munitions carriers. As illustrated in the MTMC Freight Traffic Rules Publication No. **1B** (MFTRP NO. **1B**) truck drivers qualified to haul ammunition must meet heightened requirements.’ Even with the use of dromedaries MTMC’s ability to transport ammunition has been compromised with an

⁵ MTMC munitions carriers need **75’**. The states whose **laws** already allow this length include Alaska, Idaho, Minnesota, Montana, North Dakota, Oregon, South Dakota, Washington and Wyoming. **The** group of states here and in following footnotes is not a complete list.

⁶ But this does not mean that these states will not begin writing tickets in the **future**. These states include Alabama, Delaware, the District of Columbia, Georgia, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Texas, Vermont, and Wisconsin.

⁷ These states include West Virginia, Illinois, and Virginia..

⁸ These states include California, Colorado, Connecticut, Maryland, Missouri and Utah.

⁹ “3. For carriers cleared to handle SECRET shipments, the rules contained in the Industrial Security Manual (Para 8, DOD 5220.22-M and Paragraph **11.A** (10), Section 111, DOD 5220.22-C) shall apply” (MFTRP No. 1B, Item 31 “DOD Driver Identification Requirements”). When dual driver service is requested (which is common with explosives) these requirements must be met **by** both drivers (MFTRP No. 1B, Item 35 “Dual Driver Protective Service”; Item 40 “Protective Security Service”): This means, of course, that without the ability to use dromedary equipment to transport the ammunition and ammunition-fuses, the munitions carrier would be required to provide *four* highly qualified drivers.

obvious impact to the Nation's readiness;" removal of the use of dromedaries would further exacerbate this serious situation.

C. Prohibiting Dromedary Equipment Negatively Impacts Military Readiness

While 49 USC § 177 requires the separation of ammunition from its fuses, it does not necessarily require that the two be transported in separate vehicles. Separation of ammunition from its ammunition-fuses during the transportation phase can easily frustrate bringing the two back together with an obvious impact to readiness and National Security. Any delay of mission-critical equipment during transportation from origin to ultimate destination can have disastrous impacts, and doubling the vehicles carrying the cargo doubles the chance of delay or misrouting. Sufficient delay of one of the two vehicles en route will cause one, but not both, of the two vehicles to miss the next transportation link (rail or ocean), greatly complicating the stowage or transportation plans. Additionally, reassembling the ammunition and fuse package at destination will be very difficult following the separation. And because one part of the total package is useless without the other, any delay of one of the two vehicles will complicate the already urgent circumstance of a contingency by requiring a receiving military unit to search for a delayed or missing shipment. MTMC recognizes the importance of shipping the two parts of the total package together; MTMC rules expressly envision the use of dromedary equipment.' There is no clearer example of failure to support the soldiers in the field than delaying or preventing the delivery of either ammunition or fuses in a timely manner during any operation, exercise or contingency. Munitions carriers' use of dromedary equipment ensures that negative readiness impacts are not caused by forcing the transportation of fuses in a separate vehicle.

IV. HISTORY OF EFFORTS TO OBTAIN RELIEF

A. Petition to the Federal Highway Administration

Members of the munitions carrier industry petitioned the Department of Transportation's Office of Motor Carriers¹² during the Desert Shield build-up to the Desert Storm portion of the Southwest Asia campaign to remove the grandfathered limit on the special

¹⁰ Contingency models constructed by MTOP confirm that there will be a shortfall in the number of qualified munitions carriers drivers available during the next contingency; it is only a question of how large the shortage will be.

¹¹ MFTRP NO. 1B, Item 105 "Exclusive Use Of Vehicle Or Dromedary;" Item 106 "Exceptions To Exclusive Use Service;" Item 328, "Dromedary Boxes;" and Item 1010, "Definitions." This creates the real possibility that MTMC will penalize or remove from consideration any carrier failing to provide dromedary equipment, but upon providing the dromedary equipment the carrier will be fined and required to appear in state court for violating state overdimensional laws (that would not apply to the MTMC munitions carrier but for MTMC's requirement to use dromedaries).

¹² The OMC, precursor to the FMCSA, was within the Federal Highway Administration; the OMC has since been stripped out of the FHWA and placed directly under the DOT Secretary as the FMCSA, H.R. 3419, Motor Carrier Safety Improvement Act of 1999 (Enrolled Bill).

equipment designation.¹³ This would have extended the prohibition against the states imposing an overall length limit on a combination vehicle consisting of a truck tractor equipped with a dromedary box (so long as the dromedary box, deck or plate was not more than **65** inches in length). In response the DOT granted **an** emergency rule during Desert Storm (the rule expired six months later) and solicited public comment on further extension of the designation. Despite the fact that it received little or no public comment, the DOT refused to extend the specialized equipment designation longer than the six **months**.¹⁴ Later a single munitions carrier¹⁵ contacted the DOT concerning the problem, and was told by Dr. Larson, FHWA **Administrator**¹⁶ that the FHWA was still considering the original petition” and would respond once a decision **was** made. The response back to Boyle Transportation came by way of the United States Transportation Command (USTC):¹⁸ “... Mr Tom Larsen, [*sic*]concluded that it would be inconsistent with the principles of federalism” to use the agency’s **authority** to preempt so few states when so many have shown a willingness to accommodate the special needs of the **carriers**.²⁰ Several months later the request for special designation was repeated, this time from the Office of the Assistant Secretary of Defense, Director of Transportation Policy.” **There** is no evidence that the FHWA responded to this request.

B. Inadequacy of the Local State Approach

The current state-by-state approach to dromedary exemptions that alternately allows, and then disallows, dromedary equipment negatively impacts the logistic planning of hauling ammunition throughout the United States. History shows that some of the states that voluntarily refrained from imposing fines (after being approached informally by the DOT following the Gulf **War**) have gone back to imposing fines. In addition, even after the individual states draft remedial legislation MTMC munitions carriers face a barrier imposed by the inconsistencies between the individual state laws. While MTMC munitions carriers have been able to obtain legislative changes on a state-by-state basis,

¹³ 23 CFR § 658.13 “(g) A truck tractor containing a dromedary box, deck, or plate in legal operation on December 1, **1982**, shall be permitted to continue to operate, notwithstanding its cargo carrying capacity, throughout its useful life. Proof of such legal operation on December 1, **1982**, shall rest upon the operator of the equipment.” All equipment falling within this exception has long since been retired.

¹⁴ According to Tom Klimek of the OMC the request was denied in the hopes that the problem could be solved at the local, state, level, without resorting to a nation-wide solution; telephone conversation with Greg Ircink, MTJA, October, **1999**.

¹⁵ T. F. Boyle Transportation, Inc., a member of the now defunct North American Transportation Consultants (NATC) that had originally petitioned the DOT in **1990**.

¹⁶ Appendix B.

¹⁷ NATC petition from **1990**.

¹⁸ Appendix C.

¹⁹ Executive Order **212612** –Federalism, October **26, 1987** “(g) Acts of the national government – whether legislative, executive, or judicial in nature – that exceed **the** enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.” E.O. **212612** has been superceded by E.O. **13132** – Federalism, August **4, 1999**.

²⁰ The letter repeated FHWA’s desire to handle the issue by way of exception: “We have been reassured by the Deputy Secretary of Transportation that, if necessary, the Department of Transportation will exempt Department of Defense munitions carriers from state length limits in time of national emergency.”

