

■ 4. Amend section 28.204–3 by revising the section heading and paragraphs (a), (g), and (h) to read as follows:

**28.204–3 Irrevocable Letter of Credit.**

(a) Any person required to furnish a bond has the option to furnish a bond secured by an irrevocable letter of credit (ILC) in an amount equal to the penal sum required to be secured (see 28.204). A separate ILC is required for each bond.

\* \* \* \* \*

(g) Only federally insured financial institutions rated investment grade shall issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(1) The offeror/contractor is required by paragraph (d) of the clause at 52.228–14, Irrevocable Letter of Credit, to provide the contracting officer a credit rating from a recognized commercial rating service that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) To support the credit rating of the financial institution(s) issuing or confirming the ILC, the contracting officer shall verify the following information:

(i) *Federal insurance.* Each financial institution is federally insured. Verification of federal insurance is available through the Federal Deposit Insurance Corporation (FDIC) institution directory at the Web site <http://www2.fdic.gov/idas/index.asp>.

(ii) *Current credit rating.* The current credit rating for each financial institution is investment grade and that the credit rating is a Nationally Recognized Statistical Rating Organization (NRSRO). NRSROs can be located at the Web site <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(3) The rating services listed in the Web site above use different rating scales (e.g., AAA, AA, A, BBB, BB, B, CCC, CC, C, and D; or Aaa, Aa, A, Baa, Ba, B, Caa, Ca, and C) to provide evaluations of institutional credit risk; however, all such systems specify the range of investment grade ratings (e.g., BBB–AAA or Baa–Aaa in the above examples) and permit evaluation of the relative risk associated with a specific institution. If the contracting officer learns that a financial institution's rating has dropped below investment grade level, the contracting officer shall

give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228–14.

(h) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 2006 Edition, International Chamber of Commerce Publication No. 600, is available from: ICC Books USA, 1212 Avenue of the Americas, 21st Floor, New York, NY 10036, Phone: 212–703–5066, Fax: 212–391–6568, E-Mail: [iccbooks@uscib.org](mailto:iccbooks@uscib.org), Via the Internet at: <http://store.iccbooksusa.net>.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 5. Amend section 52.228–14 by revising the date of the clause and paragraphs (d), (e)(5), and (f)(5) to be read as follows:

**52.228–14 Irrevocable Letter of Credit.**

\* \* \* \* \*

**Irrevocable Letter of Credit (Date)**

\* \* \* \* \*

(d)(1) Only federally insured financial institutions rated investment grade by a commercial rating service shall issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(3) The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institutions have the required credit rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the Web site <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(e) \* \* \*

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No.

(Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of

State of confirming financial institution, if any, otherwise State of issuing financial institution.

\* \* \* \* \*

(f) \* \* \*

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No.

(Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not

inconsistent therewith, to the laws of State of confirming financial institution.

\* \* \* \* \*

[FR Doc. 2013–10211 Filed 5–6–13; 8:45 am]

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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–AB53

**Gross Combination Weight Rating; Definition**

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

**ACTION:** Notice of Proposed Rulemaking (NPRM), request for comments.

**SUMMARY:** The FMCSA proposes to revise the definition of “gross combination weight rating” (or GCWR) to clarify that a GCWR is the greater of: the GCWR 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 (NHTSA), or the sum of the gross vehicle weight ratings (GVWRs) or gross vehicle weights (GVWs) of the power unit and towed unit(s), or any combination thereof, that produces the highest value.

**DATES:** You may submit comments by July 8, 2013.

**ADDRESSES:** Comments to the rulemaking docket should refer to Docket ID Number FMCSA–2012–0156 or RIN 2126–AB53, and be submitted to the Administrator, Federal Motor Carrier Safety Administration using any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

• *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

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:** 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). FMCSA 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 or submitting material to the docket, contact Barbara Hairston, Acting Program Manager, Docket Operations, telephone (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

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- VII. Regulatory Analyses

#### I. Public Participation and Request for Comments

FMCSA invites you to participate in this rulemaking by submitting comments and related materials.

##### 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 comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and click on the “Submit a Comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu, select “Rules,” insert “FMCSA–2012–0156” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Submit a Comment” in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they

reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

##### Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and click on the “Read Comments” box in the upper right hand side of the screen. Then, in the “Keyword” box insert “FMCSA–2012–0156” and click “Search.” Next, click the “Open Docket Folder” in the “Actions” column. Finally, in the “Title” column, click on the document you would like to review. If you do not have access to the Internet, you may 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., e.t., Monday through Friday, except Federal holidays.

