

individual right, has stated, "Although, as we have held, the Second Amendment does protect individual rights, that does not mean that those rights may never be made subject to any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country." *U.S. v. Emerson*, 270 F.3d 203 (5th Cir. 2001).

The FAA continues to believe that the possession of weapons by space flight participants on board a suborbital rocket poses an unacceptably high risk to the integrity of the vehicle and the safety of the public, and that the rule is consistent with the Second Amendment. In proposing the rule, we pointed out that "[s]ecurity restrictions currently apply to passengers for airlines. Some of the restrictions prohibit a person carrying explosives, firearms, knives, or other weapons from boarding an airplane. Similar types of security restrictions for launch or reentry vehicles would contribute to the safety of the public by preventing a space flight participant from potentially interfering with the flight crew's ability to protect the public." 70 FR 77262-01, 77271. In response to the comment regarding the Second Amendment, we added that "in 1958, Congress made it a criminal offense to knowingly carry a firearm onto an airplane engaged in air transportation. 49 U.S.C. 46505." 71 FR at 75626. The FAA thus has authority to issue this rule.

#### Correction

In final rule FR Doc. No FAA-2005-23449, published on December 15, 2006 (71 FR 75616), make the following correction:

On page 75626, in the third column, fourth full paragraph, lines 16 through 20, correct, "Additionally, nearly all courts have also held that the Second Amendment is a collective right, rather than a personal right. Therefore, despite the Second Amendment collective right to bear arms, the FAA has" to read "By analogy, and for the reasons given when the FAA issued its human space flight requirements, the FAA has, consistent with the right to bear arms secured by the Second Amendment."

\* \* \* \* \*

Issued in Washington, DC, on February 14, 2007.

**Rebecca MacPherson,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. E7-2851 Filed 2-16-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Parts 657 and 658

[FHWA Docket No. FHWA-2006-24134]

RIN 2125-AF17

#### Size and Weight Enforcement and Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the enforcement of commercial vehicle size and weight to incorporate provisions enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); the Energy Policy Act of 2005, and; the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. This final rule adds various definitions; corrects obsolete references, definitions, and footnotes; eliminates redundant provisions; amends numerical route changes to the National Highway designations; and incorporates statutorily mandated weight and length limit provisions.

**DATES:** This final rule is effective March 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Mahorney, Office of Freight Management and Operations, (202) 366-6817, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access this document, the notice of proposed rulemaking (NPRM), and all comments received by the U.S. DOT Docket by using the universal resource locator (URL) <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

## Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144), the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 544), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (Pub. L. 109-115, 119 Stat. 2396) enacted size and weight provisions concerning auxiliary power units, custom harvesters, over-the-road buses, and drive-away saddle-mount vehicle combinations.

Additionally, the transfer of motor carrier safety functions to the Federal Motor Carrier Safety Administration (FMCSA) established by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748) affected the internal organizational structure of the FHWA. Although the responsibility for commercial motor vehicle size and weight limitation remained in the FHWA, the references in the regulations to the old FHWA's Office of Motor Carriers (OMC) and its officials are obsolete. This action updates these references to reflect the changes in the agency's organizational structure.

#### Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

On May 1, 2006, the FHWA published an NPRM in the **Federal Register** at 71 FR 25516 to provide an opportunity for public comment on the proposed changes to 23 CFR Parts 657 and 658. In response to the NPRM, the FHWA received 39 comments. Commenters included 8 State enforcement agencies, 9 industry associations, 4 members of Congress, 14 individuals, a union (multiple members), a law firm representing a trucking company, one intercity bus company, and an association of State transportation officials. The FHWA considered each of these comments in adopting this final rule. The changes made in response to those comments are identified and addressed under the appropriate sections below.

#### Section-by-Section Discussion of the Proposals

##### Part 657

##### Section 657.1 Purpose

Michigan DOT (MDOT) expressed concerns about using the terms "Federal-aid Interstate, Federal-aid primary, Federal-aid Secondary, or Federal-aid Urban Systems," which are

no longer used, to describe the size and weight enforcement program, and suggested using the term "National Highway System" in their place.

*FHWA Response:* MDOT is correct that the terms identified are no longer generally used. However, to ensure the clarity and applicability of section 657.1, we chose to retain the terms because they are still used in 23 U.S.C. 141(a), and thus in 23 CFR 657.3, to define the extent of each State's enforcement obligation. We believe that using the term National Highway System, which did not exist on October 1, 1991, is not used in 23 U.S.C. 141, and is no longer identical to the highways systems listed in proposed section 657.1, would generate substantial confusion.

## Part 658

### Section 658.5 Definitions

#### Commercial Motor Vehicle

The FHWA proposed to clarify that recreational vehicle movements that include transportation to or from the manufacturer for customer delivery, sale, or display purposes are not covered by the definition of commercial motor vehicle for the purposes of these regulations. Five commenters, including Former Congressman Bud Shuster, the National RV Dealers Association, the National Automobile Dealers Association (NADA), the Ohio State Police, and the Illinois DOT, expressed support for the proposal to exclude recreational vehicles even when operated for a commercial purpose. Two commenters suggested that the section should be clarified to include recreational vehicle dealers as well as manufacturers.