²¹ Mr. Robert H. Moore, Appendix D.

the result is little better than before.²² Each state approaches the issue differently, meaning that what passes one state's dromedary or length regulations may not pass in another state. For example, California Vehicle Code § 655(b) grants an exemption to any MTMC munitions carrier using a dromedary "exclusively for the transportation of explosives or munitions-related security material, as specified by the United States Department of Defense," but Maryland Code § 24-104.1(J-1) limits its DOD exemption to semitrailer's that are less than 48', a restriction not shared by the California exemption. Consequently, even with state remedial action MTMC's munitions carriers are forced to route ammunition movements not according to MTMC's direct routing requirement, or even time or road limitations, but instead around a bewildering patchwork of state dromedary requirements. This results in waste, confusion, and unnecessary MTMC mission degradation, which was the exact situation facing all carriers prior to 1982 when the states set different maximum length and weight restrictions for truck tractor and semitrailer combinations, creating a barrier to seamless transcontinental operation. For the vast majority of the Nation's truckers this barrier no longer exists because Congress enacted legislation in 1982²³ that ordered states to permit semitrailers of at least 48 feet in length. Unfortunately, when a MTMC munitions carrier uses dromedary equipment to comply with 49 CFR § 177, it drops back into the same pre-1982 regulatory quagmire (even though the length of the semitrailer hasn't changed) but with one important difference – MTMC munitions carriers transport the means by which the DOD defends the Nation.

C. The Local Approach Negatively Impacts MTMC Operations

The previously announced FHWA preferred approach (to allow local action to resolve the problem, with reliance on temporary emergency rules in times of contingency)" assumes facts that do not exist and does not take into account changes that have affected the MTMC munitions carriers. As a result, FHWA's inaction is eroding MTMC's readiness at an ever-increasing rate.

1. Reliance on an Emergency Rule Would Provide Untimely Relief

An emergency rule could be issued in time to help MTMC transport ammunition to meet an exigent circumstance. MTMC and its munitions carriers must react rapidly, meaning there will be insufficient time to identify the problem, petition FMCSA or DOT for the emergency rule, and then have the DOT put the rule in place. The example of how this would work, the emergency rule it granted for Desert Storm,²⁵ perfectly illustrates the problem. The emergency rule in that case was effective January 30, 1991 – long after the air campaign had begun. The emergency rule was obviously useless for the tons of ammunition shipped months earlier in preparation for the air campaign.

²² And very expensive to the carriers who have been petitioning the various state legislatures one-by-one.

²³ Surface Transportation Assistance Act of 1982 (STAA), (49 USC 31111, formerly 49 USC App. 2311(f)(1)).

²⁴ Lieutenant General Dane Starling, Appendix C.

²⁵ Appendix A.

2. MTMC Needs Permanent, **Not** Temporary Relief

The bulk of DOD's operations are no longer the large, high-visibility contingencies like Southeast Asia and Operation Desert Storm; operations tempo has increased by **300%** since the Emergency Rule at Appendix **A** was published, and the bulk of that increase reflects smaller, no-notice contingencies that occur at a much higher frequency (such as the ongoing deployments of constant monitoring in Iraq and Kosovo, and operations in South America, Haiti, and Somalia). **It** is unlikely that any of these contingencies alone could generate the high-visibility public interest that Desert Shield generated prior to the Gulf War, which caused the granting of the Emergency Rule in that case. There **is** a constant need for the requested relief for contingencies and exercises, a need not met by relying on sporadically granted emergency rules (the last being granted about a decade ago).

3. Dromedary Equipment Will **Disappear Without** Permanent Relief

An emergency rule allowing dromedary equipment is effective only if the munitions carriers have dromedary equipment available. But **as** recognized by Dr. Larson, FHWA Administrator, state restrictions on the **use** of dromedary equipment makes the equipment useless, resulting in carriers phasing the equipment out **of** their inventory.” MTMC munitions carriers would not be able to afford the acquisition and maintenance **of** dromedary equipment without the ability to use the equipment **on a regular** basis; **as a** result, granting emergency relief **for** a contingency would be meaningless if the munitions carriers no longer have **the** equipment.

4. Local State Relief is Less, Not More. Effective than National Relief

Any initial success the FHWA achieved at the local state level **has** been reversed and is going in the wrong direction. MTMC munitions carriers are being stopped in more states; the fines imposed, always high, are becoming excessive. Several MTMC munitions carriers²⁷ were asked by MTMC's Ruby Ward²⁸ to provide their history of fines assessed by individual states when using dromedary equipment to haul ammunition and fuses. Three of those carriers have paid combined fines of \$12,497.00 over the last three years.²⁹ Few states were concerned with the issue of “overlength” dromedary units when the FHWA sought to rely on local efforts in 1991; since then states that never appeared

²⁶ “... [Absence of permanent relief] allow[s] an orderly phasing out should such vehicles encounter State restrictions severely limiting their utility.” Appendix B.

²⁷ Boyle Transportation, Billerica, Massachusetts; **TRISM**, Kennesaw, Georgia; and R&R Trucking, Incorporated, Duenweg, Missouri.

²⁸ MTOP-JGB. The results are found at Tables 1 – 3.

²⁹ A number of the fines were from Missouri, which typically gave notice of a court date (as opposed to a fine amount). Numerous Missouri fines, however, showed that the amount ultimately given was \$73.00, which was used to arrive at the total figure. All the fines from these three carriers came from California, Iowa, Maryland, Missouri, Tennessee and West Virginia. Further discussion with the carriers confirmed that while the drivers paid fines (rather than appearing in court) whenever possible, that occasionally the driver did have to return to the state for a court appearance.

concerned about the issue are issuing **fines**.³⁰ The latest state to begin issuing fines is Florida, with each fine in excess of \$1,000.³¹ To fill the gap left by inaction at the federal level the individual munitions carriers have been approaching each state individually in order to effect the desired changes. Predictably, they concentrated their legislative relief efforts on the states levying the heaviest fines, which has resulted in legislative relief in California, Maryland, Colorado, Connecticut, Massachusetts, Missouri and **Utah**.³² This “remedy” is, however, impractical in that the effort **is** extremely expensive and time-consuming for the **carriers**³³ and results in a patchwork **of** length and dromedary restrictions which the drivers must negotiate with their loads as they transport ammunition across the country for the DOD.

V. “SPECIALIZED EQUIPMENT” DESIGNATION IS PROPER RELIEF

A. MTMC is No Less Deserving of Relief than **Prior** Applicants

Examples of prior cases where relief, similar to that now sought by MTMC, was granted illustrates that the bar may not be set too **high**.³⁴ 23 CFR § 658 already grants “specialized equipment” designation to two types **of** carriers – haulers **of** automobiles and luxury **boats**.³⁵ The exclusive benefit gained by those **two** industries (when FHWA changed its regulations in their favor) was economic efficiency. This benefit – economic efficiency -- must be compared to the benefits MTMC’s requested change would bring to both MTMC and the general public -- safety and mission readiness. In addition, it should be noted that the relief granted to the boat and auto haulers allowed them to transport on one truck tractor and semitrailer combination a load whose weight and dimensions would otherwise have required transportation on two combinations; that is not the case with MTMC’s request. MTMC is asking that a dromedary be allowed to move on one truck tractor and semitrailer combination a load of ammunition and fuses whose weight and dimensions would easily be carried on the same truck tractor and semitrailer combination, but are required to be separate by 49 CFR § 177.848.

B. Federalism Does Not **Bar** Requested Relief

As mentioned above, the **FHWA** declined to grant **an** earlier similar request **on** the grounds that it was inconsistent with the principles of **federalism**.³⁶ While MTMC does

³⁰ Apparently seminars attended by state highway regulators are highlighting the issue; it is unclear whether the fines are seen as enforcement of true safety concern or as revenue generators; telephone conversation between Tom Boyle, president of T. F. Boyle Transportation, Inc. and Greg Ircink, MTJA, December, 1999.

³¹ Telephone conversation between David Lambert, R & R Trucking, Incorporated and Greg **Ircink**, MTJA, August 2000.

³² Missouri and Maryland imposed the bulk of the fines in the \$12,497.00 figure cited above.

³³ The few number of states that have taken action are the result of years of persistent work on the part of the munitions carriers.

³⁴ Despite the fact that this is the fourth time either the DOD or munitions carriers have made requests similar to his one.

³⁵ 23 CFR § 658.13 Length (e) Specialized equipment, (1) Automobile transporters and (2) **Boat** transporters.

