DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2003–16164]

RIN 2125–AE99

Commercial Vehicle Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposed in an earlier notice of proposed rulemaking (NPRM) to amend its regulation of truck size and weight by increasing the distance that width exclusive devices could extend beyond the sides of commercial motor vehicles by one inch. However, due to issues raised by the comments, the FHWA decided to publish this supplemental notice of proposed rulemaking (SNPRM) to solicit comments on revised regulatory language proposing to increase by one inch the width exclusive devices and to seek public input on crash statistics, safety studies, or other information related to such an increase.

DATES: Comments must be received by May 11, 2004.

ADDRESSES: Mail or hand deliver comments for the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, submit electronically at *http://dms.dot.gov/submit,* or fax comments to (202) 493–2251. 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. Anyone is able to search the electronic form of all comments received into any of our dockets by name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

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: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCH)(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.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

In October 1999, the Land Transportation Standards Subcommittee (LTSS), created by the North American Free Trade Agreement (NAFTA) Working Group 2, issued a discussion paper. The paper, ''Highway Safety Performance Criteria in Support of Vehicle Weight and Dimension Regulations'' (a copy of which is included in this docket), contained candidate vehicle performance criteria and recommended threshold values. The primary objective of Working Group 2 was to seek areas within the broad range of vehicle weights and dimensions that could be harmonized among the participating countries (Mexico, Canada, and the United States).

The working group's discussion paper included the definition of ''overall width'' and proposed a standard for use by the three countries. This definition described width exclusive 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).

In a final rule published March 29, 2002 (67 FR 15102), the FHWA said it was preparing to issue an NPRM to consider an extension in the distance that non-property carrying devices could protrude from the sides of commercial motor vehicles operating on the National Network [1] (NN) of highways in the United States from three to four inches. The FHWA published an NPRM that proposed extending the distance that non-property carrying devices could protrude from the side of commercial motor vehicles from 3 to 4 inches under FHWA Docket No. 2001–10370 on July 29, 2002 (67 FR 48994). That NPRM also included two proposals concerning recreational vehicles (RVs). The first proposal concerned excluding RVs en route from a manufacturer to a sales location from the definition of commercial motor vehicle (as described in 23 CFR 658.5), leaving the regulation of width solely to the States. The second proposal would have authorized States to allow RVs with safety and/or non-cargo carrying appurtenances extending beyond 4 inches (rather than 3 inches) from the side of the vehicle to operate without a special use over-width permit.

Because of concerns raised by several respondents to the July 29, 2002, NPRM concerning the proposed 1-inch increase in the allowed width of excluded devices, the FHWA determined that it is appropriate to issue this SNPRM (1) to solicit further public comment on our proposal to expand by 1-inch the allowance for non-cargo carrying width exclusive devices; (2) to seek additional public feedback about the possible effects on highway safety and traffic that may result from this 1-inch increase; and (3) to solicit public comment on proposed revised language. A new docket number (2003–16164) is assigned to this rulemaking.

The final rule regarding RVs is published elsewhere in today's **Federal Register.** For consistency with this SNPRM, the final rule authorizes States

[1] As defined in 23 CFR part 658. The National Network is the composite of the individual network of highways in each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under Section 658.11(f) or deleted under Section 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

to allow RVs with safety and/or non-cargo carrying appurtenances extending beyond 3 inches (rather than 4 inches as proposed in the NPRM) from the side of the vehicle to operate with a special over-width permit.

Comments to the NPRM

Five of the eight comments received addressed the proposal to increase from three to four inches the distance that width exclusive devices could project from the side of commercial motor vehicles subject to Federal width limits. The Truck Trailer Manufacturers Association (TTMA) agreed with the proposal and favored it as a step toward harmonizing size and weight limits for the North American Free Trade Agreement (NAFTA) countries (Mexico, Canada and the United States). The TTMA did not believe it would present any operational issues and would actually allow additional safety devices to be incorporated into trailer designs.

The Iowa Department of Transportation supported increasing the distance that width exclusive devices could project from the side of a commercial motor vehicle from three to four inches. It said that over 95 percent of the primary and secondary roads in the State are either 11 or 12 feet wide. According to the State, this would allow sufficient clearance for width exclusive devices to extend up to 4 inches beyond the sides of commercial motor vehicles.

The California Highway Patrol did not oppose a one-inch increase in the length of width exclusive devices, but was concerned that ''continuing to increase the width of commercial vehicles will eventually cause safety concerns.''

The Illinois Department of Transportation opposed the increase on narrow roadways and believed that the excluded devices could be designed to fit within the current 3-inch width exclusion limits.