The NADA and the Texas DOT raised concerns regarding what constitutes a recreational vehicle. Texas DOT asked whether travel trailers, and companies who transport them, were to be excluded as well. Additionally, the NADA suggested that FHWA include a definition of recreational vehicle, and the Ohio State Police requested a 3-year grace period for States to comply with any new definition.

*FHWA Response:* The FHWA believes that the same rationale applies equally to recreational vehicle dealers and manufacturers. We are therefore including dealers as well as manufacturers in this provision. Further, it is our intent to include motorized vehicles operating under their own power used only for camping or other recreational activities in this provision. However, we do not intend to exclude all third party commercial entities that transport recreational

vehicles from the width regulations. For example, a company that transports recreational vehicles via tow-bars or on a flat-bed on behalf of a dealer would not be exempt because the recreational vehicle, in this instance, becomes freight when not being operated by its own power. This would also apply equally to travel trailers, which do not travel under their own power. We do not believe that a grace period is necessary to comply with this rulemaking action because the change simply involves excluding certain vehicles from coverage by the width regulations, and relieves the State agencies of the burden of enforcing these regulations against these vehicles.

#### Non-Divisible Load or Vehicle

The NPRM proposed to expand the definition of non-divisible load to include vehicles loaded with salt, sand, chemicals or a combination of these materials, to be used in spreading the materials on any winter roads, and when operating as emergency response vehicles. Four commenters expressed support for this proposal, citing the need for additional flexibility during poor weather conditions. The American Trucking Associations (ATA) opposed modifying the definition of non-divisible loads to include "military vehicle transporting marked military equipment or materiel." Further, the ATA suggested that all emergency response vehicles should be eligible for classification as non-divisible loads. The American Association of State Highway Transportation Officials (AASHTO) also recommended that the FHWA work with AASHTO to develop a proposed exception to the current non-divisible load requirement that would allow, but not require, a State to issue a permit to an overweight vehicle certified to be carrying an urgently needed disaster relief load during a declared emergency. The MDOT, while supporting the proposal, asked whether a permit would be required as a result of this determination.

*FHWA Response:* The FHWA believes that the limiting factors for the specific vehicles mentioned in the NPRM are adequate to ensure that they are used only during an emergency. Since the proposal would allow these vehicles to be considered non-divisible loads, no permit would be necessary.

The suggestions to create a more expansive definition to accommodate additional non-divisible loads during declared emergencies are beyond the scope of this rulemaking and therefore will not be addressed at this time. The ATA's opposition to the inclusion of "military vehicles transporting marked

military equipment or materiel" in the definition of non-divisible loads is also outside the scope of this rulemaking. Such military vehicles were the subject of a previous rulemaking action, which is now finalized.

#### Drive-Away Saddle Mount Combination

The FHWA proposed to amend 23 CFR 658.13(e)(1)(iii) to extend to 97 feet the length limit on drive-away saddle mount combinations that are specifically designed to tow up to three trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it. This provision generated 22 comments. The comments focused on the wording of section 4141 of SAFETEA-LU, specifically whether or not the language was intended to include all saddle mount combinations in the new 97-foot limit, or only those that include a fullmount. The question arose because of the title of newly created 49 U.S.C. 31111(a)(4), "Drive-away saddle mount with fullmount vehicle transporter combination." Section 4141 of SAFETEA-LU defined this term as "a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it." The definition does not refer to a fullmount in the vehicle combination.

Several commenters expressed the view that the statutory language should be interpreted to include only saddle mounts with fullmount. Congressman David G. Reichert, AASHTO, and the law firm of Schwerin Campbell Barnard LLP believe that the congressional language shows clear intent to limit the application of the law to saddle mount combinations "with fullmount." In support of this position, several commenters expressed concerns about the safety of this configuration. Congressman Reichert noted that the "fullmount saddle mount vehicle, had no wheels on the ground, which tends to make the entire vehicle combination more stable." This view was also shared by Schwerin Campbell Barnard LLP, on behalf of General Teamsters Local 174, a Seattle-based affiliate of the International Brotherhood of Teamsters. Additionally, AASHTO stated, "the legislated change in the rule governing saddle mount vehicles has raised serious concerns among some State enforcement officials concerning possible safety and infrastructure issues." The California Department of Transportation asked about the scope of the legislation, specifically whether the new length

regulations would apply on service access routes. Additionally, FHWA received 20 general comments from individual Local 174 Teamster members, all expressing various safety concerns with regard to FHWA's interpretation and the proposed regulatory language.