³⁶ Appendix C.

not argue that the FHWA's decision on that ground in 1993 **was** wrong, it does argue that federalism is no longer a legitimate reason to deny the request. The Executive Order directing Agencies to consider federalism in effect in 1992³⁷ has been superseded by E.O. 13132.³⁸ Both Executive Orders direct that:

National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light **of** the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other **means**.³⁹

It is possible that the required consultation has already taken place, in the form of the "local approach" adopted by the FHWA following the expiration of the Desert Shield/Storm Emergency Rule. If local governments originally understood **why** MTMC's munitions carriers required unhindered dromedary equipment, they have forgotten. The local accommodation that state consultation could provide has been tried since 1991, its failure proves the case for a uniform nationwide policy. Even in the event that some **of** the states would object to their being prevented **from** stopping MTMC munitions carriers from safely and efficiently transporting ammunition through their jurisdiction (opting instead for a doubling **of** the vehicles necessary to do so) **the** FMCSA should extend the requested relief to MTMC for the reasons utilized in granting the request for car and boat carriers. In addition, public comment on this exact issue has already been **elicited**,⁴⁰ and no comment was received. And finally, Congress's enacting the Surface Transportation Assistance Act **of** 1982 clearly reveals **an** intention **to** legislate a federal maximum length limit on the National Network that displaces the states from the field – and it is this federal maximum length limit that **must** be allowed for MTMC munitions carriers, even when using dromedary equipment. There clearly is constitutional and statutory authority for the FHWA to make national policy in this case.⁴¹

Acting pursuant to its constitutional power to regulate commerce among states Article I, section 8 of the Constitution, Congress has on occasion enacted laws that directly affect use of the national **network** of highways commonly referred to as interstate highways. *New York State Motor Truck Association v. City of New York*, 654 F.Supp. 1521 (S.D.N.Y. 1987), affirmed 833 F.2d 430 (1987).⁴²

The above case is illustrative of how the federalism question was approached **in an** earlier judicial review:

³⁷ 212612 – Federalism, 52 F.R. 41685, October 26, 1987.

³⁸ E.O. 13132 – Federalism, August 4, 1999.

³⁹ E.O. 13132, § 2 (b).

⁴⁰ In the public comment request contained in Appendix A.

⁴¹ At a minimum, the existence of 49 USC § 31111 evidences Congress' preemption of the field.

⁴² *N.H. Motor Transport, et al. v. Town of Plaistow*, 881 F. Supp. 695,701, 1994 U.S. Dist. LEXIS 14838; 25 ELR 21354. - (D.N.H. 1994).

In *New York State Motor Truck Association, supra*, the City of New York sought to restrict use of tandem trailers on city interstate highways to certain hours of the day. The court, in granting a preliminary injunction noted that:

“If New York State (or New York City) possess the power to limit federally approved tandems’ use of Interstate highways within their borders, then other adjoining states, in this case New Jersey and Connecticut, would possess similar powers to limit the hours of operation of tandems on interstate highways within their borders. The potential for paralysis of federally approved tandems is manifest.”⁴³

MTMC faces the potential paralysis feared by the above court. In the above case the question involved tandems; MTMC’s request involves dromedary equipment (the use of which is expressly contemplated in its traffic rules and was at one time permitted by DOT regulation).⁴⁴ FMCSA’s federalism review will reveal that the hoped for local approach envisioned in 1991 and 1992 is not effective – it was during the attempted local approach that MTMC’s mission has been impacted. The preconditions relied upon by Dr. Larson in his previous determination – that few states are stopping dromedary equipment and that a local solution solves the problem – is not true anymore. The fluid movement of ammunition in the Nation’s defense requires a nationwide policy, which by definition defies local policymaking. More states, not less, are throwing up roadblocks. As mentioned above, even those states granting relief may create a patchwork of regimes due to different ways of handling the issue. Both readiness and public safety is negatively impacted if MTMC munitions carriers are forced to wind their way along a circuitous route, fully-loaded with high explosives, in order to use dromedary equipment. The paralysis feared by the federal court in *New York State Motor Truck Association*, above, is increasingly likely, but easily avoidable by granting the requested relief.

VI. SUGGESTED RELIEF – “SPECIALIZED EQUIPMENT” DESIGNATION

MTMC’s munitions carriers must be allowed protection under the Surface Transportation Assistance Act of 1982 even when using dromedary equipment to separate fuses from ammunition. The munitions carriers must be allowed to use dromedary equipment when transporting explosives, munitions, and/or any related security material or equipment, as so specified by the United States Department of Defense, relief that was previously provided for equipment in use in 1982, and then again for six months in 1991. The following language should be inserted as the new 23 CFR § 658.13 (e)(6):

(6) Munitions carriers using dromedary equipment. “Dromedary”, a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry part of a load when operating in combination with a semitrailer. A truck containing a dromedary box, deck, or plate and operating as part of a truck tractor semitrailer combination is considered to be specialized equipment on the National Network (NN) provided the combination vehicle pulled by the truck tractor containing the dromedary box, deck, or plate is

⁴³ *New Hampshire Motor Transport, supra* at 701-02.

⁴⁴ And which is apparently intended to be allowed again, albeit on a temporary basis.

transporting Class 1 explosives and/or any munitions related security material or equipment, as so specified by the United States Department of Defense, for the U.S. Department of Defense. In addition, the designation of "specialized equipment" will apply in transit between the **NN** and highway terminals, pick-up and delivery points, and other service locations. No State shall impose an overall length limitation of less than 75 feet on this type of specialized equipment when the dromedary-equipped truck tractor is transporting Class 1 explosives, and/or any munitions related security material, as so specified by the United States Department of Defense in compliance with 49 CFR § 177.⁴⁵

This change is the only way to ensure continued efficient and safe day-to-day operations and contingency response by MTMC munitions carriers.

Verification

I, Gregory F. Ircink, declare under penalty of perjury that the foregoing statement is true and correct and that I am qualified and authorized to file this statement. Executed on June 21, 2001.


Gregory F. Ircink, GS-13
Attorney-Adviser
Military Traffic Management Command

Commonwealth of Virginia
County of Fairfax

Subscribed and sworn before me this 21st day of June, 2001 by Gregory F. Ircink


Pamela S. Branstetter
Notary Public
My Commission expires June 30, 2001

⁴⁵ In addition, it is recommended that 23 CFR § 658.13 (g) be deleted, and that 23 CFR § 658.13 (h) be renumbered 23 CFR § 658.13 (g).

