

# Proposed Rules

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

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 658

[FHWA Docket No. FHWA-2001-10370]

RIN 2125-AE90

#### Commercial Vehicle Width Exclusive Devices

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

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA is requesting comments on two proposals. The first would increase the distance that width exclusive devices could project from the side of a commercial vehicle from three to four inches. The agency views this proposal as a first step in the process to harmonize size and weight limits where possible in accordance with the provisions of the North American Free Trade Agreement (NAFTA). The second proposal would remove recreational vehicles (RVs) from consideration as a commercial motor vehicle. When recreational vehicles (RVs) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are currently considered to be commercial vehicles and therefore subject to the 102-inch vehicle width limitation. When a customer takes possession of the RV, however, it becomes personal property and is no longer subject to these regulations, unless the RV is clearly being used in a commercial enterprise. This proposed rule would eliminate the RV from consideration as a commercial vehicle and the subsequent need for overwidth permit for the trip from the manufacturer to the dealer and the dealer to the customer, if add-on customer convenience devices extend beyond the regular width exclusion zone.

**DATES:** Comments must be received on or before September 27, 2002.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phil Forjan, Office of Freight Management and Operations (202) 366-6817, or Mr. Raymond W. 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 and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dms.dot.gov/submit>. Acceptable formats include: MSWord (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS 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 be downloaded by using a computer, modem and suitable communications software, from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

#### Background

This NPRM addresses two separate issues. They will each be discussed individually, as follows: (1) The increased allowance of width measurement, and (2) the removal of recreational vehicles from the definition of a commercial vehicle.

##### 1. Increase of Width Exclusive Distance

Section 411(h) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097) gave the Secretary of Transportation (Secretary) authority to exclude from the measurement of vehicle length any safety and energy conservation devices found necessary for the safe and efficient operation of commercial motor vehicles (CMVs). Section 416(b), now 49 U.S.C. 31113(b), authorized similar exclusions when measuring vehicle width. Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo. That authority is now codified at 49 U.S.C. 31111(d). The current regulation, 23 CFR 658.16(b)(ii)(B), limits the distance that such devices may extend from the side of a commercial vehicle to three inches.

A notice of proposed rulemaking is being issued today for comments on the potential safety and operational effects of increasing the allowable distance that non-property carrying devices may extend from the side of the vehicle, from three inches to four inches.

In October 1999, the Land Transportation Standards Subcommittee (LTSS), Working Group 2 on Vehicle Weights and Dimensions, created by the North American Free Trade Agreement (NAFTA) in 1994, issued a discussion paper on vehicle performance criteria for vehicles that might be allowed to operate in the three NAFTA countries (Canada, Mexico and the United States). The report, "Highway Safety Performance Criteria In Support of Vehicle Weight and Dimension Regulations," (a copy of which is included with this docket) contained candidate vehicle performance criteria and recommended threshold values. The definition of "overall width" proposed for standard use by the three countries as part of the discussion paper included, in part, "exclusive of devices or appurtenances at the sides of a truck, tractor, semitrailer, or trailer whose

function is related to the safe operation of the vehicle. Such devices may extend no more than 10 centimeters beyond the side of the vehicle." Using accepted conversion factors, 10 centimeters equates to 3.937 inches.

The primary objective of Working Group 2 has been, and continues to be, to seek areas within the broad range of vehicle weights and dimensions that can be harmonized among the participating countries. The FHWA, as an active participant in the activities of the LTSS and Working Group 2, is attempting to harmonize size and weight limits where possible. The exclusion of non-property carrying devices, extending up to three inches from the side of a commercial vehicle, is based on agency policy and industry practice that has evolved since the first Federal statute describing maximum vehicle width appeared in 1956. This three-inch limit itself is not statutory, and thus may be subject to administrative change by the agency.

## *2. Exemption of Recreational Vehicles From Commercial Vehicle Definition*

When recreational vehicles (RVs) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are currently considered to be commercial vehicles (the vehicle itself is the merchandise being transported). Therefore, the 102-inch vehicle width limitation in 23 CFR part 658 is applicable to that movement. When a customer takes possession of the RV, it becomes personal property and is no longer subject to part 658, unless the RV is clearly being used in a commercial enterprise. Therefore, the treatment of additions to the vehicle's width limitations become a matter for State determination.

