

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.

[FR Doc. 99-32911 Filed 12-17-99; 8:45 am]

BILLING CODE 4910-22-P

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.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, in response to 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.

An electronic copy of this document may be downloaded using a 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.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

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" (Pub. L. 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 the TEA-21 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 the 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 that will be 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.

GM's Application for an Exemption

GM applied for an exemption 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. GM's application for an exemption was included in its response to the notice of intent to grant similar exemptions to the Ford Motor Company on behalf of motor carriers operating certain vehicles manufactured by Ford (64 FR 43417; August 10, 1999). A copy of GM's application is included in the docket referenced at the beginning of this notice. GM indicated that it "fully supports the FHWA's preliminary determination to grant an exemption from the requirements of [§§] 393.67(c)(7)(ii), 393.67(f)(2) and 393.67(f)(3)(ii) to [the] Ford Motor Company" and requested the exemption on behalf of motor carriers operating certain vehicles manufactured by GM.

GM produces G-vans (Chevrolet Express and GMC Savanna) and full-size C/K trucks (Chevrolet Silverado and GMC Sierra) which may be equipped for numerous uses, including use as a CMV as defined in 49 CFR 390.5. GM argues that exemptions are needed for the same reasons described in the Ford Motor Company's applications. GM stated:

The basis for GM's exemption petition follows:

1. GM agrees with Ford that it is not possible to accurately estimate the number of these vehicles that will be used as CMVs.

2. GM's G and C/K vehicles, as is the Ford Econoline, are equipped with fuel tanks mounted between the frame rails, use a fill pipe system conforming to EPA fill requirements, and are designed for conformance to [Federal Motor Vehicle Safety Standard (FMVSS) No. 301] performance requirements. Although the vehicles over 10,000 pounds GVWR are not required to meet FMVSS 301, the fill system on these vehicles is based on the design for vehicles conforming to FMVSS 301.

3. GM does not authorize or support the practice of retrofitting fuel tanks and/or fill systems that would be necessary to comply with the fuel fill and labeling requirements of [§ 393.67]. We are concerned, as is Ford, that such modifications could undermine the fuel system integrity resulting in a decrease in the safety of the vehicle.

4. GM agrees with Ford that the 20 gallon per minute fill requirement is a

matter of convenience and further suggests that its applicability should be restricted to vehicles equipped with side mounted fuel tanks. These vehicles have fill openings directly on the fuel tank and are of a type that are likely to be fueled at a location where the fuel fill rate exceeds 10 gallons per minute.

5. With industry-standard automatic shut-off nozzles at fuel stations, it is unlikely that significant fuel will be spilled in the event that a vehicle is fueled at a fill rate exceeding the fuel system's capacity.

6. GM agrees that the marking requirements of § 393.67(f)(2) and (f)(3)(ii) are only identification requirements and do not contribute to the safety of the fuel tank. Additionally, the design of GM's G and C/K fuel tanks makes it difficult to see any such identification on a completed vehicle.

Basis for Proposal to Grant Exemption

The OMCS has reviewed its fill pipe design requirements. The agency concludes that the fill-pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the U.S. Environmental Protection Agency's (EPA) regulations 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.

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.

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 would present a safety problem. The OMCS agrees with GM's argument that the use of automatic shut-off valves on fuel dispensing pumps make it unlikely that a significant amount of fuel will be spilled if a vehicle is refueled using a pump that exceeds the vehicle's capacity for receiving fuel. The agency believes the combination of the

EPA regulation concerning dispensing pumps, and the use of automatic shut-off nozzles on these pumps ensures 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 believes any operational problems experienced by motor carriers using certain fuel pumps to refill GM vehicles have already been resolved. The vehicles in questions have been in use for a number of years and are still being produced. Therefore, motor carriers using these vehicles have experience refueling them. The OMCS is not aware of any safety problems associated with the fill-pipe capacity for the fuel tanks on GM G and C/K vehicles. The agency requests comments on this issue.

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 agency 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. The

agency has made a preliminary determination that it is appropriate to grant an exemption to § 393.67(c)(7)(ii) for interstate motor carriers operating certain GM vehicles and requests public comment on GM's application.

With regard to an exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the OMCS does not believe there would be a readily apparent adverse impact on safety associated with the absence of the required markings. Although the OMCS considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the agency's requirements and those that are not, the OMCS does not believe the operators of the GM vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

As a vehicle manufacturer, GM is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. GM is less familiar with the equipment requirements of the OMCS, the agency responsible for regulating motor carriers.

GM has indicated that its tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because GM cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow approximately 10 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem while ensuring highway safety.

Terms and Conditions for the Exemption

The OMCS would provide an exemption to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating certain GM vehicles. The exemption would be valid for two years from the date of approval, unless revoked earlier by the OMCS. GM, or any of the affected motor carriers, may apply to the OMCS for a renewal. The exemption would preempt inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles would not be required to

maintain documentation concerning the exemption because the vehicles 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 "J" or "K" in the fourth position and a "1" in the seventh position. The OMCS believes this information is sufficient and requests public comment.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption applications from GM. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice.

Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the OMCS may grant the exemptions at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

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.

[FR Doc. 99-32913 Filed 12-17-99; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 90)]¹

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (Buffalo Rate Study)

AGENCY: Surface Transportation Board, DOT.

¹A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388.