Other commenters took the view that the language included, or was intended to include, all saddlemount combinations, with or without fullmount. In a July 18, 2006, letter to Maria Cino, Acting Secretary of the Department of Transportation, Congressman Don Young, Chairman of the House Transportation and Infrastructure Committee, stated that the NPRM language "accurately reflects the Congressional intent of section 4141." Congressman Young indicated that as Chairman of this committee, he was directly involved in the development of this language during the three years leading up to passage of SAFETEA-LU. He further states that: "It was our intention that the term 'drive-away saddlemount vehicle transporter combination' would include all saddlemount combinations, with or without fullmount." Three other members of Congress also submitted letters stating their involvement in the development of the language, and their support for the language as proposed in the NPRM.

The Automobile Carriers Conference (ACC) supported the proposed regulatory language and noted that the safety concerns expressed by other commenters were unfounded. The ACC refers to a study prepared by the University of Michigan Transportation Research Institute (UMTRI) ["Consideration of an Increase in the Overall Length of Triple Saddlemount Driveaway Combinations" (January 2006)]:

Extensive studies have been performed that prove the safety of these combinations. Combinations up to 97 feet have a proven track record for complying with brake stopping distances as prescribed in FMCSR 393.52. According to the University of Michigan Transportation Research Institute, rollover threshold is virtually unaffected when increasing the length of a saddlemount combination from 75 feet. UMTRI goes on to state that the extended length saddlemount combination shows better rearward amplification than a corresponding 75 foot combination. UMTRI concludes that one could expect that the extended length saddlemount combination would exhibit improved handling, on the order of 23% reduction in rearward amplification, relative to a corresponding 75 foot combination.

Further, ACC states that "[s]ince the enactment of SAFETEA-LU, actual operational experience in the running

[of] saddlemount combinations at [a] length up to 97 feet in the United States and parts of Canada have had no adverse impact on safety." On behalf of JHT Holding, Holland and Knight agreed, noting "that after 107 million miles of saddlemount operations since the enactment of SAFETEA-LU, driveaway saddlemount combinations continue to experience a crash rate that is significantly less than the national average for large truck crashes in the United States."

*FHWA Response:* The FHWA believes that the use of the words "with fullmount" in the section heading and in the term defined in the section is not dispositive of the matter. The FHWA believes that it is important to examine the entire language of the provision, and in particular the statutory definition of the term itself, which are both necessary to make a reasonable interpretation of the congressional intent behind this provision. The FHWA believes that restricting this provision to saddlemounts with fullmount would ignore the express statutory definition used by the legislators, which is indicative of an intent to make the provisions of this section applicable to all saddlemount combinations. The definition contains no reference as to whether the saddlemount combination must contain a fullmount vehicle, which in effect makes the definition, and therefore the provision, applicable to saddlemounts that contain a fullmount as well as those that do not. The fact that the defined term contains the words "with fullmount" is not sufficient to override the definition itself, which makes no such limitations. This conclusion is supported by the letter from Congressman Young, Chairman of the House Transportation and Infrastructure Committee, who indicates that he was involved in the development of the language in question, as well as letters from Congressmen Paul Ryan, Michael Burgess, and Kenny Marchant.

In view of the above, the FHWA maintains that its reading of the statute is reasonable, and is retaining in this final rule the language proposed in the NPRM, which prohibits the States from enforcing an overall length limit of more or less than 97 feet on driveaway saddlemount vehicle combinations with up to 3 towed units, with or without fullmount.

#### Definition of Over-the-Road Buses

The FHWA proposed to incorporate into 23 CFR 658.5 a previously established definition of "over-the-road" buses found in 42 U.S.C. 12181(5).

The American Bus Association and Greyhound Lines, Inc. stated that the NPRM's definition of "over-the-road buses" was accurate and needed nothing further. However, these entities suggested that the FHWA should clarify that the definition of a "covered State" includes any State that enforced an axle weight limit described in the NPRM at any time described in the legislation. Both commenters suggested using the term "in" as opposed to "during" in the proposed language in section 658.17(k) in order to clarify the statute and regulation.

*FHWA Response:* We agree. Section 115 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (119 Stat. 2408) used the term "in," as opposed to "during," and is therefore correct. We also agree with the assertion that the proposed definition of "covered States" does include all States that enforced such a limit at any time during the specified period.

#### Section 658.13 Length

As discussed above, the FHWA is amending the specialized equipment provision in section 658.13(e)(1)(iii) to incorporate the statutory length limit that is now applicable to drive-away saddlemount vehicle transporter combinations. Additionally, the FHWA is amending the definition to clarify that such combinations must comply with all applicable Federal Motor Carrier Safety Regulations, not just the provisions contained in 49 CFR Part 393.71.

#### Section 658.15 Width

The NPRM proposed to amend 23 CFR 658.5 to eliminate any Federal role in regulating the width of recreational vehicles while operating under their own power as commercial motor vehicles. As discussed above, the FHWA is clarifying that recreational vehicle movements that include transportation under their own power to or from the manufacturer for customer delivery, sale, or display purposes are not covered by the definition of commercial motor vehicle. As such, we proposed to change paragraph (c), to exempt recreational vehicles operating under their own power from width limitations. The FHWA received no comments to this proposal, and will retain the language proposed in the NPRM.

