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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA-96-43261-1

RIN 2125-AE43

Truck Size and Weight; Definitions; Nondivisible

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to modify its definition of nondivisible load or vehicle to include marked military vehicles. This will allow, but not require, States to issue overweight permits for such vehicles to operate on the Interstate System.

DATES: Comments on this docket must be received on or before January 19, 1999.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401,400 Seventh Street, SW, Washington, DC 20590-000 1. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis (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 legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. 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 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 which exceed Interstate System standards, usually because they were in effect in a State before the Interstate limits were adopted. In addition, all States may issue permits allowing nondivisible loads or vehicles, i.e., those that cannot be easily dismantled or divided, to use Interstate highways at weights above the normal Interstate limits. The FHWA has 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. This notice sets forth the substance of the MTMC petition, proposes changes to the regulations at 23 CFR part 658 to accommodate MTMC's position, and solicits comments on the proposed revision of the nondivisible load or vehicle definition in the involved regulations.

Under the current FHWA definition, some overweight military vehicles, such as the M-1 Abrams main battle tank, readily qualify as nondivisible. Other vehicles and equipment, however, would be classified as divisible. If a State does not issue overweight permits for divisible loads—a practice governed by complicated "grandfather rights" which vary from State to State—these military cargoes must be disassembled into their constituent parts before they can be transported on the Interstate System. This requirement impedes military exercises intended to maintain or improve operational readiness.

One of the vehicles particularly affected by the current definition of nondivisibility is the Army's palletized load system (PLS). The PLS is a very large, rugged vehicle designed to operate off-road delivering munitions and other mission-critical supplies to front-line troops. The PLS is a 5-axle straight truck and 3-axle full trailer with an overall length of just under 60 feet, a wheelbase of just under 50 feet, and a maximum gross weight of 132,840 pounds. It weighs almost 66,500 pounds empty. If the straight truck is equipped with a material handling crane, the gross weight rises to 137,520 pounds and the empty weight to about 71,500 pounds. The loaded weights exceed the normal 80,000 pound Interstate weight limit, as well as the bridge formula limit for an 8-axle vehicle with a wheelbase of 50 feet (94,500 pounds). While the Army can operate these vehicles off-road at any time, PLS crews also need the opportunity to train for rapid deployment from bases in the United States to airfields or ports of embarkation. Such exercises often involve the use of Interstate highways.

An argument could be made that the PLS meets the current definition of a nondivisible load or vehicle because reducing its weight to normal Interstate limits would compromise its intended use or make it unusable for its intended purpose. Similar arguments, however, can be made for any commercial vehicle with a maximum designed gross weight in excess of the Federal limits. As the FHWA said in its February 25, 1993, preamble to a Supplemental Notice of Proposed Rulemaking (SNPRM), which included a proposed definition of a nondivisible load or vehicle,

The intended use of a vehicle is not "compromised" simply because it is required to comply with applicable weight limits. For example, the fact that a combination with a GCWR (gross combination weight rating) of 90,000 or 100,000 pounds may not be allowed to operate on the Interstate at more than 80,000 pounds does not compromise its intended use since the vehicle's cargo-carrying function remains entirely unchanged. This (proposed) definition does not imply that vehicles must be allowed to operate at their design limits.

(58 FR 11450, at 11456, February 25, 1993.)

If the existing definition of a nondivisible load or vehicle were interpreted as including the PLS or other large military vehicles, the same rationale could force the FHWA to treat commercial vehicles designed to carry heavy loads as nondivisible. The result would be the replacement of Federal weight limits with State permit limits.

Nevertheless, a regulation which makes it difficult for the States to allow the operation of large military vehicles on the Interstate System is indefensible. Amending the definition in 23 CFR 658.5 will enable the States to make nondivisible load permits available to military equipment without risking the loss of Federal-aid highway funds. This will not compromise the ability of the FHWA to maintain reasonable limits on the use of such permits by commercial motor vehicles and carriers. Commercial trucking is essential to the U.S. economy, but military vehicles are designed and operated differently and serve fundamentally different purposes. This rulemaking does not establish a precedent applicable to civilian vehicles.

The FHWA proposes to amend paragraph (2) of the definition of a "nondivisible load or vehicle" by adding "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. The term "marked military equipment or

materiel" has two components: (1) There must be some kind of marking which openly identifies the equipment or materiel as belonging to US. military forces. This could take the form of individual service markings ("U.S. Army"), Federal license plates or even color (e.g., desert camouflage paint), and (2) the vehicle or load must be directly related to the military's combat or defense mission. In addition to more obvious items such as tanks or cannon, crates of ammunition, field medical supplies, or any other consumable that is directly used by troops would be covered by this definition. Conversely, crates of household furnishings owned by military personnel, or commercial concrete mixer trucks delivering to a construction site on a military base would not qualify under this definition.

We believe it is appropriate to allow States to issue nondivisible-load permits authorizing overweight movements of marked military equipment or materiel on the Interstate System. 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

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

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 rulemaking proposes to allow States to

issue overweight permits for marked military vehicles 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 proposal on small entities. This rulemaking affects only States and the Department of Defense.

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

Executive Order 126 12 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 126 12, and it has been determined that the proposed 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 20.2 17, 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

This proposed 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).

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: November 13, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 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. The definition of "nondivisible load or vehicle" in 23 CFR 658.5 is amended 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 marked military equipment or materiel as nondivisible vehicles or loads.

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