Recreation Vehicles often include additions that are attached to the sides of the unit for use when parked, or for other designed purposes. When RVs are moving, these devices either fold up or roll up against the unit frame. As long as the devices remained within the 3-inch zone, States have traditionally excluded these devices (as long as they do not carry cargo), even while the unit is in a commercial status.

An increasing number of new RVs, however, are now coming equipped with roll up awnings for use when parked. The RV manufacturers, to add additional stability and strength, are building awnings into the structure of the RVs. These awnings come with the vehicle, rather than being an aftermarket or dealer add-on. However, when rolled up in the traveling position, the roll extends up to 6 inches from the side of

the unit. Customarily, the motor carrier would be required to obtain an over-width special permit for an RV moving as a commercial vehicle, if it has an appurtenance extending beyond 3 inches on each side of the vehicle.

Again, once a customer takes possession for private, personal use, there is no Federal requirement that States issue over width permits. In recent years, many States have enacted legislation specifically exempting roll-up awnings from any width requirements for personal use vehicles.

In providing comments to a notice of proposed rulemaking on length and width exclusive devices published on August 18, 2000, at 65 FR 50471 (Docket No. FHWA-1997-2234), the Wisconsin DOT, the Recreational Vehicle Industry Association (RVIA), and the U.S. House of Representatives Committee on Transportation and Infrastructure, all commented that this "one-time" requirement is not in the public interest. All noted that, for the short time and distance (relative to its eventual use) these units are a commercial vehicle, they should be exempted from any permit requirements. These requirements allegedly add to the transportation (and eventually buyer) cost, and create unnecessary administrative burdens on State permitting offices already stretched thin with increased commercial needs. These commenters proposed amending the definition of "commercial vehicle" used in this part. Because such an action was beyond the scope of the length and width exclusive device rulemaking, the FHWA decided to address it in this separate NPRM.

Additionally, the Senate report that accompanied the U.S. DOT Appropriations Act for fiscal year 2002 included language encouraging the FHWA to amend its regulation to include an allowance, with reasonable safety limitations, for the commercial transport of these RVs with appurtenances. (See S. Rep. No. 107-38, at 66). Therefore the FHWA is proposing to amend those sections of the regulations in this part to exclude RVs from the requirements that a carrier obtain a special over-width permit for the limited time the vehicle is considered commercial.

The proposed changes include: (1) An amendment of the definition of commercial vehicle, and (2) the clarification of the language in § 658.15, regarding special use permits for vehicles exceeding 102 inches in width.

## **Rulemaking Analyses and Notices Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures**

We have determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal and that there will not be any additional cost incurred by any affected group as a result of this proposal. Therefore, a regulatory evaluation is not required.

## **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. The two issues discussed in this proposed rule involve the manner in which States are to treat various vehicles. In each instance what is being proposed would reduce the regulatory requirements with which commercial vehicle drivers must comply. For these reasons, the FHWA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

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

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The proposal to remove RVs from the definition of commercial motor vehicle does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This proposal would simply remove a Federal requirement and return the authority to enforce various requirements to the States.

The proposal to increase the width exclusive device extension distance from 3 to 4 inches on the other hand, could preempt State law or regulation in some States. At present the agency is unable to determine the federalism implications of this proposal. Comments received on this proposal will help the agency determine the need for a federalism summary impact statement, if this proposal proceeds to a final rule. Many States simply enforce the "Federal rule" without establishing their own standard. Changing the distance from 3 to 4 inches would

change what is enforced, but would not actually change State law.

These proposals will not affect the State's ability to discharge traditional State government function.

**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, *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 proposal does not contain collection of information requirements for the purposes of the PRA.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would 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 proposed 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). What is being proposed in each of the two issues of this proposed rule would reduce the regulatory requirements that commercial vehicle operators must comply with.

