DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–98–4326]

RIN 2125–AE43

Truck Size and Weight; Definitions; Nondivisible

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the definition of nondivisible load or vehicle to include marked military equipment or materiel. This will allow, but not require, States to issue overweight permits for such vehicles or supplies to move on the Interstate System.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Freight Management and Operations (202) 366–2212, or Mr. Charles Medalen, Office of the Chief Counsel (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

States must adopt and enforce Federal weight standards for the Interstate System or risk the loss of certain Federal-aid highway funds. These standards are 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, and the weights specified by the bridge formula, up to a maximum gross vehicle weight of 80,000 pounds. The bridge formula is designed to ensure that a vehicle is sufficiently long and has enough axles to protect bridges by spreading the weight over a large area of bridge decking and supports. Some States also have grandfathered weight limits for divisible loads or vehicles (those that can be easily dismantled or divided) that exceed Interstate System standards. These usually represent limits that were in effect in a State before the Interstate limits were adopted. In addition, all States may issue permits allowing nondivisible loads or vehicles, (those that cannot be easily dismantled or divided) to use Interstate highways at weights above the normal Interstate limits. Prior to this final rule, the FHWA defined nondivisible load or vehicle in 23 CFR 658.5 as follows:

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed for the transport of spent nuclear materials as nondivisible vehicles or loads.

The Department of Defense's Military Traffic Management Command (MTMC) petitioned the FHWA for rulemaking to amend this definition to include marked military vehicles. The MTMC pointed out that since the end of the Cold War, the number of military units deployed overseas has declined, with the result that the bulk of our military forces are based in the continental United States. Current mobility strategy requires the capability to deploy military forces from the United States to any point where they may be needed. The nation's highways, particularly the Interstate System, play a significant role in such actions. Training exercises are essential to the performance of this mission since troops in actual deployments must be familiar with highway operations in order to assure safe and efficient transportation. The FHWA granted the MTMC petition for rulemaking on May 20, 1998, and a notice of proposed rulemaking (NPRM) was published November 20, 1998 (63 FR 64434).

Only three sets of comments, all from State agencies, were received in the docket.

The Illinois State Police (ISP) indicated that the proposal ''appears logical,'' and mirrors the current policy of the Illinois Department of Transportation. In closing, however, the ISP stated that it would ''remain neutral'' on this proposal. No further explanation was provided.

The Wisconsin Department of Transportation (WISDOT) objected to the proposal for several reasons. Summarized, these include the following: (1) the permissive language of the proposal, (''A State *may* treat * * * marked military equipment. * * *.''), does not address the desire for national uniformity posed by MTMC in its petition, because a State could refuse to issue the permit; (2) even if States are willing to issue nondivisible load permits for State highways, local jurisdictions may refuse to issue similar permits if highways under their jurisdiction are required to complete point to point travel; (3) the phrase ''marked military equipment or materiel'' is too broad; (4) because this issue is too complex to be resolved by regulation, the Congress must correct any problem by national legislation; (5) the statement in the preamble to the NPRM, that ''the vehicle or load must be directly related to the military's combat or defense mission,'' is too vague; and (6) the FHWA should postpone action until the agency's Comprehensive Truck Size and Weight Study (see 64 FR 2699, January 15, 1999) is complete.

The Idaho Transportation Department (ITD) indicated ''no concerns'' with treating marked military vehicles as nondivisible, and suggested that the definition be expanded to include military vehicles of other nations acting as training partners. However, the ITD is concerned that the term military materiel needs to be much more narrowly defined if it is to be included in the regulation.

As the preamble to the NPRM stated, the intent of this rulemaking is to accommodate the mobilization needs of the military. The original petition filed by the MTMC asked that marked military vehicles be included in the regulatory definition of nondivisible. The term materiel was included in the NPRM to make it clear that the items carried on the vehicles, as well as the vehicles themselves, are to be considered nondivisible. The reference in the NPRM to combat or defense missions, was included to help distinguish between movements intended to be covered by this rule and other transportation not uniquely

military in purpose. The term ''marked military equipment or materiel'' has two components: (1) markings which openly identify the equipment or materiel as belonging to the U.S. military forces; and (2) equipment or materiel which is directly related to a combat or defense mission. The key term is ''directly related.'' The intent here is to cover military vehicles moving ammunition, medical supplies, food, water, or any other consumable or expendable commodity directly used in carrying out a combat or defense operation, including training exercises. Items that would not normally be directly related to a military or combat mission would be, for example, household furnishings or office equipment moving on military vehicles. To clarify the status of materiel, only items carried on marked military vehicles are covered. Materiel carried on vehicles not directly owned and operated by the military, even though the carriers may be operating under lease or contract to the military, does not qualify under this regulatory action.

The WISDOT expressed concern about the permissive language of the NPRM. The only permit problems MTMC has reported were caused by State concerns that issuing divisible load permits for travel on the Interstate System, for loads or vehicles that do not meet the definition of *Nondivisible vehicle or load* set forth in 23 CFR 658.5, would cause the FHWA to find the State in violation of 23 U.S.C. 127, and withhold its National Highway System (NHS) apportionments. Allowing States to consider these vehicles and loads nondivisible, will resolve this problem. If State law allows local jurisdictions to issue permits, we believe they will nearly always follow the lead of the State in matters of nondivisibility. To date, the MTMC has not reported local permitting problems.