### Section 658.17 Weight

#### Over-the-Road Buses

The NPRM proposed to extend the temporary exemption granted by Congress for over-the-road buses until October 1, 2009, and to change the regulations to reflect the new, 24,000 lb. axle weight mandated by Congress (Sec. 115, Pub. L. 109–115, 119 Stat. at 2408). Several States provided comments and questions regarding the applicability of the proposed regulations. The Texas Department of Public Safety and the California DOT asked several questions regarding the proposed language, the relationship of the exemption listed in section 1309 of SAFETEA–LU, and the language contained in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. Specifically, the commenters asked whether either provision was mandatory for States, and whether the 24,000 lb. provision applied to the steering axle of a motorcoach.

#### Auxiliary Power Units

Comments relating to the idle reduction systems or auxiliary power units (APU) focused on three general areas: whether the APU itself was limited to 400 lbs., how the regulation should be enforced, and whether the States must allow the 400 lb. tolerance contained in the statute.

Several commenters pointed out that the language proposed by FHWA would limit the weight of the auxiliary power unit to 400 lbs., which they believed to be inconsistent with the legislative language. They believe instead that the 400 lbs. limit related to the additional weight of the vehicle, not the APU itself.

Several State and industry groups expressed concern or asked how a State would enforce the 400 lb. limit with regard to axle, tandem, gross weight, and the bridge formula. How would a State determine load distribution? What documentation or proof would or should be necessary for compliance? What constitutes proof that a unit is “fully functional at all times?” Additional concerns were raised with regard to the possibility of fraudulent certifications and APU look-alike devices that might allow additional freight in violation of the rule.

The ATA stated that the NPRM was inconsistent with congressional intent by allowing States the option of allowing either a gross weight limit, an axle weight limit exemption, or both. The ATA felt that “the regulation should make it clear that all States must allow the additional weight on gross,

vehicle, axle and bridge formula limits. The regulation should also clarify that the additional authorized weight may be inclusive of or in addition to existing state weight enforcement tolerances.”

The ATA, while agreeing with the weight certification requirement, also expressed concern that the proposed rule included fuel weight in the calculation of the APU’s weight. The Owner-Operators Independent Drivers Association (OOIDA) urged the FHWA to be flexible in this area, suggesting that an acceptable certification would include a certificate from the manufacturer, other business records, certification by the weight of individual APU components (to allow for units that are self-manufactured), or a certified scale ticket representing vehicle weight before and after the unit is installed.

Commenters also expressed concern regarding the requirement that the APU be “fully functional at all times,” stating that they were unsure how such a requirement can be certified or documented, and requested that FHWA clarify this issue. The OOIDA suggested that the operator be able to satisfy this requirement verbally. The OOIDA and the Truck Manufacturers Association also believe that the certification requirement verifying the APU’s weight will eliminate most, if not all, enforcement concerns since the driver would gain no freight advantage while transporting a non-functioning unit. This would especially be true if the unit is temporarily broken. Further, OOIDA requested that the rule make it clear that a driver would be required to make the necessary certifications only in response to the finding that the vehicle is overweight. Several respondents also requested that FHWA provide a list of manufacturers of these products, and provide guidance to the States regarding enforcement.

Finally, several commenters asked whether the States are required to adopt the 400 lb. exemption.

**FHWA Response:** Over-the-Road Buses—Section 1309 of SAFETEA–LU is not preemptive. Its purpose is to allow the States to waive the axle weight limits on both transit and over-the-road buses at their discretion until October 1, 2009. The language in Sec. 115 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (119 Stat. 2396, at 2408) is preemptive in nature, but applies only to those States defined as “covered States.” If a State meets the definition of a covered State, it must adhere to the new provision on all individual axle weights, including the steering axle. It is

important to note, however, that this legislation and the supporting regulation do not impair a State’s ability to weigh over-the-road buses. Further, the regulatory language only prohibits the citing of single axle weight violations, not violations of the gross, tandem, or other weight limits while on the Interstate system.

#### Auxiliary Power Units

Section 756 of the Energy Policy Act of 2005 amended 23 U.S.C. 127(a) to allow an increase in the Federal weight limits by up to 400 lbs. to account for APUs installed in any heavy-duty vehicle (119 Stat. 594, at 829). The intent of this provision is to promote the use of technologies that reduce fuel consumption and emissions that result from engine idling.

We agree with several of the commenters and have adjusted the regulatory language accordingly. FHWA has revised the language to eliminate the weight requirement for the APU itself, while allowing up to a total of 400 lbs. in axle, tandem, gross, or bridge weight formula (which is an axle weight calculation), or the weight of the APU unit, whichever is less. For example, a vehicle equipped with an APU that has a certified weight of 750 lbs. would be allowed the maximum of 400 lbs. additional weight. However, a vehicle with an APU that has a certified weight of 300 pounds would be allowed a 300 lb. exemption. This is consistent with the statutory language.