TRISM				
Date	State	Violation	Description	Fine
2000				
30-Nov-00	Iowa	IAC 321.457	exceeding 55'	\$47.50
27-Mar-00	Missouri	MO 304.170	exceeding 65'	Court Date
20-Apr-00	Missouri	MO 304.170	exceeding 65'	Court Date
				\$193.50
1999				
17-Sep-99	Maryland	24-104.1J	exceeding 55'	\$120.00
5-Jan-99	Maryland	24-104.1J	exceeding 55'	\$120.00
14-Jan-99	Maryland	24-104.1J	exceeding 55'	\$120.00
22-Jan-99	Iowa	IAC 321.457	exceeding 55'	\$47.50
2-Mar-99	Maryland	24-104.1J	exceeding 55'	\$120.00
5-Mar-99	Maryland	24-104.1J	exceeding 55'	\$120.00
10-Mar-99	Maryland	24-104.1J	exceeding 55'	\$120.00
7-Apr-99	Maryland	24-104.1J	exceeding 55'	\$120.00
7-Apr-99	Maryland	24-104.1J	exceeding 55'	\$120.00
12-Apr-99	Maryland	24-104.1J	exceeding 55'	\$120.00
20-Apr-99	Maryland	24-104.1J	exceeding 55'	\$120.00
5-May-99	Maryland	24-104.1J	exceeding 55'	\$120.00
6-May-99	Missouri	MO 304.170	exceeding 65'	Court Date
19-May-99	Maryland	24-104.1J	exceeding 55'	\$120.00
20-May-99	Maryland	24-104.1J	exceeding 55'	\$120.00
3-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
4-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
8-Jun-99	Missouri	MO 304.170	exceeding 65'	Court Date
9-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
11-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
8-Jul-99	Missouri	MO 304.170	exceeding 65'	Court Date
9-Jul-99	Missouri	MO 304.170	exceeding 65'	\$73.00
12-Jul-99	Maryland	24-104.1J	exceeding 55'	\$120.00
13-Jul-99	Maryland	24-104.1J	exceeding 55'	\$120.00
15-Jul-99	Iowa	IAC 321.457	exceeding 55'	\$47.50
22-Jul-99	Maryland	24-104.1J	exceeding 55'	\$120.00
28-Jul-99	Missouri	MO 304.170	exceeding 65'	Court Date
30-Jul-99	Missouri	MO 304.170	exceeding 65'	Court Date
3-Aug-99	Maryland	24-104.1J	exceeding 55'	\$120.00
5-Aug-99	Maryland	24-104.1J	exceeding 55'	\$120.00
9-Aug-99	Missouri	MO 304.170	exceeding 65'	Court Date
16-Aug-99	Maryland	24-104.1J	exceeding 55'	\$120.00
16-Aug-99	Missouri	MO 304.170	exceeding 65'	Court Date
23-Aug-99	Missouri	MO 304.170	exceeding 65'	Court Date
29-Aug-99	Missouri	MO 304.170	exceeding 65'	Court Date
30-Aug-99	Maryland	24-104.1J	exceeding 55'	\$120.00
1-Sep-99	Iowa	IAC 321.457	exceeding 55'	\$47.50
3-Sep-99	Missouri	MO 304.170	exceeding 65'	Court Date
7-Sep-99	Missouri	MO 304.170	exceeding 65'	Court Date
8-Sep-99	Missouri	MO 304.170	exceeding 65'	Court Date
11-Sep-99	Missouri	MO 304.170	exceeding 65'	\$73.00
13-Sep-99	Maryland	24-104.1J	exceeding 55'	\$120.00
13-Sep-99	Missouri	MO 304.170	exceeding 65'	Court Date

14-Sep-99	Missouri	MO 304.170	exceeding 65'	\$73.00
16-Sep-99	Missouri	MO 304.170	exceeding 65'	Court Date
19-Sep-99	Maryland	24-104.1J	exceeding 55'	\$120.00
28-Sep-99	Missouri	MO 304.170	exceeding 65'	Court Date
3-Oct-99	Missouri	MO 304.170	exceeding 65'	\$73.00
16-Oct-99	Missouri	MO 304.170	exceeding 65'	Court Date
26-Oct-99	Missouri	MO 304.170	exceeding 65'	Court Date
2-Nov-99	Missouri	MO 304.170	exceeding 65'	Court Date
12-Nov-99	Missouri	MO 304.170	exceeding 65'	Court Date
29-Nov-99	Missouri	MO 304.170	exceeding 65'	Court Date
6-Dec-99	Missouri	MO 304.170	exceeding 65'	Court Date
14-Dec-99	Missouri	MO 304.170	exceeding 65'	\$73.00
15-Dec-99	Missouri	MO 304.170	exceeding 65'	Court Date
22-Dec-99	Missouri	MO 304.170	exceeding 65'	Court Date
				\$5,305
1998				
7-Jan-98	Maryland	24-104.1J	exceeding 55'	\$120.00
9-Jan-98	Maryland	24-104.1J	exceeding 55'	\$120.00
14-Jan-98	Maryland	24-104.1J	exceeding 55'	\$120.00
6-Feb-98	Maryland	24-104.1J	exceeding 55'	\$120.00
16-Feb-98	Maryland	24-104.1J	exceeding 55'	\$120.00
7-Mar-98	Maryland	24-104.1J	exceeding 55'	\$120.00
9-Mar-98	Maryland	24-104.1J	exceeding 55'	\$120.00
9-Mar-98	Maryland	24-104.1J	exceeding 55'	\$120.00
20-Mar-98	Maryland	24-104.1J	exceeding 55'	\$120.00
23-Mar-98	Maryland	24-104.1J	exceeding 55'	\$120.00
25-Mar-98	Maryland	24-104.1J	exceeding 55'	\$120.00
7-Apr-98	Maryland	24-104.1J	exceeding 55'	\$120.00
5-May-98	Maryland	24-104.1J	exceeding 55'	\$120.00
14-May-98	Maryland	24-104.1J	exceeding 55'	\$120.00
18-May-98	Maryland	24-104.1J	exceeding 55'	\$120.00
2-Jun-98	Maryland	24-104.1J	exceeding 55'	\$120.00
			exceeding 55'	\$120.00
2-Jul-98	Maryland	24-104.1J	exceeding 55'	\$120.00
6-Jul-98	Maryland	24-104.1J	exceeding 55'	\$120.00
27-Jul-98	Maryland	24-104.1J	exceeding 55'	\$120.00
3-Aug-98	Maryland	24-104.1J	exceeding 55'	\$120.00
7-Oct-98	Maryland	24-104.1J	exceeding 55'	\$120.00
12-Nov-98	Maryland	24-104.1J	exceeding 55'	\$120.00
19-Nov-98	Maryland	24-104.1J	exceeding 55'	\$120.00
1-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
2-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
3-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
15-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
15-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
16-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
17-Dec-98	Maryland	24-104.1J	exceeding 55'	\$120.00
8-Jan-99	Maryland	24-104.1J	exceeding 55'	\$120.00
				\$3,840
			total fines:	\$9,338.50

R & R Trucking, Incorporated		orated		
Date	State	Violation	Description	Fine
21-Apr-98	Maryland	24-104.1J	exceeding 55'	\$120.00
29-Sep-98	Maryland	24-104.1J	exceeding 55'	\$120.00
8-Feb-99	Maryland	24-104.1J	exceeding 55'	\$120.00
28-Apr-99	Maryland	24-104.1J	exceeding 55'	\$120.00
1-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
1-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
23-Jun-99	Maryland	24-104.1J	exceeding 55'	\$120.00
4-Aug-99	Maryland	24-104.1J	exceeding 55'	\$120.00
31-Aug-99	Maryland	24-104.1J	exceeding 55'	\$120.00
4-Jun-98	Iowa	IAC 321.457	exceeding 55'	\$47.50
22-Mar-00	Iowa	IAC 321.457	exceeding 55'	\$47.50
14-Aug-00	Iowa	IAC 321.457	exceeding 55'	\$47.50
25-Sep-00	Iowa	IAC 321.457	exceeding 55'	Court Date
29-Sep-00	Iowa	IAC 321.457	exceeding 55'	\$47.50
20-Aug-99	Missouri	MO 304.170	exceeding 65'	\$73.00
illegible	Missouri	MO 304.170	exceeding 65'	Court Date
10-Mar-00	Missouri	MO 304.170	exceeding 65'	Court Date
3-Mar-99	California	CA 35401	exceeding 65'	Court Date
16-Feb-00	California	CA 35401	exceeding 65'	Court Date
23-Oct-00	Tennessee	CA 55-7.201	overlength	\$148.00
25-Jul-00	West Virginia	WV 17C-17-11	overlength	Court Date
			total fines:	\$1,929.00

Boyle Transportation

Date	State	Violation	Description	Fine
27-May-99	Missouri	MO 304.170	exceeded 65'	Court Date
7-Jul-99	Missouri	MO 304.170	exceeded 65'	Court Date
11-Sep-99	Missouri	MO 304.170	exceeded 65'	\$85.00
20-Sep-99	Missouri	MO 304.170	exceeded 65'	Court Date
26-Sep-99	Missouri	MO 304.170	exceeded 65'	Court Date
10-oct-99	Missouri	MO 304.170	exceeded 65'	Court Date
28-Nov-99	Missouri	MO 304.170	exceeded 65'	Court Date
28-Nov-99	Missouri	MO 304.170	exceeded 65'	Court Date
20-Dec-99	Missouri	MO 304.170	exceeded 65'	Court Date
20-Dec-99	Missouri	MO 304.170	exceeded 65'	Court Date
17-Jun-99	West Virginia	WV 17C-17-11B	overlength	Court Date
7-Aug-00	West Virginia	WV 17C-17-11B	overlength	Court Date
5-Oct-00	West Virginia	WV 17C-17-11B	overlength	Court Date
14-Dec-00	Iowa	IAC 321.457	exceeded 65'	\$47.50
19-Jan-00	Tennessee	TCA 55-7.201	overlength	\$148.00
10-Jun-99	Virginia	VA 22.2-46.2	exceeded 65'	Court Date
total fines:				\$1,229.50

56 FR 4164
DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.
23 CFR Part 658

Truck Size and Weight; Dromedary Boxes, Decks, and Plates
[FHWA Docket No. 91-10]

RIN 2125-AC72
56 FR 4164

February 1, 1991

ACTION: Emergency rule.

