

Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

#### List of Subjects in 45 CFR Part 156

Administrative appeals, Administrative practice and procedure, Administration and calculation of advance payments of premium tax credit, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Cost-sharing reductions, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Payment and collections reports, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR part 156 as set forth below:

#### PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 1. The authority citation for part 156 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701.

■ 2. Section 156.805 is amended by revising paragraph (a)(1) to read as follows:

#### § 156.805 Bases and process for imposing civil money penalties in Federally-facilitated Exchanges.

(a) \* \* \*

(1) Misconduct in the Federally-facilitated Exchange or substantial non-compliance with the Exchange

standards and requirements applicable to issuers offering QHPs in the Federally-facilitated Exchange, including but not limited to issuer standards and requirements under parts 153 and 156 of this subchapter;

\* \* \* \* \*

■ 3. Section 156.1250 is added to read as follows:

#### § 156.1250 Acceptance of certain third party payments.

Issuers offering individual market QHPs, including stand-alone dental plans, must accept premium and cost-sharing payments from the following third-party entities on behalf of plan enrollees:

(a) Ryan White HIV/AIDS Program under title XXVI of the Public Health Service Act;

(b) Indian tribes, tribal organizations or urban Indian organizations; and

(c) State and Federal Government programs.

Dated: March 11, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: March 12, 2014.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

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#### DEPARTMENT OF TRANSPORTATION

#### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 383 and 390

[Docket No. FMCSA–2012–0156]

RIN 2126–AB70; Formerly RIN 2126–AB53

#### Gross Combination Weight Rating; Definition

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

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) by revising the definition of “gross combination weight rating” (or GCWR) to clarify the applicability of the Agency’s safety regulations for single-unit trucks (vehicles other than truck tractors) when they are towing trailers, and the GCWR information is not included on the vehicle manufacturer’s certification label.

**DATES:** The final rule is effective April 18, 2014.

**ADDRESSES:** For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to <http://www.regulations.gov> at any time and insert “FMCSA–2012–0156” in the “Keyword” box, and then click “Search.” The docket is also available by going to the ground floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Siekmann, Office of Enforcement, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 493–0442 or via email at [Garry.Siekmann@dot.gov](mailto:Garry.Siekmann@dot.gov). Office hours are from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. If you have questions on viewing material in the docket, contact Docket Operations (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

#### I. Executive Summary

##### *Purpose and Summary of the Major Provisions*

This rule clarifies the applicability and improves the enforceability of the safety regulations by redefining GCWR. This revised definition provides a uniform means for motor carriers, drivers, and enforcement officials to determine whether a driver operating a combination vehicle is subject to the commercial driver’s license (CDL) requirements (49 CFR Part 383) or the general safety requirements (49 CFR Part 390). This rule also responds to a petition filed by the Commercial Vehicle Safety Alliance (CVSA) on February 14, 2008, seeking changes in the definition of “gross combination weight rating.”

##### *Benefits and Costs*

This action only clarifies the definition of GCWR to eliminate confusion surrounding the language of the previous definition and long-standing enforcement practices. The rule provides clear criteria for determining the applicability of the FMCSRs when the GCWR is the deciding factor. Costs, if any, will be borne by motor carriers and drivers who had previously concluded, based on the wording of the GCWR definition, that their operations were not subject to certain safety regulations, but now will comply with the applicable rules.

## II. Legal Basis for the Rulemaking

This final rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (MCSA or 1984 Act), both of which provide broad discretion to the Secretary of Transportation (Secretary) in implementing their provisions. In addition, this rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [49 U.S.C. Chapter 313].

The 1935 Act provides that the Secretary may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier [49 U.S.C. 31502(b)(1)], and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation [49 U.S.C. 31502(b)(2)]. The amendments made by this rule are based on the Secretary's authority to regulate the safety and standards of equipment of for-hire and private carriers.

The 1984 Act gives the Secretary concurrent authority to regulate drivers, motor carriers, and vehicle equipment [49 U.S.C. 31136(a)]. Section 31136(a) requires the Secretary to publish regulations on commercial motor vehicle (CMV) safety. Specifically, the Act sets forth minimum safety standards to ensure that (1) CMVs are maintained, equipped, loaded, and operated safely [49 U.S.C. 31136(a)(1)]; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely [49 U.S.C. 31136(a)(2)]; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely [49 U.S.C. 31136(a)(3)]; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators [49 U.S.C. 31136(a)(4)]. Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112-141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, i.e., that the regulations ensure that "(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 [Transportation of Hazardous Material] or chapter 313 [Commercial Motor Vehicle Operators] of this title" [49 U.S.C. 31136(a)(5)].

