

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS at 231.205-6 to implement the Director of Defense Pricing policy memo "Unallowable Costs for Ineligible Dependent Health Care Benefits, dated February 17, 2012. The rule adds paragraph 231.205-6(m)(1) to explicitly state that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

FAR 42.709, which implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 4303, covers the assessment of penalties against contractors that include unallowable indirect costs in final indirect cost rate proposals or the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract. The section applies to all contracts in excess of \$700,000, except fixed-price contracts without cost incentives or firm-fixed-price contracts for the purchase of commercial items. FAR 42.709-1(a) provides penalties that apply if the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR.

FAR 31.205-6(m) states that the costs of fringe benefits (which include employee health care benefits) are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor. Although fringe benefit costs that do not meet these criteria are not allowable, the FAR does not make them expressly unallowable. Specifying these fringe benefit costs as expressly unallowable in the DFARS makes it clear that the penalties at FAR 42.709-1 are applicable if a contractor includes such unallowable fringe benefit costs in a final indirect cost rate proposal or in the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Regulatory Flexibility Act**

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule will only impact entities that are submitting covered proposals containing unallowable indirect fringe benefit costs. FAR 31.205-6(m) already states what fringe benefit costs are allowable. This rule provides explicit clarification that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable. If this rule takes effect, the penalties at FAR 42.709-1 will apply to any entity that includes such unallowable indirect charges in a final indirect cost rate proposal or the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract for a contract that exceeds \$700,000.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. According to FPDS data for FY 2012, there were approximately 3000 contract awards exceeding \$700,000 to small entities, excluding fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. We estimate that a very small percentage of the entities receiving these awards would be submitting covered proposals containing unallowable fringe benefit costs. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 610 (DFARS Case 2012-D038) in correspondence.

**IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 231.**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 231 as follows:

**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

■ 1. The authority citation for 48 CFR part 231 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 231.205-6 is amended by adding paragraph (m)(1) to read as follows:

**231.205-6 Compensation for personal services.**

\* \* \* \* \*

(m)(1) Fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

[FR Doc. 2013-04353 Filed 2-27-13; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 380, 383, and 384**

[Docket No. FMCSA-2007-27748]

**Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Public Listening Session**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening session.

**SUMMARY:** FMCSA announces that it will hold a public listening session to solicit ideas and information on the issue of entry-level training for drivers of commercial motor vehicles (CMVs). Specifically, the Agency solicits input on factors, issues, and data it should consider in anticipation of a rulemaking to implement the entry-level driver

training (ELDT) provisions in the Moving Ahead for Progress in the 21st Century Act. Wherever possible, the Agency requests that participants indicate whether the ideas identified are supported by research or data analyses, including cost/benefit considerations. The entire day's proceedings will be webcast.

**DATES:** The listening session will be held on Friday, March 22, 2013, from 1–5 p.m., ET. If all interested in-person participants have had an opportunity to comment, the session may conclude earlier.

**ADDRESSES:** The listening session will be held at the Kentucky Exposition Center, 937 Phillips Lane, Louisville, KY 40209, 502–367–5000, in Room C101. In addition to attending the session in person, the Agency offers several ways to provide comments, as enumerated below.

*Internet Address for Live Webcast.* FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) one week before the listening session.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–27748 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received, without change, to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you would like acknowledgment that

the Agency received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on December 29, 2010 (75 FR 82132).

**FOR FURTHER INFORMATION CONTACT:** For information concerning the listening session or the live webcast, please contact Ms. Shannon L. Watson, Senior Advisor for Policy, FMCSA, (202) 385–2395.

If you need sign language assistance to participate in this ELDT listening session, contact Ms. Watson by Monday, March 18, 2013, to allow us to arrange for such services. FMCSA cannot guarantee that interpreter services requested on short notice will be provided.

**SUPPLEMENTARY INFORMATION:** The session will allow interested persons to present comments and relevant new research on ELDT. All comments will be transcribed and placed in docket FMCSA–2007–27748 for FMCSA's consideration.

## I. Background

In the early 1980s, the Federal Highway Administration (FHWA) Office of Motor Carriers, predecessor to the FMCSA, determined that there was a need for technical guidance in the area of truck driver training. Research showed that few driver training institutions offered a structured curriculum or a standardized training program for any type of CMV driver. A 1995 study entitled "Assessing the Adequacy of Commercial Motor Vehicle Driver Training" (the Adequacy Report) concluded, among other things, that effective ELDT needs to include behind-the-wheel (BTW) instruction on how to operate a heavy vehicle.

In 2004, FMCSA implemented a training rule that focused on areas unrelated to the hands-on operation of a CMV, relying instead on the commercial driver's license (CDL) knowledge and skills tests to encourage training in the operation of CMVs. These current training regulations cover four areas: (1) Driver qualifications; (2) hours of service limitations; (3) wellness; and (4) whistleblower

protection. In 2005, the U.S. Court of Appeals for the District of Columbia Circuit held that the Agency was arbitrary and capricious in promulgating the 2004 rule because it ignored the BTW training component aspect of the 1995 Adequacy Report.

On December 26, 2007, FMCSA published a Notice of Proposed Rulemaking (NPRM) seeking public comment on enhanced ELDT requirements (72 FR 73226). In the NPRM, FMCSA proposed revisions to the standards for mandatory training requirements for entry-level operators of CMVs in interstate operations who are required to possess a CDL. The proposal would apply to drivers who apply for a CDL beginning 3 years after a final rule goes into effect. Following that date, persons applying for new or upgraded CDLs would be required to successfully complete specified minimum classroom and BTW training from an accredited institution or program. The FMCSA proposed that the State driver-licensing agency would issue a CDL only if the applicant presented a valid driver training certificate obtained from an accredited institution or program. The Agency indicated the rulemaking would strengthen the Agency's ELDT requirements in response to the 2005 DC Circuit Court decision.