##### Privacy Act

All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

#### II. Executive Summary

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

FMCSA proposes to clarify the applicability and enforceability of the safety regulations by redefining GCWR. This proposed rule would provide a uniform means for motor carriers, drivers, and enforcement officials to determine whether a driver operating a combination vehicle that does not display a GCWR is subject to the commercial driver’s license (CDL) requirements (49 CFR part 383) or the general safety requirements (49 CFR part 390). This proposed rule also responds to adverse comments from the direct final rule (DFR) published on August

27, 2012 (77 FR 51706). The DFR was initiated in reply to a petition filed by the Commercial Vehicle Safety Alliance (CVSA) on February 12, 2008, seeking changes in the definitions of “commercial motor vehicle” (CMV) and “gross combination weight rating.”

##### Benefits and Costs

While this rule may affect some carriers and drivers not currently subject to some or all of the Federal Motor Carrier Safety Regulations (FMCSRs), the Agency is unable to quantify this effect at this time. This rulemaking only clarifies the definition of GCWR to eliminate confusion surrounding the language of the existing definition and long-standing enforcement practices. The rule will provide clear objective criteria for determining the applicability of the FMCSRs when the GCWR is the deciding factor. The cost, if any, would be borne by motor carriers and drivers that had previously determined by reference to the GCWR wording that their operations were not subject to certain safety regulations, but that would now be required to achieve compliance with the applicable rules.

#### III. Legal Basis for the Rulemaking

This NPRM 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 NPRM is based on broad authority from 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)]. These proposed amendments 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 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)].

The proposed rule would clarify the applicability and enforceability of the safety regulations when the original equipment manufacturer does not provide the (optional) GCWR information on the (required) NHTSA certification label. This rulemaking would give motor carriers and the drivers they employ a practical means of determining whether a particular 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). The regulatory language would also result in consistent application of the rules by Federal and State enforcement personnel. The rule would not address the responsibilities or physical condition of drivers covered by 49 U.S.C. 31136(a)(2) and (3), respectively, and would deal 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. Before prescribing any such regulations, however, FMCSA must consider the “costs and benefits” of any proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

With regard to 49 U.S.C. 31136(a)(5), this rulemaking would 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 would have only a limited effect on the risk of driver coercion by motor carriers, shippers, receivers, or transportation intermediaries. The rule would enable 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 rule would 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 commercial driver’s license (CDL) requirements (49 CFR part 383), or transportation that would be subject to the requirements under 49 CFR parts 390–399, would 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.

This rulemaking is also based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [49 U.S.C. chapter 313]. 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 for information to be contained on each license (49 U.S.C. 31305, 31308). This proposed rule would provide a uniform means for motor carriers, drivers, and enforcement officials to determine whether a driver operating a combination vehicle that does not display a GCWR is subject to the CDL requirements.

#### IV. Background

The term “commercial motor vehicle” (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 gross combination weight (GCW), whichever is greater, for

GVWR or GVW.<sup>1</sup> Because GVW and GCW are used in the regulatory definition 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 as an alternate means of deciding 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.

As FMCSA and its State partners increase their monitoring of drivers and motor carriers through roadside inspections and other enforcement interventions, industry officials and the enforcement community have raised questions about the inconsistency between the GCWR definitions used by FMCSA and NHTSA. The following sentence is part of the GCWR definition in 49 CFR 383.5 and 390.5, but not in 49 CFR 571.3: “In 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.” This alternative means of determining GCWR is not practical when scales are not available, however.

On February 12, 2008, the CVSA petitioned FMCSA to change the definitions of CMV and GCWR as these definitions are 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 DFR, with a request for public comment, amending the definition of GCWR by removing the sentence mentioned above (77 FR 51706). The FMCSA received comments from: Bryce Baker; David S. McQueen; Dennis Eric Murphy; and, John F. Nowak.

<sup>1</sup> *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 GVWR of the power unit and the total weight of the towed unit and any load thereon. (49 CFR parts 383.5 and 390.5)

*Gross vehicle weight rating* (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle. (49 CFR parts 383.5 and 390.5)

## V. Discussion of Comments

In response to the DFR, Mr. Bryce Baker of the Illinois Truck Enforcement Association stated that the GCWR definition is relevant only for determining the applicability of Class-A CDLs. Mr. Baker noted that the current definition is problematic for two reasons. First, manufacturers do not list GCWR on the vehicle certification label required by NHTSA; instead, they list the vehicle's maximum towing capacity. Even under the DFR definition, he argued, this makes it impossible to determine whether a driver needs a Class-A CDL. Second, Mr. Baker indicated that only manufacturers have information on the GCWR, and that obtaining it requires significant time and makes enforcement "fruitless."

