

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 657

[FHWA Docket No. FHWA-97-2219; 93-28]

RIN 2125-AC60

#### Certification of Size And Weight Enforcement

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Supplemental advance notice of proposed rulemaking (ANPRM); request for comments.

**SUMMARY:** The FHWA is considering changes in Federal regulations affecting State certification of commercial motor vehicle size and weight enforcement. Public comment is requested on the type of information and data that States should be required to submit to the FHWA in support of their annual certification of size and weight enforcement. This can include, but is not limited to: Specific relevant data elements; program approaches that may affect detection and assessment of vehicle weight violations; and the technologies and logistics of data collection. Previous efforts in this area were suspended by the FHWA as a result of the agency's decision to conduct a comprehensive study of all aspects of the truck size and weight issue and the need to devote significant resources to that effort. With the study nearing completion, the agency is resuming work on revising the certification process.

**DATES:** Comments must be received on or before December 27, 2000.

**ADDRESSES:** Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 9 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. Robert Davis, Office of Freight Management and Operations (202-366-2997), 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 7:30 a.m. to 4 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 web page at: <http://www.access.gpo.gov/nara>.

##### Background

To preserve the Nation's investment in the Interstate Highway System, in 1956 the Congress established vehicle weight limits for the Interstate System (23 U.S.C. 127). Beginning in 1975, the Congress required each State to certify annually that it is enforcing its size and weight laws (23 U.S.C. 141) as a condition for full receipt of Federal-aid highway funds. The regulation to implement section 141 is found at 23 CFR part 657, Certification of Size and Weight Enforcement. Except for technical corrections necessitated by statutory changes, the basic content of part 657 has remained unchanged since publication in August 1980.

Since that time, the motor carrier industry has undergone substantial change. Concurrently, a need for change in State enforcement efforts also has been identified. Both the General Accounting Office (GAO) and the

Department's Office of Inspector General (OIG) have conducted reviews of State operations under the existing rules and found problems, not only with specific practices in individual States, but also with the requirements themselves. In response to the GAO and OIG reports, the Federal Highway Administration in December 1993 published an advance notice of proposed rulemaking (ANPRM) under Docket No. 93-28 with a request for comments (58 FR 65830, December 16, 1993), and an extension of comment period (59 FR 11956, March 15, 1994) as the first step in revising and updating the requirements of part 657. (The FHWA rearranged its docket system to accord with the electronic system adopted by the Department of Transportation in 1997. The FHWA Docket No. 93-28 was transferred and scanned as FHWA Docket No. 1997-2219.)

As the FHWA completed its initial review of the comments received in response to the ANPRM, then Federal Highway Administrator Rodney Slater in June 1994 committed the FHWA to a comprehensive review of all aspects of the truck size and weight issue. Since the agency was then committed to a comprehensive review of the program, it decided to table the rulemaking until the comprehensive study could evaluate existing issues, including size and weight certification. Although the size and weight study did ask questions about State certification programs, only a few comments were received on the topic. After consideration, the FHWA determined that the responses to the comprehensive study that addressed vehicle weight enforcement were too few in number and specificity to form a basis for reconsidering current State certification requirements. With the comprehensive study nearing completion, therefore, the FHWA is resuming its work to revisit the certification process and determine if a rulemaking effort on this topic should be continued.

The 1993 ANPRM contained a discussion of nine problem areas that had been noted by the GAO, the OIG, or the States as having a negative effect on certification and enforcement procedures and their effectiveness at measuring and reporting commercial motor vehicle (CMV) compliance. These were:

1. The magnitude and location of overweight vehicles are unknown;
2. Operational tolerances at scales are common despite Federal law;
3. Preparation of enforcement plans and certifications is time consuming;
4. Not all States are taking advantage of improved data collection to enhance program management and effectiveness;
5. The amount of pavement wear attributable to vehicles with special permits is unknown;
6. Permit fee and overweight fine schedules often do not reflect true costs;
7. Enforcement plans lack specific, measurable goals;
8. There is inadequate vehicle size and weight enforcement in some urban areas; and
9. Sanction procedures do not clearly identify some settlement options.

Under each problem area, several questions were posed to help respondents focus their comments.