Since the publication of the NPRM, the Agency has completed its review of the public responses to the proposal and initiated new research concerning driver training. The Agency has also begun exploring new alternatives for mining Motor Carrier Safety Management Information System (MCMIS) data and Commercial Driver's License Information System (CDLIS) data to attempt to assess the safety performance of new CDL holders compared to that of more experienced CDL holders. In addition, in response to the public comments, the Agency has reexamined the regulatory options presented in the 2007 NPRM, as well as its estimates of the driver population who would be subject to the requirements. As a result, the Agency has concluded that additional stakeholder input will be useful in determining the most appropriate path forward for an ELDT rulemaking.

Section 32304 of MAP–21 requires that FMCSA issue final ELDT regulations by October 1, 2013, establishing minimum ELDT requirements for operators of CMVs. The listening session at the Mid-America Truck Show will provide an opportunity for motorcoach operators and other interested parties to share with FMCSA their ideas, especially as they relate to the training needs for

individuals seeking a passenger endorsement.

## II. Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers' remarks will be limited to 5 minutes each. No pre-registration is required. The public may submit material to the FMCSA staff at the session for inclusion in the public docket, FMCSA-2007-27748.

## III. Alternative Media Broadcasts During and Immediately After the Listening Session on March 22, 2013

FMCSA will webcast the listening session on the Internet. The telephone access number and other information on how to participate via the Internet will be posted on the FMCSA Web site at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) one week before the listening session.

FMCSA will docket the transcripts of the webcast and a separate transcription of the listening session that will be prepared by an official court reporter.

Issued on: February 20, 2013.

Larry W. Minor,

Associate Administrator for Policy.

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BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 771

### Federal Transit Administration

#### 49 CFR Part 622

[Docket No. FHWA-2012-0007]

FHWA RIN 2125-AF48

FTA RIN 2132-AB05

### Environmental Impact and Related Procedures

**AGENCY:** Federal Highway Administration, Federal Transit Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This NPRM provides interested parties with the opportunity to comment on proposed changes to the Federal Highway Administration (FHWA) and the Federal Transit Administration's (FTA) joint procedures that implement the National Environmental Policy Act (NEPA). The revisions are prompted by enactment of the *Moving Ahead for Progress in the 21st Century Act* (MAP-21). This NPRM

proposes to add new categorical exclusions for projects within an existing operational right-of-way and projects receiving limited Federal funding, as described in MAP-21. The Agencies seek comments on the proposals contained in this document.

**DATES:** Comments must be received on or before April 29, 2013.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
  - *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001;
  - *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329;
  - *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- FOR FURTHER INFORMATION CONTACT:** For FHWA: Kreig Larson, Office of Project Delivery and Environmental Review (HEPE), (202) 366-2056, or Jomar Maldonado, Office of the Chief Counsel (HCC), (202) 366-1373, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001. For FTA: Megan Blum, Office of Planning and Environment (TPE), (202) 366-0463, or Dana Nifosi, Office of Chief Counsel (TCC), (202) 366-4011. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 6, 2012, President Obama signed into law MAP-21 (Pub. L. 112-141, 126 Stat. 405), which contains new requirements that the Secretary of Transportation must meet. Sections 1316 and 1317 require the Secretary to promulgate regulations designating two types of actions as categorically excluded under 23 CFR 771.117(c) from the requirement under 40 CFR 1508.4 to prepare an environmental assessment (EA) or environmental impact statement (EIS): (1) Any project (as defined in 23 U.S.C. 101(a)) within an existing

operational right-of-way and (2) any project that receives less than \$5,000,000 of Federal funds or with a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. Since MAP-21's enactment, FTA established 23 CFR 771.118 and is therefore proposing to designate the two new categorical exclusions in section 771.118(c). The FHWA and FTA, hereafter referred to as the "Agencies," are carrying out this rulemaking on behalf of the Secretary.

#### General Discussion of the Proposals

This NPRM proposes to revise 23 CFR 771.117(c) and 23 CFR 771.118(c) by designating new categorical exclusion (CE) provisions mandated by Congress under sections 1316 and 1317 of MAP-21. The Council on Environmental Quality's (CEQ) guidance, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* (75 FR 75628, December 6, 2010), makes recommendations on procedures for establishing CEs in accordance with section 1507.3 of the CEQ NEPA implementing regulations. The CEQ guidance clarifies that the establishment and use of CEs called for by statute are governed by the terms of the specific legislation and subsequent interpretation by the agencies charged with the implementation of the statute (75 FR at 75631 (Footnote 6)). Sections 1316 and 1317 of MAP-21 describe the actions and projects that must be the subject of a rulemaking to categorically exclude those actions and projects from further NEPA analysis when there are no unusual circumstances, and this NPRM focuses on the Agencies' implementation and interpretations of those provisions. The Agencies are proposing two CEs that use the statutory language provided under sections 1316 and 1317 along with some clarifying language where the Agencies believe such language is needed to achieve the overall purposes of sections 1316 and 1317, or to avoid confusion in program administration.

Actions that are within the scope of designated CEs in 23 CFR 771.117(c) and 771.118(c) normally do not require any further NEPA analysis by the Agencies. Such actions only need a record in the project file that confirms the action fits the description of the CE and, in accordance with 23 CFR 771.117(b) and 771.118(b), that no unusual circumstances exist that require environmental studies to determine whether the CE classification is proper or whether further NEPA analysis and documentation is necessary. Examples