

DEPARTMENT OF TRANSPORTATION**Office of Motor Carrier Safety****[OMCS Docket No. OMCS-99-5867]****Parts and Accessories Necessary for Safe Operation; Ford Motor Company's Exemption Applications; Minimum Fuel Tank Fill Rate and Certification Labeling****AGENCY:** Office of Motor Carrier Safety (OMCS), DOT.**ACTION:** Grant of applications for exemptions.

SUMMARY: The OMCS is granting the applications of the Ford Motor Company (Ford) for exemptions from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the OMCS' requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The OMCS believes the terms and conditions of the exemptions achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations. The exemptions preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on December 20, 1999. The exemptions expire on December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Safety, HMCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001. 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 that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, in response to the previous notice concerning the docket referenced at the beginning of this notice 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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Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (Public Law 106-69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier and Highway Safety while part of the FHWA will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107). Section 4007 of TEA-21, entitled "Waivers, Exemptions, and Pilot Programs," amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs. An exemption may be up to two years in duration, and may be renewed.

Section 4007 of the TEA-21 requires the OMCS to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the OMCS must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA-21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures to be followed to request waivers and apply for exemptions from the FMCSRs, and the procedures used to process them.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the OMCS. On October 29, 1999 (64 FR 58355), the OMCS issued a final rule amending the heading for chapter III of Title 49 of the Code of Federal Regulations to reflect the organizational changes.

Ford's Applications for Exemptions

Ford applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On August 10, 1999 (64 FR 43417), the FHWA published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency.

Discussion of Comments to the Notice of Intent to Grant the Exemptions

The FHWA received, and the OMCS has reviewed, comments from Collins

Industries, Inc., El Dorado National, General Motors Corporation (GM), and the National Truck Equipment Association (NTEA). All of the commenters agreed with the preliminary decision to grant exemptions for motor carriers operating certain vehicles manufactured by Ford. Collins Industries stated:

As a body builder of school buses and commercial buses it has been our [experience] that Ford's internal design standards lead the industry in the safety and function. If Ford feels that 17 [gallons per minute] is the fastest fill rate to be used on their fuel tanks then I support that decision. I see how higher fill rates may cause safety issues from excess fuel spillage but can see no reason that slowing fill rates can compromise safety.

We would prefer to use the fuel tank as supplied by Ford. The labeling requirements of 393.67 are issues to be addressed by tank manufacturers that supply tanks to general applications. Ford designs its tanks to fit specific spatial constraints in its vehicles. No increase in safety beyond Ford's internal design constraints is required.

El Dorado National believes the rate at which a fuel tank may be filled has no bearing on the safe operation of the vehicle, or safety during the refueling process. El Dorado National stated that "[t]he tanks in question will accept fuel at a rate that the typical commercial unleaded fuel pumps deliver * * *."

On the subject of labeling of fuel tanks, El Dorado National indicated that "[s]ince these vehicle tanks are tested, certified, and mass produced it does not seem relevant to label each tank." El Dorado National believes the absence of a certification label would not compromise safety.

The NTEA indicated that it is not aware of any safety-related problems that have or would occur as a result of the current fuel system design on the Ford vehicles in question.

General Motors Corporation supports granting exemptions from the fuel tank fill rate, and certification labeling requirements for motor carriers operating certain vehicles manufactured by Ford. GM indicated that its G and C/K vehicles also have fuel tanks that do not meet the OMCS' requirements concerning the fill rate, marking and certification labeling. GM's comments included a request for an exemption to these requirements for motor carriers operating certain GM-manufactured vehicles. As part of the justification for an exemption for its vehicles, GM argued that the use of automatic shut-off valves on fuel dispensing pumps makes it unlikely that significant amounts of fuel will be spilled in the event that a vehicle is fueled at a fill rate exceeding the fuel

system's capacity. The OMCS will publish a separate notice at a later date requesting public comment on GM's application for an exemption.

