



ADVOCATES

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U.S. DOT Dockets, Room PL-401
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400 Seventh Street, SW
Washington, DC 20590

Commercial Vehicle Width Exclusive Devices: Supplemental Notice of Proposed Rulemaking, 69 FR 11997 *et seq.*, March 12, 2004

Advocates for Highway and Auto Safety (Advocates) submits the following comments in response to the supplemental notice of proposed rulemaking published by the Federal Highway Administration (FHWA). Advocates previously filed comments on the topic of this rulemaking action.¹ In the instant notice, the FHWA has acknowledged the need to make a specific safety finding on the safety consequences of allowing an additional inch of width on each side of a commercial motor vehicle (CMV) on routes comprising the designated National Network (NN) of highways that permit CMVs with the widths and lengths mandated by the 1982 Surface Transportation Assistance Act (STAA).² A “finding of fact” is a specific determination supported by evidence in the

¹ Comments of Advocates for Highway and Auto Safety, September 27, 2004, filed with Docket No. FHWA-2001-10370, July 29, 2002 (67 FR 48994 *et seq.*).

² The regulation of CMV maximum width was entrusted to the FHWA in 1982 when Congress legislatively expanded the width of CMVs from 96 to 102 inches for interstate commerce on certain designated highways. Congressional intent at the time was clear that the maximum width of CMVs was increased in relation to the consideration of the need for the safe movement of these wider vehicles on public roads. Section 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub.L.97-424, 96 Stat. 2097) gave the Secretary of Transportation the authority to exclude for the measurement of vehicle width any safety and energy conservation devices found necessary “for the safe and efficient operation of commercial motor vehicles.” 67 FR 48994 (July 29, 2002); 49 U.S.C. § 31113(b). The FHWA has chronically ignored the need to make a specific finding of fact about the safety consequences of increased widths of CMVs by repeatedly exempting numerous features of CMVs from the nominal maximum width limit established by Congress: “Successive Federal Register notice through calendar year 1990 have identified 55 specifically described devices as excluded from length or width measurements.” Comments of Advocates for Highway and Auto Safety, November 6, 2000, Docket No. FHWA-1997-2234 (formerly Nos. 87-5/89-12), 65 FR 50471 *et seq.*, August 18, 2000. “Advocates has long been on record in many agency proceedings pointing out the hazards of large truck operation on narrow local roads with substandard alignment and cross-section

record. Black's Law Dictionary, 7th ed. The agency has not carried its burden in this rulemaking record to achieve this requirement. Simply locating and citing or quoting sources who claim they know nothing about the precise safety effects of vehicle width increases does not comprise the application of agency expertise in order to draw well-crafted and strongly supported conclusions from the facts entered into the record.

In responding to the need to make a safety finding the FHWA has merely invoked reliance on a Transportation Research Board Special Report published in 2002 that averred that there are no definitive conclusions about the effects of size and weight practices on highway safety.³ 69 FR 11997, 11998. The agency also relies on citation to the regulatory implementation of the NN that took place in several regulatory actions throughout the early and middle 1980s.⁴ The FHWA glosses the cited provision (23 CFR 658.9(b)(5)), viz., that "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 highways." *Id.*

design features." *Id.* With regard to the agency's chronic failure to make specific findings about the safety impacts of exemptions that effectively increase CMV widths, we stated:

In point of fact, FHWA has **no** disaggregated safety data about any aspect of STAA-dimensioned vehicles operating on the NN, such as the crash involvement rate by number of registered vehicles, or by vehicle-miles-traveled, or any other meaningful safety-sensitive denominator. Therefore, the claim that the agency has no data specifically on mirror widths is disingenuous. FHWA has no documentation that extensions of up to 12 inches on each side of a combination truck, for example, do not compromise operating safety. A bare assertion that they will not adversely impact safety will not suffice.

In fact, one of the keystones of this rulemaking should be the agency's presentation of careful data and their analysis to show whether and to what extent various width exceedances of the 102 inch statutory limit for vehicles produce operating or safety problems. However, apart from isolated enforcement reports and anecdotal information, the agency has no such data base to rely upon in this rulemaking action. * * * The agency cannot decide this action on the basis of a rationalized consensus view of the opinions of what are vehicle features which acceptably exceed the current federal maximum width for vehicles, but only on the basis of reasoned and data-supported justifications derived from credible field research and its safety findings. There are no studies and no data of any kind in the administrative record of this rulemaking.