SUMMARY: The Federal Highway Administration is amending its vehicle length limitation rules, effective immediately, to designate as specialized equipment a truck tractor equipped with a dromedary box, deck, or plate not more than 65 inches in length when used in combination with a semitrailer to transport certain munitions for use by the Department of Defense (DOD). To meet military obligations and to avoid unnecessary danger, shells containing explosives are loaded onto semitrailers while the fuses are placed in the dromedary box on the tractor. This emergency rule applies only to truck tractors equipped with dromedary boxes, plates, or decks used as part of a vehicle combination transporting Class A or Class B explosives for DOD. The effect of this rule is to preempt States from imposing an overall length limit on such vehicle combinations.

DATES: This emergency rule is effective January 30, 1991, and will remain in effect until August 1, 1991. Comments on this rule must be received on or before April 2, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 91-10, Federal Highway Administration, Room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs WordPerfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Motor Carrier Information Management and Analysis (202-366-2212) or Mr. Charles Medalen, Office of Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:54 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

TEXT:

SUPPLEMENTARY INFORMATION: The FHWA has broad authority under section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, Title IV, January 6, 1983, 96 Stat. 2097,2159-2160, codified at 49 U.S.C. App. 2311(d) (1988)) to designate specialized equipment. Such equipment may operate on the National Network (NN) of highways listed in 23 CFR part 658, appendix A, to the same extent as all other STAA vehicles. The agency has designated truck tractors equipped with dromedary boxes in lawful operation on December 1, 1982, as specialized equipment (Final rule, 49 FR 23302, June 5, 1984, codified at 23 CFR 658.13(f) (1900)). That rule was subsequently interpreted as including dromedary decks and plates, in addition to boxes (Final rule, 55 FR 4996, February 13, 1990).

North American Transportation Consultants, Inc. (NATC) has petitioned the FHWA on behalf of certain motor carriers of explosives for rulemaking to designate the dromedary boxes they use as specialized equipment. These carriers transport shells for the Department of Defense. Under DOT regulations, Class A and B explosives, such as shells, must be transported separately from the fuses or detonators that are installed prior to firing (49 CFR 177.848 (1989)). The carriers, therefore, typically transport the shells on semitrailers while carrying the less bulky fuses in a dromedary box attached to the truck tractor. The petition in effect requests that the FHWA drop the December 1, 1982, grandfather date in the present rule, and allow these carriers to operate new dromedary equipment.

The issues involved in NATC's petition are complex, and the agency has not completed its evaluation of the legal and practical implications of expanding the dromedary box rule. However, it has come to our attention that certain States have recently issued citations to munitions carriers for operating overlength vehicles. Those citations are consistent with current Federal rules because many of the dromedary boxes used by munitions carriers were not in operation on December 1, 1982.

In view of the extreme urgency of expediting the movement of munitions destined for United States forces in the Persian Gulf, the FHWA has decided to issue an emergency rule valid for 6 months. Part 658 prohibits the States from imposing an overall length limit on a combination vehicle consisting of a truck tractor equipped with a dromedary box that complies with this rule and a semitrailer. This rule will therefore enable munitions carriers using tractors with dromedary boxes, decks, or plates not more than 65 inches in length to operate freely on the NN during the next 6 months. This rule does not constitute a final decision on the merits of the NATC petition.

Because of the urgency of maintaining the flow of military supplies to Operation Desert Storm, the FHWA has determined pursuant to 5 U.S.C. 553(b) (1988) that it has good cause to promulgate this rule without prior public notice or opportunity for comment.

Rulemaking Analyses and Notices

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rule does not constitute a major rulemaking action under Executive Order 12291, nor is it a significant rulemaking under the regulatory policies and procedures of the DOT. It is consistent with DOT regulatory policies and procedures and Executive Order 12291 to promulgate an emergency rule. We, nevertheless, are giving the public an opportunity to comment after promulgation of the rule.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 23 CFR Part 658

Grant programs -- Transportation, Highways and roads, Motor carriers.

Issued on: January 30, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, part 658 as set forth below.

PART 658 -- TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS -- LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133,411,412,413, and 416 of Public Law 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. App. 2311,2312,2313, and 2316), as amended by Public Law 98-17, 97 Stat. 59, and Public Law 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.13(f) is amended by designating the current text as paragraph (f)(1) and by adding paragraph (f)(2) to read as follows:

§ 658.13 Length.

* * * * *

(f)(1) * * *

(2) A truck tractor containing a dromedary box, deck, or plate and operating as part of a truck tractor semitrailer combination may operate on the National Network until August 1, 1991 provided:

(i) The dromedary box, deck, or plate is not more than 65 inches in length; and

(ii) The combination vehicle pulled by the truck tractor containing the dromedary box, deck, or plate is transporting Class A or Class B explosives for the U.S. Department of Defense.

[FR Doc. 91-2609 Filed 1-31-91; 11:09 am]

BILLING CODE 4910-22-M



U.S. Department
of Transportation

Federal Highway
Administration

Office of the Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

April 20, 1992
Refer to: HCC-20

Mr. Thomas F. Boyle
President, T. F. Boyle Transportation, Inc.
15 Riverhurst Road
Billerica, Massachusetts. 01821

Dear Mr. Boyle:

Thank you for your letter to Secretary Card concerning the problems Boyle Transportation has experienced using tractors equipped with dromedary boxes to carry munitions for the Department of Defense. The Secretary asked me to respond to you directly.

The Surface Transportation Assistance Act of 1982 (STAA) required the States to allow the operation of tractor trailer combinations with certain minimum dimensions. The STAA defined the tractor that could be used in these combinations as a "noncargo carrying power unit" [49 U.S.C. App. 2311(f)(1)]. Since a tractor equipped with a dromedary box carries cargo, the States could have classified it as a straight truck and regulated the overall length of the resulting combination. That would have forced carriers to take many of these vehicles out of service immediately. The Federal Highway Administration (FHWA) therefore decided to grandfather dromedary tractors in operation on December 1, 1982, [23 C.F.R. 658.13(f)] in order to allow a more orderly transition to normal STAA vehicles. The rule was designed to become obsolete as tractors in use in 1982 wore out and were taken off the road.

North American Transportation Consultants (NATC), on behalf of a number of explosives carriers and the munitions carrier industry, petitioned the FHWA for a rulemaking to preempt State regulation of the overall length of all dromedary combinations, or at least those used to carry munitions. You obviously support that position. However, granting NATC's request would create a conflict between the definition of a truck tractor in section 2311(f)(1) and the FHWA's authority to adopt rules to accommodate "specialized equipment" in section 2311(d). As you know, the FHWA designated as specialized equipment truck tractors with dromedary boxes which were in use as of December 1, 1982 (later extended to

include dromedary decks and plates). This grandfathering provision was a practical accommodation to prevent the sudden obsolescence of the existing fleet of such vehicles and to allow an orderly phasing out should such vehicles encounter State restrictions severely limiting their utility. Nevertheless, the legal questions are (1) whether the FHWA can exempt a dromedary tractor from the statutory definition of a tractor by designating it as specialized equipment, and (2) whether a dromedary box used by munitions carriers is specialized equipment, or merely a specialized use of equipment equally suitable for other purposes.

