

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 FMCSA does not believe this would present a safety problem. The FMCSA agrees with GM's argument in its application 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 FMCSA 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 FMCSA 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 FMCSA 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 FMCSA 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 FMCSA 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. Therefore, the agency is exempting interstate motor carriers operating certain GM vehicles from § 393.67(c)(7)(ii).

#### *Fuel Tank Marking and Certification*

With regard to an exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the FMCSA does not believe there would be a readily apparent adverse impact on safety associated with the absence of the required markings. Although the FMCSA 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 agency 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. However, GM may not have had the same level of awareness about all of the fuel tank requirements of the FMCSA, 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 FMCSA is providing 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 is effective upon publication pursuant to 5 U.S.C. 553(d)(1) and is valid until May 26, 2002, unless revoked earlier by the FMCSA. GM, or any of the affected motor carriers, may apply to the FMCSA for a renewal. 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 have markings that would enable enforcement officials to identify them. The vehicles covered by the exemption 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.

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

Issued on: April 14, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator.*

[FR Doc. 00-10400 Filed 4-25-00; 8:45 am]

**BILLING CODE 4910-22-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[FMCSA Docket No. FMCSA-99-6354 (formerly OMCS-99-6354)]**

#### **Controlled Substances and Alcohol Use and Testing; PacifiCorp Electric Operations' Exemption Application; Random Testing of Drivers**

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

**ACTION:** Notice of denial of application for exemption.

**SUMMARY:** The FMCSA is denying the application of PacifiCorp Electric Operations (PacifiCorp) for an exemption from the FMCSA's controlled substances and alcohol random testing requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). PacifiCorp requested an exemption because the company believes it has a low percentage of positive random test

results since testing was initiated. PacifiCorp's positive rate for random controlled substances tests is 1 percent and its positive rate for random alcohol tests is 0.8 percent. The FMCSA is denying the exemption because PacifiCorp did not explain how it would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the random controlled substances and alcohol testing requirements. The company requested regulatory relief but did not offer alternatives that would have comparable deterrent effects.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 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, DC 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 the previous notice concerning this subject 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**

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1748). The new statute established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule rescinding the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS's Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Service Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. 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) (Public Law 105-178, 112 Stat. 107). Section 4007 of 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 granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary.

Section 4007 of the TEA-21 requires the FMCSA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to 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 FMCSA 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 at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process them.

**PacifiCorp's Application for an Exemption**

PacifiCorp applied for an exemption from 49 CFR 382.305, which provides requirements concerning random controlled substances and alcohol

testing of commercial motor vehicle drivers. A copy of the application is in the docket identified at the beginning of this notice. PacifiCorp indicated that it is an electric utility with 133 service centers and other facilities in six States. Approximately 1,600 drivers would be affected if the exemption were granted.

**Notice of Application and Proposal to Deny Exemption; Request for Comments**

On December 20, 1999 (64 FR 71181), the Office of Motor Carrier Safety published a notice announcing its proposal to deny PacifiCorp's application for an exemption from the controlled substances and alcohol random testing requirements in the FMCSRs. The notice discussed PacifiCorp's application, the basis for proposing to deny the exemption, and requested public comment from all interested parties.

**Discussion of Docket Comments**

The FMCSA received one comment to the notice proposing to deny PacifiCorp's application for an exemption—from the Georgia Public Service Commission (Georgia PSC). The Georgia PSC indicated that it agreed with the proposal to deny the exemption application. The Georgia PSC stated:

The Commission takes the position that to remove the important deterrent of random controlled substances and alcohol testing is a detriment to safety, and such removal would set a dangerous precedent if granted. This is especially true in light of the fact that the applicant does not propose any specific alternative that would produce an equivalent level of safety.

