

Department of Defense: supplying munitions to the military. This final rule will improve the shipment of munitions by standardizing the regulatory control that States apply to the vehicles typically used for this activity. The anticipated result will be an improvement in the efficiency with which munitions are shipped. This potential improvement will aid the national security effort with respect to the armed forces, as well as activities associated with homeland security.

This final rule provides, at the Federal level, a regulatory standard that already exists in many States. Although it potentially preempts restrictions imposed by 23 States, it would not affect any State's ability to discharge a traditional State government function, *i.e.*, issuing citations to illegally overlength vehicles.

The vehicles covered by this final rule are already operating in most States, and will not have to be modified in any way to achieve compliance. Accordingly, the anticipated annual economic effect of this rulemaking will be negligible. This action will not have an adverse effect on any other governmental agency, any level of government, the industry, or the public, nor will it change any compliance or reporting requirements that already exist.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined that the 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, dated August 4, 1999, and the FHWA has determined that this action has sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

This final rule will provide a consistent national regulation applying only to vehicles hauling munitions for the Department of Defense in support of military activities. This final rule is based on the authority provided by 49 U.S.C. 31111(g) that allows the Secretary to make the decisions necessary to accommodate specialized equipment. The FHWA has also determined that, while this action will preempt any inconsistent State law or State regulation, it will not affect the State's ability to discharge traditional State government functions. The States would continue to be able to enforce

length restrictions against these vehicles. What might change, however, depending on existing State law, would be the threshold at which an enforcement action is taken.

By allowing the vehicle described in this final rule to transport munitions, the total number of trucks needed to perform this task would be reduced. This reduction, in turn, improves the safety climate on the highway system and in a small way slows infrastructure wear. Less than half of the States (23) will be affected by this rule, and of those 23 States only 3 States fluctuate enforcing for overlength for the combination vehicle covered by this rulemaking. The additional 28 States allow this combination to operate in its State.

However, due to the needs of the military and the nature of the cargo, it is imperative that all States allow the combination vehicle under discussion to operate. Even if only one or two States can prohibit, or deter this vehicle and its cargo, timely support of the military can be severely impacted.

Consultation with States over this issue has occurred in past years. In February 1991, as a result of the activities surrounding the Desert Shield/Desert Storm campaign, the FHWA issued an emergency rule allowing the use of dromedary units to transport munitions (56 FR 4164, February 1, 1991) for many of the same reasons used in support of the current petition. That rule was in effect for 6 months, and was not renewed for various reasons deemed important in responding to the conditions at that time. After the emergency rule expired, in place of a regulatory solution the FHWA urged all States and in particular those where enforcement actions were taking place to recognize the importance of the situation, and to try and accommodate munitions haulers in some manner. According to the DOD's petitions, this "persuasion" method appeared to work, at least for a few years into the mid-1990's. As this verbal agreement method of handling the issue began to breakdown, a few States again began to enforce length rules on these combinations, causing interruptions in munitions delivery. While inconvenient, these actions did not become critically disruptive until the current activities aimed at terrorist actions around the world became a national priority.

Additionally, the FHWA solicited input on the Federalism implications of the rule from the National Governors' Association (NGA) as a representative for the State officials. On May 9, 2002, we sent a letter to the NGA seeking

comment on any Federalism implications of our proposed changes to 23 CFR 658. Having received no responses, we published the NPRM on October 23, 2002, specifically soliciting comment on any Federalism issues associated with our proposed rule. We did not receive any comments to the docket addressing the issue of Federalism. On December 9, 2002, we sent a follow up letter to the NGA, again seeking comment on any Federalism implications to this final rule. To date, we have received no responses or indication of concerns about the Federalism implications of this rulemaking action from the NGA.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Programs 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, *et seq.*), 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 final rule does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). This final rule does not add any regulatory requirement that will require any expenditure by any private sector party, or governmental agency.

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.