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

This proposal 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)**

We have analyzed this proposal under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This proposal is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

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

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**National Environmental Policy Act**

We have analyzed this proposal for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and have determined that this proposed action would not have any effect on the quality of the environment.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs in 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this proposal 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 under Executive Order 13211 is not required.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

**List of Subjects in 23 CFR Part 658**

Grants Program—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: July 23, 2002.  
**Mary E. Peters,**  
*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

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

1. The authority citation for part 658 continues to read as follows:

**Authority:** 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 49 CFR 1.48(b)(19) and (c)(19).

2. Amend § 658.5 by revising the term “commercial motor vehicle” to read as follows:

**§ 658.5 Definitions.**

\* \* \* \* \*

*Commercial motor vehicle.* For purposes of this regulation, a motor vehicle designed or regularly used for carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or vehicles built and operated as recreational vehicles.

\* \* \* \* \*

3. Revise § 658.15(c) to read as follows:

**§ 658.15 Width.**

\* \* \* \* \*

(c) Notwithstanding the provisions of this section or any other provision of law, the following are applicable:

(1) A State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width; and

(2) A State may allow recreational vehicles with safety and/or non-cargo carrying appurtenances extending beyond four inches from the side of the vehicle to operate without a special use over-width permit.

4. Revise § 658.16(b)(2)(ii) to read as follows:

**§ 658.16 Exclusions from length and width determinations.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) That do not extend more than 4 inches beyond each side or the rear of the vehicle or,

\* \* \* \* \*

5. Amend appendix D to part 658 by revising item number 3 to read as follows:

### Appendix D to Part 658—Devices That Are Excluded From Measurement Of the Length or Width of a Commercial Motor Vehicle

\* \* \* \* \*

3. Devices excluded from width determination, not to exceed 4 inches from the side of the vehicle including, but not limited to, the following:

(a) through (h) \* \* \*

(b) Tarping systems for flatbed semitrailers or trailers described as follows:

Also excluded from length and width measurement are load tarping systems where no component part extends farther than 4 inches from sides or back of the vehicle when the vehicle is in operation. This exclusion applies to component parts of these systems including: a headboard (not intended or designed to meet the front end structure cargo restraint requirements of 49 CFR 393.106) up to 110 inches wide properly centered as part of the installation process so that neither edge extends farther than 4 inches from the structural edge of the vehicle, side rails running the length of the vehicle, rear doors if the only function of the doors is to complete a seal of the cargo and anchor the sliding walls, transition pieces or "wings" between a front-end structure designed to meet the requirements of 49 CFR 393.106 (and limited to 102-inches wide), and the movable portion of a tarping system as long as they are not attached to any other property-carrying or supporting part of the flatbed structure, and remain as an add-on piece as opposed to a single piece bulkhead structure designed to accommodate cargo restraint requirements and a tarping system;

(a) through (l) \* \* \*

[FR Doc. 02-19029 Filed 7-26-02; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106359-02]

RIN 1545-BA57

#### Compensatory Stock Options Under Section 482

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These proposed regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be

considered under the comparable profits method. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 28, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 20, 2002, must be received by October 30, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-106359-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-106359-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Douglas Giblen, (202) 874-1490; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by September 27, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information requirements are in proposed §§ 1.482-7(d)(2)(iii)(B) and 1.482-7(j)(2)(i)(F). This information is required by the IRS to monitor compliance with the federal tax rules for determining stock-based compensation costs related to intangible development to be shared among controlled participants in qualified cost sharing arrangements. The likely respondents are taxpayers who enter into these arrangements. Responses to this collection of information are required to determine these taxpayers' proper shares of stock-based compensation costs incurred with respect to these arrangements.

Section 1.482-7(d)(2)(iii)(B) of the proposed regulations provides that controlled participants may elect an alternative method of measurement of certain stock-based compensation by clearly referring to the election in the written cost sharing agreement required under existing regulations or by amending a cost sharing agreement already in effect to refer to the election. Section 1.482-7(j)(2)(i)(F) requires controlled participants to maintain documentation necessary to establish the amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used in computing that amount, and the data, as of the date of grant, used to identify stock-based compensation related to the development of intangibles.

*Estimated total annual reporting and/or recordkeeping burden:* 2,000 hours.

*Estimated average annual burden hours per respondent and/or recordkeeper:* The estimated annual burden per respondent varies from 2 hours to 7 hours, depending on individual circumstances, with an estimated average of 4 hours.

*Estimated number of respondents and/or recordkeepers:* 500.

*Estimated frequency of responses:* Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control