The Advocates for Highway and Auto Safety (Advocates) provided the most extensive statement of concern about the proposed change. The Advocates stated that, ''there is no foundation in the rulemaking record established by the FHWA on the basis of safety considerations to extend the overall widths of commercial motor vehicles * * *,'' and added that ''the agency has an affirmative obligation to make an explicit safety finding about increases in the widths of commercial motor vehicles that exceed the figures established in prior regulatory policy for additional safety and energy conservation devices that extend beyond 102 inches * * *.'' It also said that, ''the FHWA has made no safety finding of any kind in this rulemaking about the consequences of further widening of commercial motor vehicles by permitting additional extension to either side of safety and energy conservation devices * * *'' but instead, ''* * * the agency simply invokes a need to harmonize the widths of commercial motor vehicles in order to advance the purposes of the North American Free Trade Agreement (NAFTA).'' Finally, the Advocates wrote that ''[i]t is crystal clear that Congress expects the agency to make an explicit safety finding whenever it exercises its discretion to permit or modify the size of safety or energy conservation devices that exceed the statutory maximum width of 102 inches for commercial vehicles * * *,'' and that, ''[a]lthough the addition of an inch of width for exclusive devices on each side of a commercial vehicle may appear to be a *de minimis* change, it in fact can have safety consequences for commercial motor vehicles, especially those with long trailers, offtracking on short radius curves on these substandard roads.''

The purpose of this SNPRM, in addition to seeking comments on the revised language, is to solicit additional information from transportation stakeholders, government officials at all levels, and the general public on (1) the issues raised by the Advocates and other respondents to the NPRM, and (2) the effects of increasing the distance that non-property carrying devices may protrude from the sides of commercial motor vehicles.

Request For Information

Following its analysis of comments, the FHWA sought to locate sources of information that would document the experience of others in (1) undertaking similar changes to vehicle width exclusion standards or (2) monitoring and evaluating vehicle crashes caused by contact with width exclusive devices. Sources were found to be very limited. As a result, the FHWA seeks additional public input on this topic. It asks respondents to this SNPRM to also consider the following in their review and comments:

1. *Safety effects of a width exclusion increase on the NN and reasonable access routes.* The Transportation Research Board (TRB), in its Special Report 267,[2] ''Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles,'' 2002, referenced a 1941 study by the Interstate Commerce Commission (ICC) which sought to determine whether allowing greater size and weight would be compatible with highway safety. The TRB report said that:

> Studies of Federal policy conducted since 1941 have reached conclusions generally similar to the ICC's cautiously worded statement: available evidence does not show that size and weight, within the range of existing practices, are highly significant safety factors; lack of data may have prevented observation of hazards; and therefore research and monitoring should accompany regulation. It is a source of frustration that 60 years of research has not yielded definitive conclusions on these questions.

Another TRB publication, Special Report 223,[3] ''Providing Access for Large Trucks,'' 1989, stated as follows on page 139:

> Although there appear to be no definitive guidelines for appropriate lane widths for STAA vehicles, two observations can be made. First, the modest increase of 6 inches in vehicle width [from 96 to 102 inches] does not appear to have introduced any significant decrement in the safe operation of trucks on the highways. Second, minimum lane widths of 11 feet, and even wider on roads with sharp curves, appear to be desirable on roads with high volumes of commercial traffic, whether the trucks be 96 or 102 inches wide.

As provided in 23 CFR 658.9(b)(5), NN routes must have lanes designed to be at least 12 feet wide or otherwise consistent with highway safety to be included within this category of roadways.

Federal exclusion of devices from the measurement of a commercial motor vehicle's width applies only on the NN, or those vehicles using reasonable access routes for purposes other than access between the NN and terminals and facilities for food, fuel, repairs, and rest. Reasonable access routes are those between the NN and terminals and facilities for food, fuel, rest or repairs where States have determined that vehicles subject to Federal width requirements may safely operate. States are not required to allow such routes to be used for through traffic, but may do so if they wish.

Respondents to this SNPRM should consider any information concerning the effect on safety on the NN and reasonable access routes of a one-inch increase in the allowable width of devices excluded from the measurement of the width of commercial motor vehicles (CMVs).

2. *Not all excluded devices are inch-restricted.* Current regulations at 23 CFR 658.16(b)(2)(ii) exclude from the measurement of vehicle width on the

[2] A copy of this publication may be obtained from TRB by telephone (202) 334–3213, facsimile (202) 334–2519, mail at TRB, 500 Fifth Street, NW., Washington, DC 20001, e-mail: *TRBSales@nas.edu,* or online at *http://www.trb.org* and select ''online documents.''

[3] Ibid.

National Network (NN) and reasonable access routes all non-property-carrying devices, or components thereof, that do not extend more than 3 inches beyond each side of 102-inch wide commercial motor vehicle. However, rear-view mirrors, turn signal lamps, handholds for cab entry/egress, splash and spray suppressant devices, and load induced tire bulge are excluded under 23 CFR 658.16(b)(1) from the maximum width standard. It was explained in the March 29, 2002 (67 FR 15102), final rule that these devices had to extend far enough to serve their intended purpose. Thus, some excluded devices are already allowed to extend beyond the current 3-inch limit.

Respondents to the SNPRM should consider how extending the width limit for devices excluded from the measurement of CMVs by one inch would affect safety differently than width devices, which are unrestricted as to length.

3. *States currently issue permits for over-wide vehicles.* States may choose to grant special use permits to motor carriers when their vehicles or cargoes exceed 102 inches in width. As a result, States allow vehicles to exceed Federal width limits on the NN under conditions they impose, provided only that the States issue actual permits for these over-wide movements. In the absence of a Federal rule requiring States to allow NAFTA vehicles with up to a 4-inch width exclusion to operate on the NN, operators of vehicles containing the NAFTA-width excluded devices could apply for overwidth permits in each State where they might travel. It would be up to each State to expand their permit procedures to include carriers operating vehicles equipped with 4-inch width-exclusive devices.

Respondents to this SNPRM should consider the likelihood that their States would issue overwide load permits to NAFTA vehicles equipped with excluded devices protruding no more than 4 inches beyond the sides, and how this issuance, if undertaken, would alter current permitting and motor carrier routing practices.

4. *Non-safety effects of a width exclusion increase.* In considering the effects of allowing devices to extend an extra inch beyond the sides of vehicles, we ask respondents to consider what specific ways this change might also influence traffic flow and congestion as well as safety. For example, lane widths affect the amount of separation between vehicles as well as the potential encroachment of a vehicle into an adjoining lane on turns. The FHWA solicits information about how allowing an increased width exclusion might influence these particular issues.

Conclusion

This SNPRM seeks to be responsive to the issues raised by the respondents to the NPRM. It offers some additional considerations regarding the factors that might affect the safety of allowing devices already excluded from the measurement of commercial motor vehicle width to extend an additional inch on each side of such a vehicle. The public is encouraged to offer responses to these and other issues of concern.

Please note that the amended language of 23 CFR Part 658 that is proposed below differs slightly from the language presented in the NPRM. The NPRM contained revised language in section 658.16, ''Exclusions from length and width determinations,'' that provided for the exclusion of devices that do not extend more than 4 inches beyond each side or the rear of the vehicle * * *.'' This SNPRM provides for a 4-inch width exclusion, but retains the current 3-inch exclusion for moveable devices to enclose the cargo area of flatbed semitrailers or trailers, usually called tarping systems, that extend off the back of the vehicle when the vehicle is in operation. It was never the intention of the NPRM to propose a 1-inch increase for devices other than width exclusive devices. Rear-mounted excluded devices to enclose the cargo area of flatbed semitrailers or trailers would still have to adhere to the current 3-inch limit.

Similarly, in the NPRM, Appendix D, paragraph 3(i), called for a 4-inch exclusion for ''* * * load tarping systems where no component part extends farther than 4 inches from the sides or back of the vehicle when the vehicle is in operation.'' Again, it was not the intent of the FHWA to provide for a 1-inch increase for devices other than width exclusive devices. Accordingly, the 3-inch provision is retained in the SNPRM for rear-mounted excluded devices.

The language in the NPRM dealing with the treatment of Recreational Vehicles (RVs) in Section 658.5, ''Definitions,'' and Section 658.15, ''Width,'' is now included in the separate RV final rule printed elsewhere in today's **Federal Register**. The final rule removes RVs from the definition of commercial motor vehicle and authorizes States to allow RVs with appurtenances extending beyond 3 inches to operate without a special use over-width permit. In this SNPRM, we propose changing the distance from 3 inches to 4 inches for consistency with the other changes we are proposing.

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 would be minimal, since it would not require any additional action on the part of commercial vehicle operators or States. No additional action by commercial vehicle operators or States is necessary because this proposed rule would allow an additional inch on each side of a commercial motor vehicle for non-property carrying devices. 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 proposal would reduce the regulatory requirements with which commercial vehicle drivers must comply by reducing their need to apply for State overwidth permits. For this reason, 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 action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action would not have a substantial direct effect or significant federalism implications on States that would limit the policymaking discretion of the States.

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 regulation. 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 would 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 would reduce the regulatory requirements with which commercial motor vehicle operators must comply.

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 would 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 proposed action 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 proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would 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 action 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: March 8, 2004.

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. 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 4 inches from the side of the vehicle to operate without a special use over-width permit.

3. Revise Section 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 of the vehicle, or 3 inches beyond the rear of the vehicle, or,

* * * * *

4. Amend appendix D to part 658 by revising item number 3 introductory text and paragraph (i) in item 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:

* * * * *

(i) Movable devices to enclose the cargo area of flatbed semitrailers or trailers, usually called tarping systems, where no component part of the system extends more than 4 inches from the sides, or 3 inches from the back, of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of tarping systems, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 CFR 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to 110 inches wide if properly centered so that neither side extends more than 4 inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 CFR 393.106 is load bearing and thus limited to 102 inches in width. However, the ''wings'' designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and not integral parts of the load-bearing headerboard structure;

* * * * *

[FR Doc. 04–5635 Filed 3–11–04; 8:45 am]

BILLING CODE 4910–22–P