The WISDOT also commented that regulatory action on this issue is inappropriate and that Congress should resolve any problems via national legislation, which would preempt State laws. The problems encountered by MTMC on this issue have been limited to a small number of States. There is every reason to believe that rulemaking will resolve the problem without resort to congressional action. At the same time, the permits issued by States will enable them to track and direct movements in order to protect the infrastructure.

The WISDOT's last comment suggested that the FHWA ''may wish to postpone action'' until the agency's Comprehensive Truck Size and Weight Study is complete. The Study is essentially creating a national modeling mechanism that allows the agency objectively to analyze proposed changes to the current size and weight laws. This final rule is designed to alleviate a specific administrative problem affecting only a few States. This regulatory action is not likely to cause significant nationwide changes in permit movements, though it will alleviate the special problems faced by U.S. military forces.

A regulation that makes it difficult for States to allow the use of the Interstate System for military purposes is indefensible. Amending the definition of a nondivisible load or vehicle in 23 CFR. 658.5 will enable the States to make nondivisible load permits available to military equipment and materiel without risking the loss of Federal-aid highway funds. While the movement of both commercial and military traffic is essential to the national welfare, they serve fundamentally different purposes. Allowing States to issue nondivisible overweight permits for military traffic to use the Interstate System will not compromise the ability of the FHWA to maintain reasonable limits on the use of such permits by commercial traffic. This final rule does not establish a precedent applicable to civilian vehicles.

By this action the FHWA is amending paragraph (2) of the definition of a ''nondivisible load or vehicle'' by adding ''military vehicles transporting marked military equipment or materiel'' to the vehicles and equipment already listed there. This will enable, but not require, States to issue nondivisible load permits to vehicles qualifying as, or transporting, marked military equipment or materiel as discussed earlier. This is not to say that States should issue permits without consideration of the structural limits of their pavements or bridges. But withholding the discretion to accommodate the needs of U.S. military forces would be a disservice to the nation.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows States to issue overweight permits for marked military equipment or materiel to travel on the Interstate System. The effect on that System will be negligible and under full control by the States. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities. This rulemaking affects only States and the Department of Defense.

Based on its evaluation of this rule, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: September 2, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends 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 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111—31114 ; 49 CFR 1.48.

2. In § 658.5, revise the definition of ''nondivisible load or vehicle'' to read as follows:

§ 658.5 Definitions.

* * * * *

Nondivisible load or vehicle.

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles, casks designed for the transport of spent nuclear materials, and military vehicles transporting marked military equipment or materiel as nondivisible vehicles or loads.

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[FR Doc. 99–23346 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Noncommercial Group Use Permit Approval

AGENCY: Forest Service, USDA.

ACTION: Interpretive rule.

SUMMARY: The Department is adopting this interpretive rule to make explicit the intended interpretation and application of the term ''public interest'' in 36 CFR § 251.56 as it relates to noncommercial group uses of National Forest System Lands.

EFFECTIVE DATE: This interpretive rule is effective September 9, 1999.

ADDRESSES: Written queries about this interpretive rule may be addressed to Director Recreation, Heritage, and Wilderness Resources Staff, 2720, 4th Floor-Central, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, or via e-mail to dbschor/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, 202–205–1399.

SUPPLEMENTARY INFORMATION:

In August 1995, the Secretary of Agriculture adopted a final rule at 36 CFR part 251, subpart B, governing issuance and administration of permits for groups of 75 or more people who wish to use National Forest System lands for noncommercial activities (60 FR 45258; August 30, 1995). The intent in promulgating the rule was to ensure that authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion, while simultaneously providing a reasonable administrative system for allocating space among scheduled and existing uses of National Forests and Grasslands, for addressing concerns for public health and safety, and for controlling or preventing adverse impacts on forest resources.

The regulation as written is constitutional. It is a content-neutral, narrowly tailored time, place, and manner restriction. In particular, the rule sufficiently limits the discretion of authorized officers to place terms and conditions in noncommercial group use permits. The imposition of term and conditions in noncommercial group use permits is limited to those designed to further the three public interests identified by the Forest Service in promulgating the noncommercial group use rule, i.e., the need to address concerns of public health and safety, to minimize damage to National Forest System resources, and to allocate space among actual or potential uses and activities.

Despite the clarity of the existing regulation, some confusion has persisted with respect to the amount of discretion allowed an authorized officer by 36 CFR 251.56(a)(1)(ii)(G) with regard to placing terms and conditions on noncommercial group uses. Under paragraph (a)(1)(ii) of § 251.56, the authorized officer may place into a special use authorization such terms and conditions as the officer deems necessary for seven purposes. Paragraph (a)(1)(ii)(G) authorizes terms and conditions deemed necessary by the authorized officer that ''otherwise protect the public interest.'' Out of an abundance of caution, the Department is issuing this interpretive rule to make explicit preexisting law and the agency's intent regarding § 251.56(a)(1)(ii)(G) as applied to noncommercial group uses. Therefore, in the context of noncommercial group uses, the reference to ''public interest'' in § 251.56(a)(1)(ii)(G) will be interpreted and applied as allowing only those terms and conditions furthering the three public interests served by the noncommercial group use rule.

This rule qualifies as an interpretive rule under the Administrative Procedure Act because it is a rule or statement issued by an agency to advise the pubic of the agency's preexisting construction of one of the rules it administers, i.e., 36 CFR 251.56(a)(1)(ii)(G) in the context of noncommercial group uses. *See, e.g., Shalala, Secretary of Health and Human Service* v. *Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). Under 5 U.S.C.