Mr. John F. Nowak commented that the definition of GCWR should not be changed until GCWRs are readily available to law enforcement, motor carriers, and drivers. Mr. Nowak believes that NHTSA rules should be amended to require the manufacturer to include a GCWR in addition to the GVWR. Mr. Nowak believes it is unclear as to how citations are supposed to be issued when the GCWR cannot be established and how this fact will impact motor carriers' safety ratings or Safety Measurement System (SMS) scores. He suggested not citing carriers and/or drivers for failing to provide the GCWR and that the GCWR definition should not be changed until information on this rating is available and accessible to law enforcement.

Mr. David S. McQueen questioned the benefit of the rule in the absence of a requirement for the GCWR to be displayed on the vehicle. In that regard, he suggested that manufacturers would not be able to predict what combinations would be used by motor carriers on any given day.

Mr. Dennis Eric Murphy stated that he agreed with the other commenters' views that the GCWR should be marked on the truck in some manner. He also believes FMCSA should use the manufacturer's GCWR and prohibit motor carriers from operating vehicles loaded in excess of the GCWR. He suggests that the determination whether a vehicle meets the CMV definition should be made by adding the GVWR of the truck and trailer together.

All of these comments were deemed to be adverse responses to the DFR. Therefore, as required by 49 CFR 389.39(d), the direct final rule was withdrawn on October 29, 2012 (77 FR 65497).

## VI. Discussion of Proposed Rule

FMCSA acknowledges the commenters' concerns but continues to believe that the revision outlined in the DFR has merit. The Agency therefore proposes that GCWR be re-defined as the greater of (1) the GCWR 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 (NHTSA), or (2) the sum of the gross vehicle weight ratings (GVWRs) or gross vehicle weights (GVWs) of the power unit and towed unit(s), or any combination thereof, that produces the highest value. For instances in which the manufacturer's GCWR indicates that the vehicle should not be subject to the safety regulations, but the sum of the GVWRs, GVWs, or the highest combination of those values, is greater than the manufacturer's GCWR, the combination would be deemed to be a CMV subject to the Federal rules.

The Agency believes this GCWR definition would provide motor carriers and enforcement officials with clear direction in determining whether a multiple-unit vehicle is a CMV when (1) the manufacturer of the power unit does not display a GCWR value on the FMVSS certification label, or (2) the GCWR is displayed but the sum of the power unit and trailer GVWRs, GVWs, or the highest combination thereof, exceeds the manufacturer's GCWR. Using the revised definition, motor carriers and enforcement officials could easily determine whether any type of single-unit or combination vehicle was a CMV. The Agency requests public comments on whether the proposed change would improve consistent application of the rules or whether other alternatives might better accomplish this objective.

In consideration of the proposed revision of the definition of GCWR in 49 CFR 383.5 and 390.5, FMCSA would withdraw regulatory guidance concerning means of determining the applicability of the Federal safety regulations. Specifically, the guidance to be withdrawn are questions 3 and 4 to 49 CFR 383.5 (April 4, 1997; 62 FR 16369, 16395), and questions 3, 4 and 11 to 49 CFR 390.5 (April 4, 1997; 62 FR 16406–16407). The text of the guidance to be withdrawn is presented below. The Agency requests public comment whether the guidance would still be needed in view of the proposed revision to the GCWR definition.

### Guidance to 49 CFR 383.5

**Question 3:** If a vehicle's GVWR plate and/or vehicle identification number (VIN) number are missing but its actual gross weight is 26,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the part 383?

**Guidance:** Yes. The only apparent reason to remove the manufacturer's GVWR plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of part 383, which has a GVWR threshold of 26,001 pounds. In order to frustrate willful evasion of safety regulations, an officer may therefore presume that a vehicle which does not have a manufacturer's GVWR plate and/or does not have a VIN number has a GVWR of 26,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 26,001 pounds or more; and (2) It has an actual gross weight of 26,001 pounds or more.

A motor carrier or driver may rebut the presumption by providing the enforcement officer the GVWR plate, the VIN number or other information of comparable reliability which demonstrates, or allows the officer to determine, that the GVWR of the vehicle is below the jurisdictional weight threshold.

**Question 4:** If a vehicle with a manufacturer's GVWR of less than 26,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of part 383?