These issues had not been resolved when Operations Desert Shield/Desert Storm began. The FHWA issued an emergency rule valid for 6 months to prevent delays in the delivery of munitions to U.S. forces that might have occurred if States continued to cite dromedary combinations used by many munitions carriers for overall length violations [56 Fed. Reg. 4164, February 1, 1991]. That rule expired in August, and since it appeared to have no adverse impact on motor carrier safety, we asked the States informally to consider abandoning overall length limits on dromedary combinations used by these carriers. A statutory change would be necessary to provide this relief in California, one of the very few States that enforced a length limit on such vehicles. No such change has been made to date.

We are considering the questions raised by the NATC petition, and will notify representatives of the munitions carriers when a decision has been reached.

Sincerely yours,



T. D. Larson
Administrator



UNITED STATES TRANSPORTATION COMMAND
SCOTT AIR FORCE BASE, ILLINOIS 62225-7001

3 August 1992

Mr Thomas F. Boyle
President
T. F. Boyle Transportation, Inc.
15 Riverhurst Road
Billerica, Massachusetts 01821

Dear Mr Boyle

I would like to share with you the latest information on the use of dromedary-boxes in the movement of ammunition. The federal Highway Administrator, Mr Tom Larsen, concluded that it would be inconsistent with the principles of federalism to use the agency's authority to preempt so few states when so many have shown a willingness to accommodate the special needs of the carriers. He therefore denied the North American Transportation Consultants' petition on 24 April 1992.

We have been reassured by the Deputy Secretary of Transportation that, if necessary, the Department of Transportation will exempt Department of Defense ammunition carriers from state length limits in time of national emergency.

Thank you for including the United States Transportation Command in issues of mutual concern. We share your interest and value your efforts to enhance our nation's Defense Transportation System,

Sincerely

Dane Starling
DANE STARLING
Lieutenant General, U.S. Army
Deputy Commander in Chief



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-5000

15 JAN 1993

PRODUCTION AND
LOGISTICS

(L/TP)

Dr. Thomas D. Larson
Administrator
Federal Highway Administration
U.S. Department of Transportation
400 Seventh Street
Washington, DC 20590

Dear Dr. Larson:

This is a request for reissuance of the emergency rule concerning dromedary boxes, as published in the Federal Register on February 1, 1991 (Vol 56, No. 22).

This rule designates as specialized equipment a truck-tractor equipped with a dromedary box, deck, or plate not more than 65 inches in length when used in combination with a semitrailer to transport certain munitions (as classified by 49 CFR 173.53 as 1.1, 1.2, and 1.3) for use by the Department of Defense (DoD). Because of their nature, these munitions must be transported separately from their fuzes or detonators. Currently, the DoD estimates an increased shipment workload for these type munitions over a period of at least the next six months. Reissuance of the emergency ruling will facilitate movement of this increased workload by permitting the shells or rockets to be transported on semitrailers, while their firing fuzes are moved in the accompanying dromedary boxes.

Several states classify truck-tractors with dromedary boxes as trucks. When trailers are attached, the resulting combination is considered a truck-trailer, making them subject to overall length limitations, despite the fact that the presence or absence of a dromedary does not add or reduce the overall length of the combination. This interpretation subjects DoD munitions carriers using dromedary boxes to fines and inconvenience.

By reissuing the exemption, during this period of increased munitions movement, the DoD will not be required to ship the aforementioned munitions and fuzes in separate vehicles, thus

reducing the munitions traffic on the highway. This will result in cost savings and enhance public safety. Your support of this request is greatly appreciated.

Sincerely,



Robert H. Moore
Director
Transportation Policy

cc: Director of Emergency
Transportation, Research and
Special Programs Administration

Munitions Statutes, Federal Regulations & DOD/Joint Regulations

SOURCE	OUTLINE
Title 49 U.S.C. §§ 5101 et seq. (Chapter 51 – Transportation of Hazardous Material)	<ul style="list-style-type: none"> - The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Department of Transportation
Title 49 Code of Federal Regulations (CFR) Part 171 – Hazardous Materials Regulations	<ul style="list-style-type: none"> - Prescribes requirements of the Department of Transportation governing <ul style="list-style-type: none"> -- Transportation of Hazardous Materials in intrastate, interstate and foreign commerce by rail car, aircraft, motor vehicle and vessel -- Any person who under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufacturers, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified or sold by such person as qualified for use in the transportation of hazardous material shall be subject to and comply with all provisions of Federal hazardous materials laws
Title 49 Code of Federal Regulations (CFR) Part 172 – Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements	<ul style="list-style-type: none"> - Lists and classifies those materials which DoT has designated as hazardous materials. The table designates the materials listed therein as hazardous materials for the purpose of transporting
Title 49 Code of Federal Regulations (CFR) Part 173 – Shipping – General Requirements for Shipments and Packaging	<ul style="list-style-type: none"> - Definitions of hazardous materials for transportation purposes - Requirements to be observed in preparing hazardous materials for shipment - Inspections, testing, and retesting responsibilities - In general, the hazardous materials regulations (HMR) contained in this subchapter are based on the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods and are consistent with international regulations
Title 49 Code of Federal Regulations (CFR) Part 174 – Carriage by Rail	<ul style="list-style-type: none"> - Prescribes requirements in addition to those contained in parts 171, 172, 173, and 179 of this subchapter to be observed with respect to the transportation of hazardous materials in or on rail cars
Title 49 Code of Federal Regulations (CFR) Part 175 –	<ul style="list-style-type: none"> - Prescribes requirements in addition to those

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Carriage by Aircraft	contained in parts 171, 172, and 173 of this subchapter, applicable to aircraft operators transporting hazardous material
Title 49 Code of Federal Regulations (CFR) Part 176 – Carriage by Vessel	- Prescribes requirements in addition to those contained in parts 171, 172, and 173 of this subchapter to be observed with respect to the transportation of hazardous materials by vessel
Title 49 Code of Federal Regulations (CFR) Part 177 – Carriage by Public Highway	- Prescribes requirements in addition to those contained in parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common, or contract carriers by motor vehicle
Title 49 Code of Federal Regulations (CFR) Part 178 – Specifications for Packaging	- Prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials in commerce
Title 49 Code of Federal Regulations (CFR) Part 180 – Continuing Qualification and Maintenance of Packaging	- Prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and testing of packaging, and any other function having an effect on the continuing qualification and use of a packaging under the requirements of this subchapter
Title 48 Code of Federal Regulations (CFR) Chapter 2, Subpart 223.3 – Hazardous Material Identification and Material Safety Data	- DoD procedures for use in acquisitions involving transportation and storage of Hazardous Materials, including sensitive conventional arms, ammunition and explosives. These include exceptions, contract clauses and pre-award responsibilities
DOD Directive 6055.9 – DoD Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities (July 29, 1996) – implements Title 10 U.S.C. § 172 – Ammunition Storage Board	- Secretary of Army delegated by SECDEF as DoD Executive Agent for DoD emergency response to transportation mishaps involving ammunition and explosives - The Commander in Chief, Transportation Command, shall:
HISTORY: The Department of Defense Explosives Safety Board (DDESB), formerly called the Armed Forces Explosives Safety Board, was established in 1928 by the Seventieth Congress after a major disaster occurred at the Naval Ammunition Depot, Lake Denmark, New Jersey in 1926. The accident virtually destroyed the depot, causing heavy damage to adjacent Picatinny Arsenal and the surrounding communities, killing 21 people, and seriously injuring 51 others. The monetary loss to the Navy alone was \$46 million. As a result of a full scale Congressional investigation, Congress directed the establishment of the Board to provide oversight of the development, manufacture, testing, maintenance, demilitarization, handling, transportation and storage of explosives, including chemical agents on DoD facilities worldwide. The DDESB mission is to provide objective advice to the Secretary of Defense and Service Secretaries on matters concerning explosives safety and to prevent hazardous conditions to life and property on and off	-- Designate a knowledgeable official who, in addition to other assigned duties, shall serve as a nonvoting, advisory member when the business before the DDESB concerns U.S. Transportation Command -- Establish a program to evaluate the safety of commercial carriers of DoD ammunition and explosives, and maintain coordination with the DDESB and the Department of Transportation to ensure its effective implementation -- Have authority, if dictated by a strategic or other compelling reason, to approve DoD explosives safety waivers for moving ammunition and explosives through commercial aerial and water ports -- Develop command and control procedures -- Maintain the DoD coordination center using the Defense Transportation Tracking System as the DoD focal point for initial notification of accidents involving ammunition and explosives - The <u>Commanders of the Unified Combatant</u>