The FHWA understands the concerns of enforcement agencies and users about the weight certification requirements. The FHWA believes that the certification of the APU’s weight must be in writing, but can include a wide range of options, including a manufacturer’s certification (sticker, specification plate, etc), certified scale tickets listing the vehicle’s weight both before and after the unit’s installation, a component parts list with listed weights of each component if the unit is manufactured by the owner or operator, etc., so long as it accurately reflects the weight of the unit and is available to roadside enforcement officers. As for the inclusion of fuel in the overall weight calculation of the unit, we have concluded upon further consideration that the empty weight of the APU is more appropriate, given that many of these units will utilize the truck tractor’s fuel supply.

The statutory requirement for a “demonstration or certification” that the unit is “fully functional at all times” is more problematic. We believe that a manual demonstration, or a certification letter which clearly states the unit’s

operational characteristics if the unit is temporarily broken down, should provide sufficient proof. FHWA agrees with several commenters that there will be little or no incentive for a driver to install and transport a non-working APU. We also believe that there would be little need to require a driver to provide proof of weight and operability unless the vehicle is over the weight thresholds specified in the regulations. Additionally, we agree that the increased weight must be allowed in addition to any enforcement tolerances that are currently authorized under Federal law.

It is important to note that section 756 of the Energy Policy Act of 2005 which amended 23 U.S.C. 127 does not preempt State enforcement of its weight limits on all highways; rather, it prevents the FHWA from imposing funding sanctions if a State authorizes the 400 lb. weight limit on their Interstate system. Therefore, it remains for each State to decide whether it will allow the increased weight limits for APUs. However, a State must adhere to the provisions of section 658.17 if it chooses to allow the additional weight.

#### *Section 658.23 LCV Freeze; Cargo-carrying Unit Freeze*

The NPRM proposed to replace obsolete references to the Office of Motor Carriers with references to the FHWA. In drafting the replacement regulatory text in the NPRM, the FHWA inadvertently changed the word "must" to "may" in the last sentence of subsection (c). We did not propose, nor did we intend, to change the substantive requirements contained in this subsection. The FHWA did not receive any comments in response to the proposals contained in this section. Therefore we have corrected the regulatory text to reflect the current regulatory requirements and to update the obsolete references to the Office of Motor Carriers.

#### *Appendix A to 23 CFR Part 658—National Network—Federally-Designated Routes*

The FHWA proposed to change route designations within the State of New Mexico on certain portions of the National Network. The State of New Mexico submitted a comment clarifying the changes to route number designations for routes on its portion of the National Network. These changes are numerical only and will not add or remove routes from the original network. Additional changes include: changing NM 491 to U.S. 491; changing U.S. 516 to NM 516, and; deleting U.S. 666 in its entirety. The FHWA is

therefore amending Appendix A to reflect these route number changes.

#### *Appendix B to 23 CFR Part 658—Grandfathered Semitrailer Lengths*

One commenter pointed out that Appendix B refers to 23 CFR 658.13(h), which no longer exists, and suggests making the appropriate modifications to correct the error.

**FHWA Response:** As stated in the NPRM, the FHWA is aware that section 658.13 was reorganized in a previous rulemaking action, at 67 FR 15110, March 29, 2002, and that the provisions that formerly appeared in paragraph (h) are now found in paragraph (g). Therefore, the FHWA is adopting the language proposed in the NPRM to correct this error.

#### **Miscellaneous Comments**

##### *General Comments on FHWA's Size and Weight Program*

Several individuals submitted general comments on the FHWA's size and weight program. Among the comments were suggestions to eliminate double and triple vehicle combinations on the highways, restricting the length of landscape trucks and trailers, mandating pavement standards to provide for 10 ton-per-axle weight limits in all weather conditions, allowing 90,000 lbs. gross weight on six axle tractor-semitrailers, and generally revising section 658.15 and section 658.17 to accommodate larger, heavier, hybrid vehicles that are currently not allowed on the Interstates or National Network.

**FHWA Response:** These comments address issues that were not raised in the NPRM, and are therefore outside the scope of this rulemaking. Additionally, the vehicle weight limits for Interstate highways are statutory (23 U.S.C. 127), as are the vehicle width and length limits on the National Network (49 U.S.C. 31111-31115). None of them can be changed by FHWA.

##### *FHWA Authority*

One commenter questions the FHWA's legal authority to amend the regulations as proposed in the NPRM. The commenter indicates several of the proposals, including those that propose to replace references in the regulations to the old Office of Motor Carriers with references to the FHWA, are illegal because section 101(a) of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748) (MCSIA) requires the Federal Motor Carrier Safety Administrator to carry out any duties and powers related to motor carriers or motor carrier safety. He indicates that after the creation of

FMCSA, various driver and vehicle safety inspection functions were transferred from FHWA's Office of Motor Carriers to FMCSA in a final rule published on October 19, 1999 (64 FR 56270), but that the final rule failed to transfer, and maintained within the FHWA in violation of the statute, the enforcement of commercial motor vehicle size and weight laws and regulations affecting the safe design of trucks.

