



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No. FMCSA-2012-0156]

RIN 2126-AB53

Gross Combination Weight Rating (GCWR); Definition

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the definition of “gross combination weight rating” (GCWR) in our regulations. The definition currently prescribes how the GCWR is calculated if the vehicle manufacturer does not include the information on the vehicle certification label required by the National Highway Traffic Safety Administration (NHTSA). The Agency has determined the definition should not include what is essentially guidance that is difficult for the motor carrier and enforcement communities to use. Therefore, FMCSA amends this definition to state that the GCWR is the value specified by the commercial motor vehicle manufacturer.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless an adverse comment or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.] or reaches the Docket Management Facility by that date. If an adverse comment or notice of intent to submit an adverse

comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], we will withdraw this direct final rule and publish a timely notice of withdrawal in the Federal Register.

ADDRESSES: You may submit comments identified by docket number FMCSA-2012-0156 using any one of the following methods:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>.
- (2) Fax: (202) 493-2251.
- (3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.
- (4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, by telephone at (202) 366-1812 or via e-mail at Thomas.Kelly@dot.gov. Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
- II. Abbreviations
- III. Regulatory Information
- IV. Background
- V. Discussion of the Rule
- VI. Regulatory Analyses
- VII. The Final Rule

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2012-0156), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comment and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "FMCSA-2012-0156" in the

“Keyword” box. Click "Search" then click on the balloon shape in the “Actions” column. If you submit your comment by mail or hand delivery, submit it in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit it by mail and would like to know that it reached the Facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the “Keyword” box insert “FMCSA-2012-0156” and click "Search." Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

II. Abbreviations

FMCSA	Federal Motor Carrier Safety Administration
FR	Federal Register

GCWR	Gross combination weight rating
NHTSA	National Highway Traffic Safety Administration

III. Regulatory Information

FMCSA publishes this amendment to parts 383 and 390 under the direct final rule procedures in 49 CFR 389.11 and 389.39 because we believe the rule is a routine, non-controversial amendment to the definition of “gross combination weight rating” (GCWR) in both 49 CFR 383.5 and 390.5. The rule would provide consistency between FMCSA’s definition of GCWR and the definition of that term used by NHTSA under 49 CFR 571.3. FMCSA does not expect adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, FMCSA will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if the Agency receives any adverse comments or notices of intent to submit an adverse comment, FMCSA will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule and it is possible to remove that part without defeating the purpose of this rule, the Agency may adopt, as final, that part of this rule on which no adverse comments were received. FMCSA will withdraw the part of this rule that was the subject of an adverse comment. If the Agency decides to proceed with a rulemaking following receipt of any adverse comments, FMCSA will publish a separate notice of proposed rulemaking and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

IV. Background

Currently, the definitions in 49 CFR 383.5 and 390.5 both say:

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR¹ of the power unit and the total weight of the towed unit and any load thereon.

The first sentence of the definition is entirely correct; this is the definition used by other authorities. The second sentence, however, presents an alternative definition that is not used to determine GCWR by either vehicle manufacturers or the National Highway Traffic Safety Administration (NHTSA) (see 49 CFR 571.3) (“Gross combination weight rating or GCWR means the value specified by the manufacturer as the loaded weight of a combination vehicle.”) As FMCSA and its State partners increase their monitoring of drivers and carriers through roadside inspections, investigations and the Agency’s Safety Measurement System and other tools, questions from industry and the enforcement community about the inconsistency between FMCSA’s GCWR definition in 49 CFR 383.5 and 390.5 and NHTSA’s definition in 49 CFR 571.3 make it clear that the FMCSA definition must be changed.

V. Discussion of the Rule

FMCSA is using a direct final rule to promulgate this correction to the GCWR definition in 49 CFR 383.5 and 390.5 because the Agency does not believe the change

¹ GVWR stands for gross vehicle weight rating.

would have a net impact of the number of drivers or carriers subject to the FMCSRs, or the applicability of the requirements therein. Furthermore, we do not anticipate the submission of adverse comments. By removing the second sentence in the definition in both sections, the rule simply conforms the Agency's GCWR definition to the one used by NHTSA.

VI. Regulatory Analyses

E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this proposed rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and not significant within the meaning of the Department of Transportation's regulatory policies and procedures because the direct final rule is not expected to generate substantial congressional or public interest. The rulemaking is unlikely to impose costs on the industry because the change to the GCWR definition would not have a net impact of the number of drivers or carriers subject to the FMCSRs, or the applicability of the requirements therein. The cost, if any, would be borne by motor carriers that had previously determined by reference to the inconsistent wording that their operations were not subject to certain safety regulations and that would now be required to achieve compliance with the applicable rules. The Agency believes this population to be negligible, and that the costs of the rule would not begin to approach the \$100 million annual threshold for economic significance. This rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this direct final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the direct final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Tom Kelly, listed in the **For Further Information Contact** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has Federalism implications if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rule under E.O. 13132 and determined that it does not have Federalism implications.

E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 (Protection of Children)

FMCSA analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has

determined it will not effect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. There is no new information collection requirement associated with this final rule.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under our

environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(b) of Appendix 2. The CE under paragraph 6(b) addresses rulemakings that make editorial or other minor amendments to existing FMCSA regulations. A Categorical Exclusion Determination is available for inspection or copying in the [Regulations.gov](http://www.regulations.gov) Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway Safety, Incorporation by reference, Motor carriers.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

VII. The Final Rule

For the reasons stated above, FMCSA amends 49 CFR parts 383 and 390 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

**PART 383—COMMERCIAL DRIVER’S LICENSE STANDARDS;
REQUIREMENTS AND PENALTIES**

1. The authority citation for part 383 continues to read as follows:

AUTHORITY: 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 4140, Pub. L. 109-59, 119 Stat. 1144, 1746; and 49 CFR 1.73.

2. Amend § 383.5 by revising the definition of “gross combination weight rating” to read as follows:

§ 383.5 Definitions.

* * * * *

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination motor vehicle.

* * * * *

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS;
GENERAL**

3. The authority citation for part 390 continues to read as follows:

AUTHORITY: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, and 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; secs. 212, 217, and 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744), sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; and 49 CFR 1.73.

4. Amend § 390.5 by revising the definition of “gross combination weight rating” to read as follows:

§ 390.5 Definitions.

* * * * *

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination motor vehicle.

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Issued on: August 16, 2012

Anne S. Ferro
Administrator

[FR Doc. 2012-21017 Filed 08/24/2012 at 8:45 am; Publication Date: 08/27/2012]