Fifty-three interested parties submitted written comments to the ANPRM: 33 State departments of transportation, departments of public safety, and/or State highway patrols; 9 transportation related associations; 3 commercial motor carriers; 1 safety advocacy group; 1 university engineering department; 1 Federal agency (the U.S. Department of Commerce's Technology Administration); and 4 others from private citizens. In response to the questions posed in the 1993 ANPRM, respondents stated, in summary, that:

- As a group, they believed no separate data base was needed to help them monitor heavy vehicle movements, and that the cost of developing a separate data base would outweigh any savings in pavement and bridge costs;
- Overall, the format and contents of the State's enforcement plan should be left largely as they are. Some States stated that they would expand the data reported as new technology is developed to help them collect and provide these data. Four States suggested that the FHWA should outline a core group of enforcement activities and allow the States to respond to them.
- Overwhelmingly, some form of scale tolerances should be allowed. Only one respondent suggested that none should be permitted.
- States were taking advantage of advanced technologies, largely the result of the Intelligent Transportation Systems' Commercial Vehicle Operations initiative, to collect and convey size and weight data. Fifteen States indicated reliance on weigh-in-motion (WIM) technology, in some manner, for data collection.

- A minority of States responding were attempting to track infrastructure costs resulting from vehicles operating under special permits. However, none of them had the capability to track movements undertaken with multiple trip permits.

- Fee structures and fines charged by States ranged from full consideration of infrastructure costs to a nominal fee with no attempt to reflect effects on the highway system. Respondents noted that imposition of fees and fines ultimately should remain a State decision.

- A separate evaluation of urban enforcement activities was not needed. Cooperative agreements existed with large cities or enforcement programs were in place around urban areas that took care of the concern. Regular communication with, and training of, local officials on commercial vehicle weight enforcement was on-going.

The objective of this supplemental ANPRM is to update information like that summarized above, and provide all interested parties the opportunity to present new ideas, concepts, and information that they believe the FHWA should consider in revising the certification process. This will afford States an opportunity to cost-effectively achieve better compliance with size and weight laws, obtain data that they and the FHWA may apply to assessing weight compliance, identify existing technologies to facilitate certification and describe new technologies that may ultimately apply. The input received in response to this request will be considered, along with comments provided in response to the 1993 ANPRM, as the FHWA decides whether to continue the rulemaking to the NPRM stage.

The FHWA asks that respondents consider the following areas of concern, as well as any others which they believe are relevant to a discussion of improving the language, requirements, and effectiveness of 23 CFR part 657 for State agencies. As in 1993, the agency requests that respondents structure their comments to respond to the issues listed below, where appropriate, taking into consideration the following under each:

1. *Data Identification of Problem Areas.* Is a data collection system needed to track truck weight patterns throughout a State? States in general did not believe that a new system was needed to collect data on overweight commercial truck travel patterns in their jurisdictions, although they did not describe how the process was currently handled. Left unanswered was: should such a system be required? Moreover, is one feasible? Does one already exist for

other purposes that might be adapted to help satisfy certification requirements? Would one improve the operation of the State's weight enforcement program?

2. *Aspects of Highway Safety involving Commercial Vehicles.* The increasing volume of all traffic, including that of commercial vehicles, continues to increase the exposure that any single vehicle has to potential crash involvement. The importance of truck safety has always been known to the traffic safety enforcement community, but the issue has now become an increasingly "high-profile" item to the public at large, with the public demanding increased accountability. Accordingly, highway and truck safety must be considered in every aspect of highway system operation, including commercial vehicle weight enforcement. The primary reason for the development of vehicle weight laws was infrastructure protection. Enforcement of these laws was, and continues to be, seen as the primary method to obtain full value from the resources committed to building and maintaining the highway system. However, the operational safety performance of commercial vehicles is compromised when those vehicles either exceed legal weight limits, or are loaded beyond the design capacity of the vehicle. The FHWA recognizes that at the Federal level, truck safety issues *per se* are the direct responsibility of the newly created Federal Motor Carrier Safety Administration, and that it is not the intention to duplicate in any way requirements or responsibilities. The question here is whether the value added to improving commercial vehicle safety by weight enforcement should be formally acknowledged, and if so, in what manner.

3. *Weight Tolerances at Scales or Enforcement Judgment.* According to 23 U.S.C. 127, States may not allow any weight tolerances on the Interstate System. Thus, by law, States are required to issue a citation, or take some enforcement action, if a scale reading on the Interstate is even one pound over the limit. Off the Interstate, States may provide for "enforcement tolerances." The problem is that State law or regulation has to prescribe a tolerance in order for it to be allowed. Often, there is no codification of the practice; yet, it takes place. Under 23 U.S.C. 141, this can be considered inadequate enforcement of State size and weight laws.