The FHWA disagrees with the commenter's interpretation of the provisions of the MCSIA and its alleged effect on FHWA's authority over the commercial vehicle size and weight program. The provision in question is now codified at 49 U.S.C. 113(f)(1). This provision, which describes the powers and duties of the Federal Motor Carrier Administrator, reads as follows:

"(f) Powers and Duties.—The Administrator shall carry out—(1) duties and powers related to motor carriers or motor carrier safety vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315, and 317 and by section 18 of the Noise Control Act of 1972 (42 U.S.C. 4917; 86 Stat. 1249-1250); except as otherwise delegated by the Secretary to any agency of the Department of Transportation other than the Federal Highway Administration, as of October 8, 1999 \* \* \*"

For purposes of this discussion, it is clear that the FMCSA's Administrator is delegated by statute the duties and powers related to motor carriers and motor carrier safety vested in the Secretary by, among other provisions, chapter 311 of title 49, United States Code. However, we note that this statutory delegation is limited to duties and powers "related to motor carriers and motor carrier safety" in that chapter. This clearly refers to the motor carrier and motor carrier safety functions that were delegated to the FMCSA in the 1999 final rule cited by the commenter (64 FR 56270), which are very different from the commercial motor vehicle size and weight limitations, duties, and functions, which are in part located in 49 U.S.C. Chapter 311, and which remained delegated to the FHWA. Duties and powers under other subchapters of chapter 311 which are related to motor carrier and motor carrier safety functions such as the Motor Carrier Safety Assistance Program and State grants, and the Federal Motor Carrier Safety Regulations that affect motor carriers and drivers, were delegated to the FMCSA by the 1999 final rule. Duties and powers relating to the commercial motor vehicle size and weight limitations, which are

established by law, not only in Chapter 311 of title 49 United States Code, but also in Chapter 1 of title 23 U.S.C. (sections 127 and 141), remained delegated to the FHWA Administrator (see 71 FR 30828).

The commercial motor vehicle size and weight program is different from the motor carrier and motor carrier safety duties carried out by the FMCSA, and serve to establish limitations which the States are required to implement and enforce in order to protect and preserve the infrastructure and overall highway safety in highways that have received Federal assistance for construction and maintenance. It is not a regulation of motor carriers or their drivers, although these limitations affect the dimensions of the vehicles operated by these entities. The commercial motor vehicle size and weight program, including its regulation of the State's authority over vehicle limitations, is directly related to the Federal-aid highway program and Federal-aid highway funding. It does not involve the type of motor carrier or motor carrier safety oversight that Congress intended to be delegated to the FMCSA in the MCSIA provisions. As a result, it has appropriately remained delegated to the FHWA, as part of this agency's duties to administer the Federal-aid highway program and highway safety.

Finally, we note that Congress is fully aware that the commercial vehicle size and weight program remained in FHWA. As part of recent major highway program reauthorization acts and related oversight, congressional committees have requested and received information on FHWA's implementation of changes to the size and weight program. The Department would surely have received direction from Congress during all the years since the enactment of the MCSIA if Congress had intended this program to be delegated to an agency other than the FHWA.

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

##### *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 and would not be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This rule will not adversely affect, in a material way, any sector of the economy. This action changes out-dated references to offices within the FHWA and updates the current regulations to reflect changes made by the Congress in

SAFETEA-LU and other recent legislation. Additionally, this action would add various definitions; correct obsolete references, definitions, and footnotes; eliminate redundant provisions; amend numerical route changes to the National Highway designations; and incorporate a statutorily mandated weight limit provision. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs. Consequently, a regulatory evaluation is not required.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

##### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has preliminarily determined that this proposed action would not warrant the preparation of a federalism assessment. Any federalism implications arising from this rule are attributable to SAFETEA-LU sections 4112 and 4141. The FHWA has determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

##### *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 Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not

contain collection of information requirements for the purposes of the PRA.

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

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year. (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

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

This 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 has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or safety that may disproportionately affect children.

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

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

##### *National Environmental Policy Act*

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) and has determined that this action will not have any effect on the quality of the environment.

##### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the

action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects is not required.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory section 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 Parts 657 and 658**

Grants Program—transportation, Highways and roads, Motor carriers.

Issued on: February 13, 2007.

**J. Richard Capka,**

*Federal Highway Administrator.*

■ In consideration of the foregoing, the FHWA amends Chapter I of title 23, Code of Federal Regulations, by revising Parts 657 and 658, respectively, as set forth below:

#### **PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT**

■ 1. Revise the authority citation for part 657 to read as follows:

**Authority:** 23 U.S.C. 127, 141 and 315; 49 U.S.C. 31111, 31113 and 31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1) and (c)(19).

■ 2. Revise § 657.1 to read as follows:

##### **§ 657.1 Purpose.**

To prescribe requirements for administering a program of vehicle size and weight enforcement on the Interstate System, and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid primary, Federal-aid secondary, or Federal-aid urban systems, including

the required annual certification by the State.