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<p>Defense of Department installations from the explosives and environmental effects of DoD titled munitions.</p>	<p><u>Commands</u> shall, through respective Service components, ensure explosives safety is integrated into the planning process. At the request of the Chairman of the Joint Chiefs of Staff, provide a representative to the DDESB to advise the Board as required</p>
<p>DODD 5 160.65 – Single Manager Conventional Ammunition (SMCA) (USD(A&T) (March 1995)</p> <p>DOD 5 160.65-M – Single Manager for Conventional Ammunition (SMCA) (Assistant Secretary of Defense (Production and Logistics) – April 1989</p>	<ul style="list-style-type: none"> - Reissues reference (a) to update policy and agency responsibilities for the SMCA - Assigns the SMCA mission, within the Department of Defense, to the Secretary of the Army - Prescribe handling, transportation , and traffic management policies and procedures that are unique to the SMCA mission and inherent in the performance of this mission in the SMCA environment - Prescribe handling, transportation and traffic management policies and procedures that are not included in the SMCA mission, but that require coordinated efforts and agreements between the Military Services, MTMC and SMCA to ensure overall interests of the Military Services and the DoD are best served - Chapter 9, paragraph A.4.d., states “Transportation in the Logistics Support Phase.. .distribution plan shall be developed that considers manufacturing sits’ and depots’ capabilities to respond to all delivery requirements...” - TCCs responsible to facilitate sealift, airlift and land movement of munitions
<p>DOD 6055.9-STD – DOD Ammunition and Explosives Safety Standards (Under Secretary of Defense for Acquisition and Technology) (July 1999)</p>	<ul style="list-style-type: none"> - To ease identification of hazard characteristics and thus promote safe storage and transport of ammunition and explosives, DoD shall use the international system of classification devised by the United Nations Organization (UNO) for transport of dangerous goods - Ammunition/Explosives transportation mode change locations: Movement and transfer of DoD-titled ammunition and explosives must be in compliance with national, international, and host country-specific transportation regulations - DoD Supplement to the Federal Acquisition Regulation requires contracting officers to incorporate this Manual in A&E procurement actions to achieve parity between contractor and DoD component compliance. The purchasing activity may include additional A&E or related safety requirements as it deems necessary
<p>DODD 4500.9 – Transportation and Traffic Management, (USD(A) (Jan 1989, Ch 2, Dec 1993)</p>	<ul style="list-style-type: none"> - Movement of Hazardous Materials. Shipments of hazardous materials shall conform to applicable statutes and to requirements established by regulatory bodies having responsibility over such traffic. MTMC is the DoD point of contact for the establishment, amendment, or clarification of rules and regulations of

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	<p>the regulatory bodies governing safe transportation of explosives and other hazardous material. DoD Components may contact the Department of Transportation (DoT) and other Agencies directly in cases of emergency or for technical consultations on hazardous materials. Shipment of sensitive conventional arms, ammunitions, and explosives shall conform to requirements of DoD 5 100.76-M, reference (bb). DoD Directive 6055.13 (reference (cc)) provides guidance for prevention of, and emergency response to, transportation accidents involving conventional DoD munitions and explosives</p>
<p>DOD 4500.9-R – Defense Transportation Regulation – Part II – Cargo Movement (December 2000)</p> <p>DOD 4500.9-R - Defense Transportation Regulation – Part III – Mobility (April 1997)</p> <p>DOD 4500.9-R-1 - Management and Control of the DoD Intermodal Container System (April 1997)</p>	<ul style="list-style-type: none"> - Chapter 204 – Hazardous Material Shipments - Contains policies, procedures, and responsibilities applicable for movement of HAZMAT by all modes of commercial transportation and military surface transportation operated by military, DoD civilian personnel, and DoD contractor personnel <ul style="list-style-type: none"> -- Prior to release, ensure commercial and military vehicle drivers receive emergency response instructions...Activities having safe haven/refuge capability will provide carriers with a temporary holding area. Holding areas are subject to regulations for handling and safeguarding HAZMAT - Responsibility for shipment remains with the carrier until actual delivery and receipt at destination - Defense Transportation Tracking Service (DTTS). A computer-based system located at the Naval Transportation Support Center, Norfolk, Virginia, which is manned 24-hours a day and is used to maintain in-transit visibility of carrier vehicles transporting shipments of munitions and other hazardous material - The 20-foot container is designated as primary size for containerized munitions shipments. Twenty- and 40-foot ISO containers are standard for sustainment and unit equipment <p>Chapter 205: CARRIER ASSISTANCE</p> <ul style="list-style-type: none"> - Safe Haven and Refuge <ul style="list-style-type: none"> -- When DOD and DOD-sponsored AA&E or classified shipments are en route and prevented from proceeding to destination by emergencies or other circumstances beyond the carrier's control, at the request of MTMC personnel, commanders of military activities with appropriate facilities will grant safe haven or refuge. Safe haven or refuge may also be granted en route for other government agency-sponsored shipments, when requested -- During emergencies, such as carrier strike, civil disorder, or natural disaster; carrier driver or qualified

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employee will notify the emergency hot line (see paragraph P). Hot line personnel will provide availability of activities which can provide safe haven or refuge

-- Carrier representative will contact the hot line or selected activity to arrange safe haven or refuge.

MTMC may be contacted for further assistance

-- Each carrier whose vehicle is granted safe haven or refuge must be apprised by the selected activity orally or in writing of their policies such as the following:

--- Granting of safe haven does not relieve the carrier of liability under the GBL contract of carriage

--- The **U.S.** Government does not assume responsibility for the shipment or carrier equipment, so long as terms and conditions of providing safe haven are not inconsistent with those of the GBL contract of carriage

--- It is within the prerogative of the activity commander to require carrier personnel to remain with the vehicle to fulfill **TPS** requirements

--- The safe haven or refuge provided is strictly temporary in nature and the vehicle must be removed as soon as the activity commander or appropriate civil authority determines that the shipment is no longer in danger

- When shipments are accorded a temporary storage area for safe haven or refuge, terminal security standards prescribed in DOD 5 100.76-M, Appendix C, as implemented by DOD Component regulations, will apply. These standards also apply when a vehicle contains the shipment of classified material or uncategorized Class/Division 1.1, 1.2, 1.3 explosives as follows:

-- SECRET shipments will be accorded the same protection as required for sensitive Category I shipments

-- CONFIDENTIAL shipments, except for those assigned CAT I or II, will be accorded the same protection as required for CAT III and IV material

- Compatibility restrictions and quantity-distance requirements of DOD 605 5.9-STD, as implemented by shipper-service regulations, will be followed

- Shipping documents will be examined to prevent entry of an unauthorized shipment into the activity

- Transportation Facility Guides or MTMC Pamphlet 385-1 may be consulted to determine safe haven or refuge capabilities of specific activities

- Defense installations capable of providing safe haven, refuge, or secure holding areas will do so in the