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FHWA is on record in many proceedings over the past several years under this Administration asserting that public policy decisions directly affecting road safety will be based on scientific review and publicly evaluated, defensible data on safety effects. That promise has not been upheld in this rulemaking.

Id. (emphasis in the original)

³ FHWA also cites another TRB Special Report issued in 1989 which, again, makes generalizations about what "appears" to be the negligible safety effects of STAA width increases without any specific evidence of field studies or other data corroborating this surmise. 69 FR 11998. Citing the ignorance of other authorities does not somehow exonerate the agency from carrying out its statutory duties to protect and enhance the safety of the traveling public.

⁴ Although it is the case that the overwhelming majority of routes currently comprising the NN were ratified by federal action through a series of final rules issued primarily from 1984 to 1987, rulemaking actions intermittently continue to be issued by the FHWA until the present to effect minor additions and deletions to the network for a variety of policy, infrastructure, and safety rationales.

The FHWA's reliance on these inapposite references does not acquit its statutory duty to make specific safety findings about the consequences of changes in policy regarding the widths of CMVs on the NN. First, the TRB Special Report provides no refuge for the agency given that the committee that formed the opinions for the report clearly disavow any specific knowledge of record on the precise safety effects of different vehicle widths as they relate to different highway widths and alignments. Citing this lack of knowledge about safety consequences does not absolve the agency from its statutory duty to determine whether wider CMVs on NN highways present a safety threat. The issue of whether incremental increases in CMV width has an impact on highway safety must be resolved empirically, not by invocation of prior sources claiming no knowledge or information about this important topic. The agency, not TRB or other institutions or persons, is charged with a statutory obligation to measure the safety impact of such changes and evaluate them in a rulemaking action through exposition of potential effects and receipt and review of public comments. This safety issue has direct relevance to the safety and well-being of the traveling public. It cannot be addressed through expressions of ignorance or *a priori* argument.

Second, there are many highways within the NN that have lanes less than 12 feet wide, and some that have lanes 10 feet wide. 49 FR 23302, 23307 (June 5, 1984). Moreover, the FHWA has stated for the record that it "does not have complete information as to where the less than 12-foot lane mileage is located." *Id.* at 23308. Furthermore, in those instances where the agency has permitted highways with lanes only 10 feet wide to pass muster for inclusion in the NN, it did not cite safety needs but instead relied on the necessity to maintain commerce and ensure network continuity. See, *e.g.*, 52 FR 35064, 35067 (September 17, 1987).

This supplementary rulemaking proposal fails even to meet minimum needs in responding to a statutory requirement. Citing a lack of evidence in a TRB report and referring to a safety test in 23 CFR that clearly was superseded by published agency decisions to maintain route continuity and network connectivity while ignoring safety effects does not constitute a specific finding on the actual effects of allowing wider CMVs on NN highways, especially those with short radius curves, narrow lanes, inadequate sight distance, and numerous vehicle conflicts. It is clear that the FHWA believes that it can absolve itself of the responsibility of making such a specific safety finding without marshaling actual empirical data on wider vehicle operations about which the agency renders its expert decision on resulting safety effects simply through the act of publishing a supplementary rulemaking notice without any new information presented for evaluation. The agency apparently believes, without advancing any evidence to support such a belief, that the increased width that it wants to approve for CMVs on the NN is a *de minimis* change that requires no safety evidence to support it. Courts have routinely found such evasive responses to specific statutory responsibilities, particularly in the arenas of health, safety, and environmental protection, to be inadequate.

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In order to approve wider CMVs, FHWA has the burden of showing that credible facts affirmatively support such a finding. Failing that showing, the agency may not proceed. Advocates still awaits the FHWA to make a specific finding sufficiently supported in the administrative record regarding the safety consequences of adding an inch of additional width to each side of a CMV operating on the NN.

Respectfully submitted,

ORIGINAL SIGNED

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