■ 3. Revise § 657.3 to read as follows:

##### **§ 657.3 Definitions.**

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

*Enforcing or Enforcement* means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on the Interstate System and those roads which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems.

*Urbanized area* means an area with a population of 50,000 or more.

■ 4. Revise the first sentence of paragraph (a) and revise paragraph (b) of § 657.11 to read as follows:

##### **§ 657.11 Evaluation of operations.**

(a) The State shall submit its enforcement plan or annual update to the FHWA Division Office by July 1 of each year. \* \* \*

(b) The FHWA shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation and of any needed changes in the plan itself or in its implementation. Copies of the evaluation reports and subsequent modifications resulting from the evaluation shall be forwarded to the FHWA's Office of Operations.

■ 5. Revise paragraphs (b), (e), and (f)(3)(iii) of § 657.15 to read as follows:

##### **§ 657.15 Certification content.**

\* \* \* \* \*

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Urban, and Secondary Systems, and that the State is enforcing and complying with the provisions of 23 U.S.C. 127(d) and 49 U.S.C. 31112. Urbanized areas not subject to State jurisdiction shall be identified. The statement shall include an analysis of enforcement efforts in such areas.

\* \* \* \* \*

(e) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(iii) *Permits*. The number of permits issued for overweight loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis.

■ 6. Revise § 657.17 to read as follows:

##### **§ 657.17 Certification submittal.**

(a) The Governor, or an official designated by the Governor, shall submit the certification to the FHWA division office prior to January 1 of each year.

(b) The FHWA division office shall forward the original certification to the FHWA's Office of Operations and one copy to the Office of Chief Counsel. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

■ 7. Revise § 657.19 to read as follows:

##### **§ 657.19 Effect of failure to certify or to enforce State laws adequately.**

If a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid primary, Federal-aid secondary or Federal-aid urban systems, notwithstanding the State's certification, the Federal-aid funds for the National Highway System apportioned to the State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

#### **PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS**

■ 8. The authority citation for part 658 is revised to read as follows:

**Authority:** 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; sec. 347, Pub. L. 108–7, 117 Stat. 419; sec. 756, Pub. L. 109–58, 119 Stat. 829; sec. 1309, Pub. L. 109–59, 119 Stat. 1219; sec. 115, Pub. L. 109–115, 119 Stat. 2408; 49 CFR 1.48(b)(19) and (c)(19).

■ 9. Amend § 658.5 by revising the definitions of “commercial motor vehicle” and paragraph (2) of the definition of “nondivisible load or vehicle”; and adding definitions of “drive-away saddle-mount vehicle transporter combinations” and “over-the-road bus” to read as follows:



**§ 658.5 Definitions.**

\* \* \* \*

*Commercial motor vehicle.* For purposes of this regulation, a motor vehicle designed or regularly used to carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or recreational vehicles operating under their own power.

*Drive-away saddlemount vehicle transporter combination.* The term drive-away saddlemount vehicle transporter combination means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck tractor in front of it. Such combinations may include up to one fullmount.

\* \* \* \*

*Nondivisible load or vehicle.*

(1) \* \* \*

(2) A State may treat as nondivisible loads or vehicles: emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy; casks designed for the transport of spent nuclear materials; and military vehicles transporting marked military equipment or materiel.

*Over-the-road bus.* The term over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment, and typically operating on the Interstate System or roads previously designated as making up the Federal-aid Primary System.

\* \* \* \*

■ 10. Amend § 658.13 by revising paragraph (e)(1)(iii) and adding paragraph (h) to read as follows:

**§ 658.13 Length.**

\* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) Drive-away saddlemount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less or more than 97 feet on such combinations. This provision applies to drive-away saddlemount combinations with up to three saddlemounted vehicles. Such combinations may include one fullmount. Saddlemount combinations must also comply with the applicable motor carrier safety regulations at 49 CFR parts 390–399.

\* \* \* \*

(h) Truck-tractors, pulling 2 trailers or semitrailers, used to transport custom

harvester equipment during harvest months within the State of Nebraska may not exceed 81 feet 6 inches.

■ 11. Revise paragraph (c) of § 658.15 to read as follows:

**§ 658.15 Width.**

\* \* \* \*

(c) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width.

■ 12. Revise paragraph (k) and add paragraph (n) of section § 658.17 to read as follows:

**§ 658.17 Weight.**

\* \* \* \*

(k) Any over-the-road bus, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus, is excluded from the axle weight limits in paragraphs (c) through (e) of this section until October 1, 2009. Any State that has enforced, in the period beginning October 6, 1992, and ending November 30, 2005, a single axle weight limitation of 20,000 pounds or greater but less than 24,000 pounds may not enforce a single axle weight limit on these vehicles of less than 24,000 lbs.