This action clarifies the applicability and improves the enforceability of GCWR within the safety regulations.

This gives motor carriers and the drivers they employ a practical means of determining whether any combination vehicle is subject to the Federal safety regulations concerning licensing, equipment, and inspection, repair and maintenance, consistent with 49 U.S.C. 31136(a)(1). This action will also result in consistent application of the rules by Federal and State enforcement personnel. This rule does not address the responsibilities or physical condition of drivers covered by 49 U.S.C. 31136(a)(2) and (3), respectively, and deals with 49 U.S.C. 31136(a)(4) only to the extent that a vehicle operated in accordance with the safety regulations is less likely to have a deleterious effect on the physical condition of a driver. FMCSA has considered the costs and benefits of the rule, as required by 49 U.S.C. 31136(c)(2)(A) and 31502(d).

With regard to 49 U.S.C. 31136(a)(5), this rule does not change the long-standing prohibitions and penalties against operating a CMV, as defined either in 49 CFR 383.5 or 49 CFR 390.5, without complying with applicable requirements. Among other things, motor carriers are currently prohibited from using unqualified CMV drivers; and unqualified drivers are currently prohibited from operating CMVs. This rule has only a limited effect on the risk of driver coercion by motor carriers, shippers, receivers, or transportation intermediaries. This action enables drivers and the entities that are in a position to coerce drivers into violating the FMCSRs to determine with a greater degree of certainty whether particular vehicle configurations meet either of the CMV definitions under 49 CFR Parts 383 or 390. This will help eliminate differences of opinion between drivers and other entities regarding the applicability of the rules and previously published guidance. As a result, entities in a position to coerce drivers to operate in violation of the CDL requirements (49 CFR Part 383) or certain safety regulations (49 CFR Parts 390-399) will either ensure each of their decisions is consistent with the rules or be unable to avoid the fact that any decision inconsistent with the rules represents an act of coercion. The Agency expects the rule to reduce the risk of driver coercion.

The CMVSA required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for the issuance of CDLs by the States and the information to be contained on each license (49 U.S.C. 31305, 31308). This action provides a uniform means for motor carriers, drivers, and enforcement

officials to determine whether a driver operating a combination vehicle is subject to the CDL requirements.

## III. Background

The term CMV is defined differently in 49 CFR 383.5 and 390.5, as required by the underlying statutes (the CMVSA and the MCSA, respectively). Both regulatory definitions, however, like their statutory equivalents, depend (in part) on the GVWR or GVW, whichever is greater, to determine whether a single-unit vehicle is a CMV for purposes of the relevant safety regulations. Although neither the MCSA nor the CMVSA referred explicitly to combination vehicles, Congress clearly did not intend to exempt this huge population of vehicles from the safety regulations applicable to CMVs. FMCSA, therefore adapted the statutory language used for single-unit vehicles to combination vehicles, substituting GCWR or GCW, whichever is greater, for GVWR or GVW.<sup>1</sup> Because GVW and GCW are used in the regulatory definitions of CMV in parts 383 and 390, enforcement officials and motor carriers may determine the applicability of the safety regulations simply by weighing the vehicles. In many situations, however, scales are not readily available. That deficiency increases the importance of correctly determining the GCWR by alternate means to decide whether a combination is a CMV. Drivers, carriers and enforcement officials should not have to search manufacturers' product literature for the GCWR or FMCSA's Web site or commercial publications for regulatory guidance. Instead, they should be able to rely on codified regulations that are accessible and easy to understand and implement.

On February 14, 2008, the CVSA petitioned FMCSA, among other things, to change the definition of GCWR which it said was "proving problematic for inspectors and industry when determining what is considered to be a CMV and when a CDL is required." The Agency granted the petition on August 18, 2011, and agreed to initiate a rulemaking. On August 27, 2012, FMCSA published a direct final rule (DFR) pursuant to 49 CFR 389.39 to amend the definition of GCWR (77 FR 51706). The FMCSA received several adverse comments, resulting in the withdrawal of the DFR (77 FR 65497, Oct. 29, 2012) and the subsequent republication of the proposed GCWR

<sup>1</sup> Gross combination weight rating (GCWR) is defined in 49 CFR 383.5 and 390.5.

Gross vehicle weight rating (GVWR) is defined in 49 CFR 383.5 and 390.5.

definition as a notice of proposed rulemaking (NPRM) (78 FR 26575, May 7, 2013, under Regulatory Identification Number 2126-AB53). The adverse comments to the DFR were addressed in the NPRM.

#### IV. Discussion of Comments

FMCSA received 12 comments in response to the NPRM. The commenters included the CVSA, the New York State Department of Motor Vehicles (NY DMV), the Truck and Engine Manufacturers Association (EMA), SAE International (SAE) [formerly the Society of Automotive Engineers], NTEA (formerly National Truck Equipment Association), the Truck Trailer Manufacturers Association (TTMA), and a few individuals. Five commenters favored the proposed rule, six opposed it (for different reasons), and one comment did not directly address the proposed change.

##### *Comments Supporting NPRM*

A statement in support of the proposed rule was provided by "R.S." in an on-line comment: "It's about time. New definition is finally correct and makes it easy for people to understand." Dave Schofield expressed the same view.

The NY DMV said that "[t]he proposed rule clarifies the applicability of the safety regulations and provides a uniform means for motor carriers, drivers, and Federal and State enforcement officials to determine whether a driver operating a combination vehicle that does not display a GCWR, is subject to the CDL requirements. New York State extends our support to this new proposed definition."

CVSA said that it "strongly supports FMCSA's proposal to change the definition of 'Gross Combination Weight Rating' in Parts 383 and 390 to read" as indicated in the NPRM.

EMA commented that "we support FMCSA's proposed new GCWR definition. . . . [M]ost trucks and tractors do not include a GCWR on the FMVSS certification label, and when they do it could be misleading. Accordingly, we agree with FMCSA that the GCWR specified on the certification label of a truck or truck tractor should only serve as an optional element of the GCWR definition. The better method for determining the GCWR of a combination vehicle is to add the GVWRs or GVWs of the power unit and the towed unit(s)."

*FMCSA Response:* The Agency agrees with their comments.

##### *Comments Opposing NPRM*

Michael J. Schmidt, Sr., objected to "any change" in the current regulations. "The bottom line is that enforcement must have scales. The current regulation is sufficient as it reads."

NTEA "supports the FMCSA's goal . . . and offers further clarification. . . . By creating a definition that starts out by referencing a GCWR figure on the certification label, we believe many enforcement officials will assume that the certification labels require such a figure. Even today, it is not uncommon for an enforcement official to assume the GCWR is required. When they see a label without a GCWR figure they will, incorrectly, cite the driver/owner for a false or incorrect label. . . . The definition as proposed, while well intentioned, is likely to exacerbate this situation." NTEA therefore recommended that GCWR be defined simply as the GVWR of the towing unit added to the GVWR of the trailer(s).

"SAE and the SAE Tow Vehicle Trailer Rating Committee (SAE TVTRC) do not believe [the proposed definition] is an appropriate methodology for determining GCWR. . . . GCWR covers performance requirements for systems including (but not limited to) power unit engine, transmission, drive axle, powertrain cooling, steering, suspension, brake and structural systems, and as such, can only properly be determined by the power unit manufacturer. Summing the GVW or GVWR values of power unit and towed unit(s) may result in an actual Gross Combination Weight condition but it will not necessarily produce a Gross Combination Weight RATING, as the resultant may not even be close to the value tested and validated by the power unit manufacturer. . . . Law enforcement difficulties in determining GCWR for means of enforcement should not lead to a change in definition of GCWR, but rather a change in how the value is communicated and displayed."

John F. Nowak raised several objections to the proposed GCWR definition. Although the first element of the definition is the "value specified by the manufacturer of the power unit if displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration," he pointed out that few manufacturers actually list the GCWR on the certification label. Mr. Nowak also noted that the second element of the definition allows other "means [to] be used to determine GCWR information even if the [manufacturer's GCWR]

information is posted on the certification label." He believes that a "revision to the definition of GCWR by FMCSA must also include a revision to the NHTSA certification label to require the display of GCWR on said label." In his view, "[d]isplay of the GCWR on the certification label would solve the problem . . ."

Mr. Nowak's second major contention is that the proposed definition could promote unsafe practices. Combining the GVWR of the towing vehicle and GVWR of the trailer could produce a GCWR higher than that specified by the manufacturer of the towing vehicle (though rarely listed on the NHTSA certification label). As a result, the definition might reduce safety because "the driver and or carrier may assume that the [Agency's GCWR] number . . . is an accurate and safe rating for the towing vehicle. . . . It is imperative that the FMCSA drop the sum of the GVWRs definition and work with NHTSA to post the GCWR rating on the certification to promote safe operation of combination vehicles."

TTMA and John Gregg argued that the GCWR of a vehicle should be the sum of its gross axle weight ratings (GAWR). TTMA, like Mr. Nowak, was "concerned that the proposed rule . . . might allow for situations where combination vehicles are dangerously overloaded. . . . [W]e suggest that the rule for GCWR . . . be amended to show that in no case shall the GCWR exceed the sum of the [GAWRs] of the power unit and the towed unit(s)." Mr. Gregg pointed out that "[t]he GCW is not the sum of the GVWs when the connections between the vehicles transfer vertical loads, such as 5th wheel hitches. With load bearing couplers a portion of the GVW of one vehicle is included in the GVW of the other. The GCW is actually the sum of the Gross Axle Weights (GAW) of the vehicles in the combination."

*FMCSA Response:* The recommendation to require manufacturers to list the GCWR on the certification label is beyond the scope of this rulemaking. The Agency notes that a manufacturer's GCWR label would not resolve certain situations, e.g., when the driver of a combination vehicle with a GCWR below the relevant jurisdictional threshold (10,001 or 26,001 pounds) appears to have loaded the vehicle and trailer beyond those values. This question could be decided only by the use of scales. The manufacturer's GCWR alone could not, and should not, exempt the driver of an overloaded vehicle from the applicable regulatory requirements.

While the FMCSA agrees that the display of the GCWR information on the

certification label would be helpful, the Agency does not have the authority to adopt that requirement. That long-term approach would leave the enforcement community and the industry without a practical solution for the short term. The NPRM focused on a more immediate approach with minimal economic impact to the industry.

FMCSA does not share SAE's apparent belief that vehicle operators would load their combinations to a GCWR allowed by this rule that might exceed the GCWR established by the manufacturer of the towing vehicle. The Truck & Engine Manufacturers Association also expressed no concern over that possibility.

A GCWR established by adding two (or more) GVWRs should not be construed as the Agency's promotion of excessive and unsafe weights for that combination. State and Federal laws set strict limits on the axle weight and gross weight of combination vehicles, irrespective of their GCWR. This rule does not affect those limits; it simply ensures that drivers and carriers who combine towing vehicles and trailers of sufficient GVWR—in various ways that FMCSA cannot control—are not excused from compliance with the appropriate safety regulations. As for NTEA's concern that the first element of the definition—listing of the manufacturer's GCWR on the NHTSA certification label—would lead enforcement officers to assume that such a listing is required, we believe that the normal training procedures of the Agency and its State partners would reduce any such misunderstanding to insignificance. NTEA supported the second element of the definition, which defines GCWR as (among other things) the combined GVWRs of the towing unit and trailer.

Mr. Nowak pointed out that the second method of determining GCWR could be used “even if the [GCWR] information is posted on the certification label.” The Agency agrees that even if the manufacturer's GCWR were displayed on the NHTSA label, the proposed definition would use the sum of the GVWRs as the GCWR if that sum exceeded the value specified by the manufacturer.

FMCSA declines to give further consideration to the proposal to treat GCWR as the sum of the GAWRs. While a comment that constitutes a “logical outgrowth” of an NPRM may be considered “within the scope” of a rulemaking under the requirements of the Administrative Procedure Act, adoption of a far-reaching alternative regulatory scheme, like that proposed by TTMA and Mr. Gregg, without prior

discussion would test the limits of those doctrines.

#### *Removal of Regulatory Guidance*

The NPRM proposed to remove FMCSA's regulatory guidance on certain issues because the revised GCWR definition would make it unnecessary. The Agency is withdrawing questions 3 and 4 to 49 CFR 383.5 (62 FR 16369, 16395, April 4, 1997) and questions 3, 4, and 11 to 49 CFR 390.5 (62 FR 16369, 16406–16407, April 4, 1997). The text of the guidance to those questions was included in the NPRM at 78 FR 26578–26579.

#### **V. Discussion of Regulatory Changes in Sections 383.5 and 390.5**

Both the previous and revised definitions of GCWR include two alternative methods of determining GCWR, but the revised definition is simpler to understand and apply.

The first method of establishing GCWR is changed from “the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle” to “[a] value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration.” The revised definition is simpler and easier to understand.

The alternative method of establishing GCWR applies irrespective of the manufacturer's GCWR. The previous definition said that “[i]n the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.” As explained above, this meant that scales were typically needed to determine GCWR. The revised definition is “[t]he sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed units, or any combination thereof, that produces the highest value.” This method retains the option of weighing combination vehicles, but also adopts an enforcement practice that was widely, though informally, used over the years, namely adding the GVWR of the truck and trailer. While this method may occasionally produce a GCWR higher than that specified by the manufacturer, it reflects what motor carriers and drivers are actually doing. Many vehicle operators load up to (and sometimes beyond) the maximum their towing units and (especially) trailers can handle, which they generally assume to be the combined GVWRs. When these

combined GVWRs exceed the weight thresholds for the safety regulations (10,001 pounds) or the CDL regulations (26,001 pounds), the operators will be held accountable. The new definition also allows enforcement officers to combine actual weights with GVWRs and to treat the heaviest combined value as the GCWR.

Finally, the revised definition provides that GCWR will be the value produced by either the first or second method, whichever gives the higher value. An “exception” has been added to the definition. Some heavy-duty pickup trucks and lighter-duty straight trucks have GCWRs set by the manufacturer that are well above the 10,001-pound threshold for application of the general safety regulations; others have manufacturer-established GCWRs that are above the 26,001-pound threshold required for a CDL. Yet many of these vehicles are often operated without trailers, or with very small trailers. In the absence of evidence that these vehicles are being used in “combination,” that is, to tow trailers, FMCSA believes it would be unfair (and for reasons of safety unnecessary) to use the manufacturer's GCWR to decide whether the driver and carrier must comply with the safety or CDL regulations. The final GCWR definition therefore includes an exception: “The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.”

#### **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 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), or within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 2, 1979). While this rule may affect some carriers and drivers not currently subject to some or all of the FMCSRs, the Agency is unable to quantify this effect. This rulemaking only clarifies the definition of GCWR to eliminate confusion surrounding the language of the existing definition and acknowledges long-standing enforcement practices. The rule will provide clear criteria for determining the applicability of the FMCSRs when the GCWR is the deciding factor. The cost, if any, will be borne by motor carriers and drivers who had previously

concluded, based on the wording of the definition of GCWR, that their operations were not subject to certain safety regulations, but who now will comply 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. The Agency does not expect the final rule to generate substantial congressional or public interest. No member of congress commented on the NPRM and the public response was limited. This rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), this final rule is not expected to have a significant economic impact on a substantial number of small entities because it would only clarify existing rules by providing clear objective criteria for determining the applicability of the FMCSRs when the GCWR is not included on the FMVSS certification label required by NHTSA. Consequently, I certify that the final rule would not have a significant economic impact on a substantial number of small entities.

#### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding the effects of this final rule. While the Agency believes that the rule will adversely affect few, if any, small businesses, organizations, or governmental jurisdictions, any questions concerning its provisions or options for compliance should be

directed to, the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the final 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 ensuring 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 final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$151 million (which is the 2012 inflation-adjusted value of the 1995 threshold of \$100 million) or more in any 1 year.

#### *E.O. 13132 (Federalism)*

A rule has Federalism implications if it 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 final 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 final rule does 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 does 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 that receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this final 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 action.

#### *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 final 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* Web site listed under **ADDRESSES**.

FMCSA also analyzed this final 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 final 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 final rule does not have tribal implications under E.O. 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 final 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.

For the reasons stated above, FMCSA amends title 49, Code of Federal Regulations, chapter III, subchapter B, parts 383 and 390, 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 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 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)* is the greater of:

(1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

\* \* \* \* \*

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

■ 3. The authority citation for part 390 is revised 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. 4114 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; sections 32101(d) and 34934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 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)* is the greater of:

(1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

\* \* \* \* \*

Issued under the authority of delegation in 49 CFR 1.87 on: March 6, 2014.

Anne S. Ferro,  
Administrator.

[FR Doc. 2014–05502 Filed 3–18–14; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS–HQ–IA–2014–0010; 92220–1113–0000; ABC Code: C6]

**RIN 1018–BA47**

**Endangered and Threatened Wildlife and Plants; Reinstatement of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Consolidated Appropriations Act of 2014 (Pub. L. 113–76) was enacted into law on January 17, 2014. A provision of that act directs the Secretary of the Interior, within 60 days of enactment, to reissue the final rule published on September 2, 2005, that authorized certain otherwise prohibited activities with U.S. captive-bred specimens of scimitar-horned oryx, addax, and dama gazelle where the purpose of the activity is associated with the management of the species in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries. This rule implements that directive.