**FMCSA Decision**

The FMCSA has carefully reviewed PacifiCorp's application for an exemption from the controlled substances and alcohol random testing requirements of 49 CFR 382.305, and the comment from the Georgia PSC and decided to deny the application. As indicated in the proposal to deny the application, a motor carrier's low positive testing rate is not, in and of itself, sufficient reason for the carrier to be granted an exemption from the random testing regulations. Random testing identifies drivers who use controlled substances or misuse alcohol, but are able to use the predictability of other testing methods (e.g., pre-employment, and reasonable suspicion) to avoid testing positive. More importantly, random testing serves as a deterrent against beginning or continuing prohibited controlled substances use and misuse of alcohol.

Although PacifiCorp indicated that its positive testing rates for controlled

substances and alcohol are 1 percent and 0.8 percent, respectively, these rates are indications that its workplace is not presently drug-free and that random testing still serves a very necessary purpose. Based on the information submitted by PacifiCorp, the company appears to employ an annual average of 1,600 drivers, which means the company is required to conduct at least 800 random controlled substances tests, and 160 random alcohol tests during each calendar year. A positive testing rate of 1 percent for controlled substances means that out of the 800 random tests conducted, eight individuals were found to have violated the prohibition on the use of controlled substances. A positive testing rate of 0.8 percent for alcohol means that out of the 160 random tests conducted, two individuals were found, at a minimum, to have violated the prohibition against reporting for duty or remaining on-duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater (49 CFR 382.201). These two individuals may also have violated the prohibitions against using alcohol while performing safety-sensitive functions (49 CFR 382.205), and using alcohol within four hours of performing safety-sensitive functions (49 CFR 382.207).

It is clear that some of PacifiCorp's drivers were not deterred from using controlled substances, and misusing alcohol. It is therefore unreasonable to conclude that exempting the company from random controlled substances and alcohol testing would provide a more effective deterrent for the company's workforce. Even if the effect of ending random testing were nil, which is unlikely, the projection into the future of PacifiCorp's current positive test rates means that at least 80 of its drivers would operate CMVs on the public highways in the next decade with controlled substances, and another 20 with substantial amounts of alcohol, in their bodies. This is not reassuring.

Furthermore, PacifiCorp did not indicate whether drivers who tested positive were terminated, or returned to duty. If they returned to duty, what was their subsequent record of compliance? The agency believes this information is relevant.

Discontinuing random controlled substances and alcohol testing would send a message that as long as CMV drivers are not involved in serious accidents and do nothing that would prompt an employer to conduct a reasonable suspicion test, there is no real obstacle to recreational use of controlled substances or the abuse of alcohol.

Although the current post-accident and reasonable suspicion testing requirements would have remained in effect if PacifiCorp's request were granted, the FMCSA does not consider them effective deterrents without the complementary random testing requirement. In the case of post-accident testing, the damage has already been done before a test is conducted. For reasonable suspicion testing, indicators that the driver may have a problem have already become apparent to a trained observer. Random testing however, provides a means to detect driver problems in the absence of an accident or reasonable-suspicion indicators. An effective controlled substances and alcohol program must have all three of these elements to deter the prohibited conduct, and, if deterrence fails, to detect such conduct by drivers. Even with all three of these elements, some drivers engage in prohibited conduct, as evidenced by PacifiCorp's own data. It is extremely unlikely that discontinuing the random testing portion of the program would have allowed PacifiCorp to achieve the same level of safety currently achieved through a program that includes all the required elements.

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

Issued on: April 14, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator.*

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**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on February 7, 2000 [65 FR 5928]. No comments were received.

**DATES:** Comments must be submitted on or before May 26, 2000.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are Invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, DC 20590, telephone number 202-366-4161. Copies of this collection can also be obtained from that office.

#### **SUPPLEMENTARY INFORMATION:**

##### **Maritime Administration**

*Title of Collection:* "Seamen's Claims; Administrative Action and Litigation".

*OMB Control Number:* 2133-0522.

*Type of Request:* Approval of an existing information collection.

*Affected Public:* Officers or members of a crew who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration, or successor. Also included are surviving dependents, beneficiaries, and or/legal representatives of officers or crew members.

*Form(s):* None.

*Abstract:* The collection consists of information obtained from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor. The information will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed, it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.