Despite the requirement for tolerance codification, scale tolerances are apparently widely used, and respondents to the 1993 ANPRM overwhelmingly supported their usage.

Frequently, the tolerances described were defined as something other than tolerances *per se*, usually "officer discretion."

In sum, should the practice of allowing scale operational tolerances be recognized in Federal law to permit State usage on some systematic basis? What kind (percentage or poundage) and amount of scale tolerance should be allowed? Or, should scale tolerances be considered a matter for enforcement officials' judgment at the weighing site, drawing upon State regulation and enforcement practice?

4. *Documenting Pavement Use and Bridge Wear Attributable to Vehicles with Special Permits.* What do we now know about pavement use and bridge wear associated with vehicles with special permits, especially permits allowing multiple trips? What *can* we reasonably know? What systems now help document usage? What is being done with the information obtained? What improvements are needed to provide State officials with timely, representative knowledge about pavement use and bridge wear due to permitted vehicle operations? Any information systems that would be considered for implementation to respond to these questions would at least cover the Interstate System, as current Federal statute (23 U.S.C. 127) applies only to the Interstate System. Could such a system be reasonably expanded to distinguish permitted travel on non-Interstate highway systems such as the non-Interstate portions of the National Highway System (NHS), or National Network (NN) (for trucks described in the Surface Transportation Assistance Act of 1982 (STAA), Public Law 97-424, 96 Stat. 2097). Do you believe that such an expansion would be warranted from a safety standpoint?

5. *Permit Fees and Overweight Fines.* What is the basis for current systems of fees and fines? Are they designed to cover highway costs (including enforcement), simply provide a token fee, or serve as a deterrent? Do States have any systems to more completely capture, or more equitably assess, State highway costs? What are your views on the potential for a system that would monitor vehicle operations for use in applying the State permit fee and fine structures? If such a system is considered, what would be the minimum data elements that should be included? For each incremental increase in vehicle specificity, what are additional costs and issues that you see affecting implementation?

6. *Vehicle Size and Weight Enforcement in Urban Areas.* The

wording of 23 U.S.C. 141 requires vehicle size and weight enforcement on the Federal-aid primary, urban, and secondary systems, including the Interstate System. The system references in this section were not amended by Congress when these systems (except for the Interstate) were eliminated and replaced by the National Highway System (NHS) in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914. When the language of section 141 was enacted (Federal-Aid Highway Amendments of 1974, Public Law 93-643, 88 Stat. 2284), the mileage comprising the urban system, the urban extensions of the primary and secondary systems, and the urban Interstate, accounted for a significant proportion of the total street mileage in many cities. Today, the only designated Federal-aid system, the NHS, includes a much smaller proportion of the total mileage in every city. From a system mileage standpoint, Federal interest has decreased significantly, even though the total mileage on which some form of Federal-aid funds may be spent by States has remained constant.

The current regulation simply requires that States must identify any urbanized areas not subject to State enforcement and, for those areas, must include an analysis of enforcement efforts. Many States include with their certifications information on urban weight enforcement discussions of activity that are conducted by city/municipal police, even though many of these activities probably occur on local streets that have never been a part of any Federal-aid system.

Is it appropriate to reconsider and or clarify Federal interest in the extent of urban weight enforcement?

7. *Sanction Procedures.* Section 657.21 establishes Federal penalties for State imposition of non-conforming weight limits on the Interstate system, as well as failure to submit a certification or enforce its size and weight laws. However, unanswered by current statute is how the FHWA will determine if inadequate enforcement is occurring, and how a State may respond to Federal determinations of violation.

Therefore, what are some workable, practical performance measures or index values that might more objectively define the enforcement efforts of a State that would reflect the varying State enforcement philosophies, procedures, and statutory bases? Such a measure or measures could include items such as effort expended, applicable mileage, number and type of scales used, as well as the existing measures of activity (e.g., weighings and

penalties). What processes or procedures would best serve the State in responding to, and working with the FHWA to resolve, a Federal determination of non-compliance or non-enforcement? What might be the simplest, most straightforward system of resolution?

**Note:** Respondents may wish to refer to § 657.15 for currently invoked measures of performance as an aid in considering and developing their own recommendations.