\* \* \* \*

(n) Any vehicle subject to this subpart that utilizes an auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling, may be allowed up to an additional 400 lbs. total in gross, axle, tandem, or bridge formula weight limits.

(1) To be eligible for this exception, the operator of the vehicle must be able to prove:

(i) By written certification, the weight of the APU; and

(ii) By demonstration or certification, that the idle reduction technology is fully functional at all times.

(2) Certification of the weight of the APU must be available to law enforcement officers if the vehicle is found in violation of applicable weight laws. The additional weight allowed cannot exceed 400 lbs. or the weight certified, whichever is less.

■ 13. Revise paragraphs (c) and (e) of § 658.23 to read as follows:

**§ 658.23 LCV freeze; cargo-carrying unit freeze.**

\* \* \* \*

(c) For specific safety purposes and road construction, a State may make minor adjustments of a temporary and emergency nature to route designation and vehicle operating restrictions

applicable to combinations subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 and in effect on June 1, 1991 (July 6, 1991, for Alaska). Minor adjustments which last 30 days or less may be made without notifying the FHWA. Minor adjustments which exceed 30 days require approval of the FHWA. When such adjustments are needed, a State must submit to the FHWA, by the end of the 30th day, a written description of the emergency, the date on which it began, and the date on which it is expected to conclude. If the adjustment involves alternate route designations, the State shall describe the new route on which vehicles otherwise subject to the freeze imposed by 23 U.S.C. 127(d) and 49 U.S.C. 31112 are allowed to operate. To the extent possible, the geometric and pavement design characteristics of the alternate route should be equivalent to those of the highway section which is temporarily unavailable. If the adjustment involves vehicle operating restrictions, the State shall list the restrictions that have been removed or modified. If the adjustment is approved, the FHWA will publish the notice of adjustment, with an expiration date, in the **Federal Register**. Requests for extension of time beyond the originally established conclusion date shall be subject to the same approval and publications process as the original request. If upon consultation with the FHWA a decision is reached that minor adjustments made by a State are not legitimately attributable to road or bridge construction or safety, the FHWA will inform the State, and the original conditions of the freeze must be reimposed immediately. Failure to do so may subject the State to a penalty pursuant to 23 U.S.C. 141.

\* \* \* \*

(e) States further restricting or prohibiting the operation of vehicles subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 after June 1, 1991, shall notify the FHWA within 30 days after the restriction is effective. The FHWA will publish the restriction in the **Federal Register** as an amendment to appendix C to this part. Failure to provide such notification may subject the State to a penalty pursuant to 23 U.S.C. 141.

\* \* \* \*

**Appendix A to Section 658—National Network—Federally Designated Routes**

■ 14. Amend appendix A to part 658 as follows:

■ A. By removing the words “[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and



the following additional Federal-aid Primary highways.]” and adding, in their place, the words “[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional highways.]” in each place that they appear;

■ B. By removing the explanatory phrase “No additional routes have been

federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.” for the States of Arkansas, Colorado, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, Nevada, Ohio, South Dakota, Texas, Utah, Washington and Wyoming, and add, in its place, the

words, “No additional routes have been federally designated; under State law STAA-dimensioned commercial vehicles may legally operate on all highways which, prior to June 1, 1991, were designated as Federal-aid primary highways.”;

■ C. By revising the entries for “New Mexico” to read as follows:

#### NEW MEXICO

US 56 .....	I-25 Springer .....	OK State Line.
US 60 .....	AZ State Line .....	I-25 Socorro.
US 62 .....	US 285 Carlsbad .....	Tx State Line.
US 64 .....	AZ State Line .....	NM 516 Farmington.
US 70 .....	AZ State Line .....	I-10 Lordsburg.
US 70 .....	I-10 Las Cruces .....	U.S. 54 Tularosa.
NM 80 .....	US 285 Roswell .....	U.S. 84 Clovis.
US 84 .....	AZ State Line .....	I-10 Road Forks.
US 87 .....	Tx State Line Clovis .....	CO State Line.
US 160 .....	US 56 Clayton .....	Tx State Line.
US 285 .....	Az State Line (Four Corners) .....	CO State Line.
US 491 .....	Tx State Line s. of Carlsbad .....	CO State Line.
NM 516 .....	1-40 Gallup .....	CO State Line.
US 550 .....	U.S. 64 Farmington .....	U.S. 550 Aztec.
	NM 516 Aztec .....	CO State Line.

#### Appendix B To Part 658— Grandfathered Semitrailer Lengths

■ 15. Amend appendix B to Part 658 in footnotes 1, 2, and 3 by removing the reference “23 CFR 658.13(h)” and by adding in its place “23 CFR 658.13(g)” each place it appears.

[FR Doc. E7-2823 Filed 2-16-07; 8:45 am]

BILLING CODE 4910-22-P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 060216044-6044-01; I.D. 021407B]

##### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to

prevent exceeding the A season allocation of the 2007 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2007, until 1200 hrs, A.l.t., September 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA is 868 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific cod apportioned to vessels catching

Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 668 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod