



Federal Register

**Friday,
March 12, 2004**

Part IV

Department of Transportation

Federal Highway Administration

23 CFR Part 658

**Commercial Vehicle Width Exclusive
Devices; Final Rule and Proposed Rule**

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:** Final rule.

SUMMARY: The FHWA amends its regulation on truck size and weight by removing Recreational Vehicles (RVs) from consideration as commercial motor vehicles (CMVs) and grants States additional flexibility to deal with certain appurtenances extending from the side of the RVs. These changes allow the States the discretion to regulate the width of RVs and allows RVs to be exempt from any special use over-width permit requirements.

EFFECTIVE DATE: April 12, 2004.

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**

Internet users may access all comments received by the U.S.DOT Docket Facility, Room PL-401, by using the universal resource locator (URL) <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

The FHWA published a notice of proposed rulemaking (NPRM) on July 29, 2002 (67 FR 48994), that proposed two separate issues. First, a proposal was made to remove RVs from their treatment as CMVs when en route from

manufacturer to sales location, allowing the States to use their discretion to regulate the width. Second, a proposal was made to increase by one inch the distance that non-cargo carrying, width exclusive devices could project from the side of a CMV.

Increase of Width

The FHWA has determined that it is appropriate to issue a supplemental Notice of Proposed Rulemaking (SNPRM) to solicit further public input about the possible effects on highway safety and traffic that may result from the 1-inch increase. There were concerns raised by several respondents to the July 29, 2002, NPRM concerning the proposed 1-inch increase in the allowed width distance exclusion of non-cargo carrying devices. This SNPRM appears elsewhere in today's **Federal Register** and solicits crash statistics, safety studies, and any other information related to the possible effects of such an increase.

Remove RVs From CMV Definition and Clarification of Special Use Permits in Section 658.15

The current definition of a CMV at 23 CFR 658.5 is as follows: "*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." Under this definition when RVs are being moved to the point of customer delivery, as from a manufacturing location to a dealer, or between a dealer and a tradeshow, these vehicles are considered CMVs (the vehicle itself is the merchandise being transported).

The RV manufacturers are currently building awnings into the structure of the RVs to provide additional stability and strength. 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, if the RV has an appurtenance extending beyond 3 inches on each side of the vehicle, the motor carrier would be required to obtain an over-width special permit from the State for an RV moving as a CMV. The special permit would authorize their CMVs to operate in excess of the maximum width limit of 102 inches. However, once a customer takes possession of the RV for the purpose of private or personal use, it is no longer considered a CMV and is not subject to the Federal requirement that States issue over-width permits.

The language proposed in this final rule differs slightly from the language proposed in the NPRM. Since we are issuing an SNPRM for the proposed 1-inch increase in the allowed width distance of non-property carrying devices, this final rule authorizes States to allow RVs with appurtenances extending beyond 3 inches, rather than 4 inches, to operate without a special use over-width permit. In the SNPRM, we propose changing the distance from 3 inches to 4 inches for consistency with the other proposed changes.

In recent years, many States have enacted legislation specifically exempting roll-up awnings from any width requirements for personal use vehicles. The FHWA, like many of the commenters, believes that, for the short time and distance (relative to its use over the lifetime of the vehicle) an RV is now considered a CMV, the RV should be exempted from any special use over-width permit requirements.

Therefore, this final rule removes RVs from the definition of a commercial motor vehicle, and clarifies the language in § 658.15, regarding special use permits for RVs with safety and/or non-cargo carrying appurtenances extending beyond 3 inches from the side of the vehicle to operate without a special use over-width permit.

Discussion of Comments

We received eight sets of comments to the docket. Of the eight commenters, two were from State transportation departments (Illinois Department of Transportation, and Iowa Department of Transportation); one from a law enforcement entity (Department of California Highway Patrol); one comment from the Vermont Department of Motor Vehicles; two comments from associations (the Truck Trailer Manufacturers Association (TTMA) and the Recreational Vehicle Industry Association (RVIA)); one comment from a safety organization (Advocates for Highway and Auto Safety (Advocates)); and one comment from a manufacturer (Tire Pressure Control International Ltd). The majority of the commenters were in favor of the proposed changes.

The comments from the California Highway Patrol, the Vermont DMV, and the Iowa DOT favored the removal of RVs from consideration as a commercial motor vehicle (CMV). The reasons given included: The inefficient use of the State's resources and an administrative burden to process a commercial over-width permit for RVs; no evidence of safety problems as a result of an awning or appurtenance; and the 2000 Fatal Accident Reporting System (FARS)

data¹ that indicated fatal vehicle accidents involving RVs were statistically insignificant.

The Illinois DOT opposed the proposed change concerning RVs, focusing on the approximately 14,000 miles of local highways in its State that presently have 9-foot driving lanes. Its concern was that trucks and RVs 9 feet 2 inches wide could legally operate on highways 9 feet wide. However, the FHWA is removing RVs from consideration as CMVs while on the National Network (NN) which typically have wider lanes. States are still free to regulate the dimensions of vehicles on their own local highways.

The FHWA contends that the time needed to deliver a new RV is insignificant when compared to the lifetime of the RV once privately owned. Additionally, it is reasonable that the manufacturers would take the appropriate routes and exercise appropriate caution when delivering expensive RVs to dealers and trade shows. RVs are designed for personal rather than commercial use. Private individuals do the vast majority of the driving once the RV is sold to a retail customer, making it overwhelmingly a personal vehicle for use on the National Network and other State and county roads.

The RVIA fully supported the removal of RVs from consideration as CMVs. It viewed allowing RVs equipped with incidental appurtenances that do not pose a safety hazard as a warranted, positive change. It also noted that the proposed exclusion would eliminate an overwide permitting process. It believed that the proposal would:

- Have a *de minimus* effect as there are only a small number of units involved when compared to the far larger number of trucks and buses traveling on U.S. roads;
- Remove an administrative burden on the States and the industry;
- Not threaten the State highway and bridge infrastructure;
- Not present safety concerns; and
- Help reduce State and industry compliance costs.

The RVIA also cited (FARS) data indicating that only 101 motorhomes were involved in fatal accidents in 2001. The data did not specify if these RVs were operating as CMVs, or private vehicles at the time of the accident. Furthermore, the RVIA indicated that only 213,200 RVs, the type that could potentially exceed 102 inches wide,

were transported in 2001. The RVIA believed the FHWA's proposal to exclude RVs from consideration as CMVs was warranted by sound public policy and the special factual circumstances listed above.

The Advocates stated that the Congress has not mandated that RVs be exempted, but has only recommended agency evaluation of such an exemption. The Advocates further commented that the report language does not contemplate simply a lifting of the current restrictions on RV deliveries in favor of no Federal role. Rather, the Advocates asserted that the report language unmistakably directs the agency to allow such transport only with reasonable safety limitations.

The FHWA recognizes that RVs are designed and manufactured for personal use and are not considered CMVs when operated in that capacity. The RVIA reported that in 1999, the average number of commercial miles driven per RV was 1,213 miles by those manufacturers with single plants and only 689 commercial miles for those that have multiple plants nationwide. In contrast, large trucks, according to 1999 Bureau of Transportation Statistics information, logged over 202,688 million commercial miles. As noted, in 2001, 213,200 RVs equipped with the widest RV appurtenance (awning) were shipped to dealers. The awning is located on the outside, top of the vehicle, 10 to 12 feet above the surface of the road which reduces most safety concerns. Additionally, the retracted awning, which extends 6 inches from the side of the vehicle, still remains inside the outmost perimeter of the rear view mirrors. The FHWA believes that RVs do not pose potential safety hazard and therefore, amends its regulation on truck size and weight by removing RVs from consideration as CMVs.

Pressure Control Systems

Tire Pressure Control International Ltd. Of Edmonton, Alberta, Canada suggested the FHWA use this rulemaking as an opportunity to add "Tire Pressure Control and Monitoring Devices" to the exclusion list identified in "Appendix D to Part 658—Devices That are Excluded From Measurement Of the Length or Width of a Commercial Motor Vehicle,"—Item 3. The FHWA has determined that this request is beyond the scope of this rulemaking and may consider this issue in a future rulemaking.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

We have determined that this final rule 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. This rulemaking removes RVs from the definition of commercial motor vehicle and authorizes States to allow RVs with safety and/or non-cargo carrying appurtenances extending beyond 3 inches from the side of a vehicle to operate without a special use over-width permit. 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 final rule on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. The issue discussed in this final rule involves the manner in which States are to treat recreational vehicles. In this instance the final rule would reduce the regulatory requirements with which commercial vehicle drivers must comply. For these reasons, the FHWA certifies that this final action will not have a significant economic effect 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. Removing RVs from the definition of commercial motor vehicle does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This final rule simply removes a Federal requirement and returns the authority to enforce various requirements to the States. This final rule does not affect the State's 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

¹ The FARS is a database maintained by the National Highway Traffic Safety Administration. More information is available electronically at: <http://www-fars.nhtsa.dot.gov>.

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 will reduce the regulatory requirements that commercial vehicle operators must comply with, thus reducing their operating cost.

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)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This rule 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 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

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) 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 this 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 final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this 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: March 8, 2004.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends 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 to 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 3 inches from the side of the vehicle to operate without a special use over-width permit.

[FR Doc. 04-5634 Filed 3-11-04; 8:45 am]

BILLING CODE 4910-22-P