8. *Enforcement of LCV Regulations.* The ISTEA added a statement to the annual certification of vehicle size and weight enforcement specifically covering compliance with the freeze on the operation of longer combination vehicles (LCVs). Previously, this activity was covered by the general statement in 23 U.S.C. 141 that "it is enforcing all State laws respecting maximum vehicle size and weights." In considering possible changes to the measures of size and weight enforcement activity to be included with a certification, can LCV enforcement be singled out and reported with its own measure? What are practical measures the States can propose to quantify this activity?

**Note:** the ISTEA added State compliance with the freeze on the operation of longer combination vehicles (LCVs) to the certification process of 23 U.S.C. 141.

9. *Use of Variable Load Suspension (VLS) Axles.* Anecdotal evidence suggests that vehicles equipped with VLS axles may be causing road damage because the axles are not always used as designed to compensate for heavier loads. Should VLS axles be specifically mentioned in Federal regulations to either exclude them from, or conditionally include their use in, the determination of a commercial motor vehicle's compliance with the various weight limits, including the bridge formula? If included, what qualifications would have to be met to permit these axles' inclusion?

**Note:** Bigger payload has been one of the reasons for the large increase in VLS axle usage. Another is load equalization. However, the axle can often be raised or lowered from inside the cab, so that the opportunity exists for the axle not to be engaged when the loaded vehicle is underway. The potential for abuse exists, therefore, as a disengaged VLS axle could lead to heavy permanent axle loadings and significant damage to both the roadway and vehicle. Documentation on individual State treatment of VLS axles when calculating vehicle axle weight is fragmented.

10. *Size and Weight Enforcement Practices and Procedures.* Concerns have been voiced about the lack of uniformity in States' roadside size and weight enforcement practices, including measurement of length, use of portable

scales, and citing multiple violations on the same vehicle. Should there be some minimum level of Federal standards established for the various tasks that make up State size and weight enforcement? Do such standards already exist that might be incorporated in a State's enforcement process? Should employee training in various aspects of size and weight enforcement be a component of State enforcement plans?

11. *Role of Technology.* What are your views on the role that Intelligent Transportation Systems (ITS) technology can have in monitoring and/or implementing the various aspects of commercial vehicle size and weight discussed herein. In terms of the existing highway systems, what would be the minimum data and coverage requirements necessary to make an ITS-based information system effective from a public agency standpoint, and useable for motor carriers and drivers?

#### **Rulemaking Analyses and Notices**

All comments received before the close of business on the final day of the comment period indicated above will be considered and will be available for examination in the docket at the above address or by electronic means. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket that becomes available after the 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 is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the economic impact of potential changes to the regulatory requirements concerning the certification of size and weight enforcement. Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with various alternative requirements. Comments, information and data are solicited on the economic impact of the potential changes.

#### **Regulatory Flexibility Act**

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information and data on these impacts.

#### **Unfunded Mandates Reform Act of 1995**

The FHWA does not anticipate that any rule resulting from this preliminary action would impose a Federal mandate involving 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. 1531 *et seq.*)

#### **Executive Order 12988 (Civil Justice Reform)**

The FHWA will evaluate any action that may be proposed in response to comments received here to ensure that such 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)**

The FHWA will evaluate any rule that may be proposed in response to comments received here under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We do not anticipate that any such rule would be economically significant or would present an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

The FHWA will evaluate any rule that may be proposed in response to comments received here to ensure that any such rule will not effect 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 13132 (Federalism)**

Any action that may be initiated in response to comments received here will be analyzed in accordance with the principles and criteria contained in

Executive Order 13132 dated August 4, 1999. The FHWA anticipates that such action would not have a substantial direct effect or sufficient Federalism implications on States that would limit the policymaking discretion of the States. Nor do we anticipate that such action would directly preempt any State law or regulation.

#### **Executive Order 12372 (Intergovernmental Review)**

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

#### **Paperwork Reduction**

The FHWA does not anticipate that any action initiated in response to comments received here will add or expand a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

#### **National Environmental Policy Act**

The FHWA will analyze any actions that may be initiated in response to comments received here for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in order to assess whether such action would have any effect on the quality of the environment.

#### **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 section with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 657**

Enforcement plan, Highway and roads, Sanctions, and Vehicle size and weight certification.

**Authority:** 23 U.S.C. 127, 141, and 315; 49 CFR 1.48(b).

Dated: September 15, 2000.

**Anthony R. Kane,**

*Federal Highway Executive Director.*

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