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	<p>interest of public safety and national security</p> <ul style="list-style-type: none"> - Installation Commanders will establish SOPs to accept all sensitive, classified, and/or hazardous shipments after hours. Granting of safe haven, refuge, or a secure holding area does not relieve the carrier of liability. Installation Commanders will establish specific procedures for receiving security risk category (SRC) I, II, and III shipments, relative to carriers remaining with cargo/equipment or placement in the custody of installation security. If the carrier leaves cargo/equipment in the custody of installation security, the installation may request and receive reimbursement for providing any additional required security services. Installations granting safe haven, refuge, or secure holding must ensure that quantity-distance requirements are met or a waiver/exception is granted IAW DOD 6055.9-STD (DOD Explosives Safety Board). In the event installation entry is denied, Commanders will ensure that adequate alternative arrangements are made and verified
<p>DODI 4 145.26 – DOD Contractors’ Safety Requirements for Ammunition and Explosives (April 1996)</p> <p>DOD 4 145.26-M – DOD Contractor’s Safety Manual for Ammunition and Explosives (Sep 1997)</p>	<ul style="list-style-type: none"> - Instruction provides safety standards common to DoD and private industry ammunition and explosive (A&E) operations and facilities - Manual provides reasonable, standardized safety principles, methods, practices, requirements, and information for contractual work or services involving ammunition and explosives (A&E). Understanding and compliance with the applicable requirements of this Manual and additional safety requirements of the contract, if any, are intended to minimize the potential for mishaps that could interrupt Department of Defense (DoD) operations or delay production, damage or destroy DoD material, cause injury to DoD personnel, or endanger the general public. Adherence to the Manual’s requirements and principles are intended to support DoD mission, provide a safe environment, and foster cooperation between contractor and DoD personnel
<p>DODD 4500.37 – Management of the DoD Intermodal Container System (USD(A)) (April 1987)</p>	<ul style="list-style-type: none"> - . The 20-foot American National Standards Institute (ANSI) and International Standards Organization (ISO) container is designed as the primary size for containerized ammunition shipments. This includes the standard MILVAN, seavan, air/surface, seashed, flatrack, and side-door containers of various heights. While larger containers may be used in contingency or mobilization operations for munitions movements, the capability of the user to handle and transport these containers shall be the overriding consideration (e.g., availability or capacity of container-handling equipment)

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<p>DODD 5100.76- Physical Security Review Board (USD(P)) (Feb 1981)</p> <p>DOD 5100.76-M – Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives (Aug 2000)</p>	<ul style="list-style-type: none"> . Directive outlines the authorities, responsibilities, and functions relative to the formulation of world-wide uniform policy, standards, and procedures for the physical security of nuclear weapons, devices, reactors, and materials, and conventional arms, ammunition, and explosives in the possession or custody of DoD Components . Bulk Storage Areas (Depot Activities/Munitions Supply Points) - These categories shall be stored in fixed structures prescribed in DoD 6055.9-STD [reference (e)]. If operational necessity dictates, Category III and IV A&E may also be stored in pre-Engineered explosives magazines as specified in Naval Facilities Engineering Service Center Technical Data Sheet 82-12, dated May 1985 (reference (m)), or a similarly constructed Component-prescribed structure - AA&E shipments arriving at DoD installations and activities during non-delivery hours shall be accepted by consignees and provided appropriate protection commensurate with the sensitivity category of the delivered items - DoD installations and activities shall provide a safe haven for AA&E shipments during emergency conditions (vehicle breakdowns, criminal/terrorist threats, etc.) in accordance with the DTR
<p>DODD 5160.62 – Single Manager Responsibility for Military Explosive Ordnance Disposal Technology and Training (EODT&T) (April 1989 thru Ch 1 Dec 1995)(ASD(SO/LIC))</p>	<ul style="list-style-type: none"> - This Directive reissues reference (a) to update policies and responsibilities for DoD explosive ordnance disposal (EOD) technology and training (T&T), including EOD research and development (R&D) programs, EOD procedures and related technical documentation required by the operational forces, and common-type EOD training of operational forces - Testing and transportation of developmental explosive ordnance, including foreign ordnance being evaluated for possible U.S. acquisition, shall not begin until sufficient data on its hazards and functioning are available for EOD response to incidents or accidents during transportation and testing
<p>DODI 5160.68 – Single Manager for Conventional Ammunition (SMCA): Responsibilities of the SMCA and the Military Services (USD(A&T)) (Mar 1995)</p>	<ul style="list-style-type: none"> - This Instruction implements DoD Directive 5160.65, "Single Manager for Conventional Ammunition (SMCA)," March 8, 1995 by specifying the functional responsibilities and mission functions to be performed by the SMCA and by the Military Service customers on conventional ammunition management actions
<p>Army Regulation 55-38 NAVSUPINST 4610.33 AFR 75-18 MCO P4610.19 DLAR 4500. 15</p>	<ul style="list-style-type: none"> - Classified or protected cargo requires discrepancy-reporting procedures slightly different from other cargo shipments - Explains the actions to take when reporting these transportation discrepancies

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<p>Reporting of Transportation Discrepancies in Shipments (RCS: MTMC-54) 31 August 1992</p>	<p>- Discrepancies in all shipments of arms, ammunition and explosives are reported under these requirements even if the material is not classified or protected</p>
<p>Army Regulation 740-32 OPNAVINST 8070.1B AFR 136-4 MCO 4030.25B</p> <p>Responsibilities for Technical Escort of Dangerous (HQDA (DALO-SMS) Materials (8 Aug 1972)</p>	<p>- Delineates the responsibilities of the Army, Navy, Marine Corps, and the Air Force with regard to the operational technical, material and administrative aspects of technical escort for shipments of dangerous materials</p>
<p>Joint Publication 1-03 – Joint Reporting Structure (JRS) General Instruction (10 Jan 1994)</p>	<p>- Sample message format for supplying status report on munitions which provides the ability to monitor critical munitions items worldwide that affect warfighting capabilities during hostilities, emergencies, or exercises (<i>USTRANSCOM & USSTRATCOM excluded from reporting</i>)</p>
<p>Joint Publication 3-35 – Joint Deployment and Redeployment Operations (Sep 1999)</p>	<p>- Ammunition: MTMC provides routing instructions for movement of all classes of ammunition entering the DTS. In a contingency operation, select units may be designated to deploy through select commercial ports with their ammunition basic load. A potential deployment constraint (particularly in HN port) related to movement of ammunition is net explosive weight. Port safety requirements may restrict the amount of ammunition or other hazardous materials that may move through the port at any given time. Discharge of ammunition at the foreign PODs requires prior coordination with HN authorities to certify the port for ammunition handling and storage, or to obtain the necessary waivers to discharge ammunition through commercial ports. Similar authorization may be necessary for storage of ammunition at ISBs</p> <p>- For CONUS ports, MTMC will process necessary DOD explosives safety waivers and coordinate other required permits or clearances. For OCONUS ports, the geographic combatant commander will assign waiver and clearance responsibilities to one of the combatant command's component commands</p> <p>- For CONUS deployment situations, if a unit is scheduled to move through a commercial seaport with basic load munitions, MTMC must be notified early on to process necessary DOD explosive safety waivers and USCG permits. The following information must be provided for waiver and permit purposes: DOD Identification Code; National Stock Number; DOT proper shipping name; hazard class, storage compatibility and fragment distance; UN identification number number; round count; net explosive weight; and ship-</p>

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	ping figuration (e.g., vehicle upload, containerized). MTMC must also activate DOT Exemption 3498 before actual movement of uploaded vehicles can commence. Additionally, all hazardous materials (including ammunition) shipments must be prepared and documented in accordance with DOD Regulation 4500.9-R, "Defense Transportation Regulation, Parts II and III" and other governing regulations
Joint Publication 4-01.7 – Joint Tactics, Techniques, and Procedures for Use of Intermodal Containers in Joint Operations (Jan 1997)	- MTMC develops and maintains contingency plans and positions DOD common-use and CADS containers based upon requirements of the DOD components once validated by USTRANSCOM, Army, and the joint munitions transportation coordinating activity (JMTCA) respectively
Army Regulation 190-11 , Physical Security of Arms, Ammunition and Explosives (AA&E) (Feb 1998)	- Guidance and direction to use systems that incorporate technology and equipment available within the Federal Government and the private sector to provide cost effective protection, automated accountability, and inventory control of AA&E