OMCS Decision

The OMCS has considered all the comments received in response to the August 10 notice of intent and has decided to grant the exemptions.

Exemption from § 393.67(c)(7)(ii)

The OMCS has reviewed its fill pipe design requirements and has concluded that the fill-pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the Environmental Protection Agency's (EPA) regulations¹ concerning gasoline fuel pumps. While the OMCS requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline fuel pumps are designed to dispense fuel.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (e.g., at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the OMCS does not believe this will present a safety problem because the fill pipe design used by Ford is capable of receiving fuel at a rate of 17 gallons per minute. The 17-gallon-per-minute rate is only 15 percent less than the requirement in § 393.65. Accordingly, the agency concludes that the 17-gallon-per-minute rate will achieve a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii).

The OMCS agrees with GM's comments concerning the use of automatic shut-off valves on fuel dispensing pumps. The use of such technology minimizes the risk that a significant amount of fuel will be spilled even in the event that one of the vehicles in question is refueled using a pump exempt from the EPA requirement.

The OMCS also reviewed available information on the origin of the fill-pipe

rule. The 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice "Side Mounted Gasoline Tanks" as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, "Fuel Systems," an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 "Fuel Systems—Truck and Truck Tractors." The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The OMCS does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, "[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue."

The OMCS believes the current requirement may need to be reconsidered in light of the EPA requirements. While the OMCS reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. Therefore, the agency is exempting interstate motor carriers operating Ford Econoline vehicles from § 393.67(c)(7)(ii).

Exemption from §§ 393.67(f)(2) and (f)(3)(ii)

With regard to the exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the OMCS agrees with the arguments presented in Ford's application, and the comments from GM and El Dorado National that there is no readily apparent adverse impact on safety associated with the absence of the required markings. However, the agency continues to believe marking and certification are important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the OMCS'

¹ The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

requirements and those that are not. For cases in which the fuel tank is manufactured and installed by the vehicle manufacturer, and maintained by the motor carrier, there appears to be little need for marking and certification. The need would typically be greatest for replacement or aftermarket fuel tanks manufactured by an entity other than the original equipment manufacturer. Since there is no practicable means for motor carriers and enforcement officials to make a distinction between original and aftermarket fuel tanks, marking and certifications are necessary.

The OMCS does not believe the operators of the Ford Econoline vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67. Accordingly, the agency is exempting interstate motor carriers from §§ 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

Terms and Conditions for the Exemption

The OMCS is providing exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating Ford Econoline-based vehicles. The exemptions are effective upon publication pursuant to 5 U.S.C. 553(d)(1) and are valid until December 20, 2001, unless revoked earlier by the OMCS. Ford, or any of the affected motor carriers, may apply to the OMCS for a renewal of the exemption. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles are not required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain E30, E37, E39, E40, or E47 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA-9002-G*, F3UA-9002-H*, F4UA-9002-V*, F4UA-9002-X*, F5UA-9002-V*, F5UA-9002-X*, F6UA-9002-Y*, F6UA-9002-Z*, F7UA-9002-C*, and F7UA-9002D* where the asterisk (*) represents a "wild card" character (any character of the alphabet).

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 14, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

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DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS-99-6285]

Parts and Accessories Necessary for Safe Operation; General Motors Corporation's Exemption Application; Minimum Fuel Tank Fill Rate and Certification Labeling

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of application for exemption and proposal to grant exemption; request for comments.

SUMMARY: The OMCS is announcing its proposal to grant the application of the General Motors Corporation (GM) for an exemption from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemption would enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by GM, and equipped with fuel tanks that do not meet the OMCS' requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The OMCS believes the terms and conditions of the exemptions being considered achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations and requests public comment on GM's application. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before January 19, 2000.

ADDRESSES: Submit written, signed comments with the docket number appearing at the top of this document to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination 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 envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS-10, (202) 366-4009, Office of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590-0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

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