**Guidance:** Yes. The motor carrier's intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a higher GVWR, § 390.33 allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

### Guidance to 49 CFR 390.5

**Question 3:** If a vehicle's GVWR plate and/or VIN number are missing but its actual gross weight is 10,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the FMCSRs?

**Guidance:** Yes. The only apparent reason to remove the manufacturer's GVWR plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of the FMCSRs, which have a GVWR threshold of 10,001 pounds. Therefore, an officer may therefore presume that a

vehicle which does not have a manufacturer's GVWR plate and/or does not have a VIN number has a GVWR of 10,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 10,001 pounds or more; and/or (2) It has an actual gross weight of 10,001 pounds or more.

**Question 4:** If a vehicle with a manufacturer's GVWR of less than 10,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of the FMCSRs?

**Guidance:** Yes. The motor carrier's intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a higher GVWR, § 390.33 allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

\* \* \*

**Question 11:** A company has a truck with a GVWR under 10,001 pounds towing a trailer with a GVWR under 10,001 pounds. However, the GVWR of the truck added to the GVWR of the trailer is greater than 10,001 pounds. Would the company operating this vehicle in interstate commerce have to comply with the FMCSRs?

**Guidance:** Section 390.5 of the FMCSRs includes in the definition of CMV a vehicle with a GVWR or GCWR of 10,001 or more pounds. The section further defines GCWR as the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. Therefore, if the GVWR of the truck added to the GVWR of the trailer exceeds 10,001 pounds, the driver and vehicle are subject to the FMCSRs.

## VII. 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), 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 Federal Motor Carrier Safety Regulations (FMCSRs), the Agency is unable to

quantify this effect at this time. This rulemaking only clarifies the definition of GCWR to eliminate confusion surrounding the language of the existing definition and long-standing enforcement practices. The rule will provide clear objective criteria for determining the applicability of the FMCSRs when the GCWR is the deciding factor. The cost, if any, would be borne by motor carriers and drivers that had previously determined by reference to the GCWR wording that their operations were not subject to certain safety regulations, but 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. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest. This proposed 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), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities because the proposed rule 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.

### *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 this proposed rule so that they can

better evaluate its effects on them and participate in the rulemaking initiative. If the proposed 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 personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the 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 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 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 would 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 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 proposed rule under E.O. 13132 and determined that it does not have Federalism implications.

### *E.O. 12988 (Civil Justice Reform)*

This proposed 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 proposed 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 NPRM 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 that receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this proposed 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 NPRM.

#### *National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this proposed 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 NPRM 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 proposed 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 proposed 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 proposed 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 proposed 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 proposes to amend 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 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.

\* \* \* \* \*

#### **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. 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. 114,

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 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.

\* \* \* \* \*

Issued under the authority of delegation in 49 CFR 1.87 on: April 19, 2013.

Anne S. Ferro,  
Administrator.

[FR Doc. 2013–10735 Filed 5–6–13; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R3–ES–2012–0065; FWS–R3–ES–2013–0016; 4500030113]

RIN 1018–AY16; 1018–AZ41

### Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Grotto Sculpin

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 27, 2012, proposed endangered status and designation of critical habitat for the grotto sculpin under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the grotto sculpin and an amended required determinations section of the proposal. In addition, we announce our intention to recognize the grotto sculpin as *Cottus specus*. We are reopening the comment period to allow all interested parties an opportunity to comment

simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received or postmarked on or before June 6, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:**

*Document availability:* You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS–R3–ES–2012–0065 and copies of the draft economic analysis at Docket No. FWS–R3–ES–2013–0016, or by mail from the Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS–R3–ES–2012–0065, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS–R3–ES–2013–0016. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2012–0065 (for the listing proposal) or FWS–R3–ES–2013–0016 (for the critical habitat proposal and associated draft economic analysis); Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Amy Salveter, Field Supervisor, U.S. Fish and Wildlife Service, Missouri Ecological Services Field Office, 101 Park De Ville Drive, Suite A, Columbia, MO 65203; by telephone 573–234–2132; or by facsimile 573–234–2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the grotto sculpin that was published in the **Federal Register** on September 27, 2012 (77 FR 59488), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the grotto sculpin. The final listing rule will publish under the existing Docket No. FWS–R3–ES–2012–0065 and the final critical habitat designation will publish under Docket No. FWS–R3–ES–2013–0016.

We request that you specifically provide comments on our listing determination under Docket No. FWS–R3–ES–2012–0065. We are particularly interested in comments concerning:

- (1) The species' biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) Overutilization for commercial, recreational, scientific, or educational purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this