

licenses will not be converted to individual, site-by-site authorizations for already constructed stations.

(d) Nationwide licensees will not be required to construct and place in operation, or commence service on, all of their authorized channels at all of their base stations or fixed stations.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 393

[DOT Docket No. FMCSA-02-13589]

RIN 2126-AA80

#### Parts and Accessories Necessary for Safe Operation; Fuel Systems

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

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The FMCSA proposes to revise the requirements concerning fuel tank fill rates for gasoline- and methanol-fueled light-duty vehicles contained in Subpart E of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the proposal is to: (1) Remove a conflict between the fuel tank fill rate requirements of the FMCSRs and those of the Environmental Protection Agency for gasoline and methanol-fueled vehicles up to 14,000 pounds (lbs) Gross Vehicle Weight Rating (GVWR); and (2) to make permanent the terms of the exemptions previously granted to motor carriers operating certain gasoline-fueled commercial motor vehicles (CMVs) manufactured by Ford Motor Company (Ford) and by General Motors (GM). The FMCSA also proposes to incorporate into the FMCSRs previously issued regulatory guidance concerning the applicability of the agency's fuel tank rules to vehicles subject to the National Highway Traffic Safety Administration (NHTSA) fuel system integrity standard at the time of manufacture.

**DATES:** Comments must be received on or before January 12, 2004.

**ADDRESSES:** You may submit comments to DOT Docket Management Systems (DMS) Docket Number 13589 by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

• *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation subheading at the beginning of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety 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:**

##### **Public Participation**

The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

##### **Background**

Section 393.67(c)(7)(ii) of Title 49, Code of Federal Regulations (CFR),

requires the fill pipe and vents of a CMV with a fuel tank of more than 25 gallons capacity to permit the tank to be filled at a rate of at least 20 gallons per minute (gpm) without fuel spillage.

In 1999, Ford and GM filed applications for limited exemptions from this fuel system requirement.

Ford manufactures a line of vehicles under the "Econoline" brand for additional work and sale by second-stage manufacturers, including use as CMVs as defined in 49 CFR 390.5. Specifically, finished vehicles are based on a "light-truck" platform with load-or passenger-carrying capabilities that place them within the weight-or passenger-carrying thresholds of the FMCSRs.

The fill pipe of the fuel system of these light-duty vehicles is routed to minimize its exposure in the event of a crash. Because of the design characteristics of the fuel fill-pipe and system and the vapor generated when filling such tanks with gasoline, Ford found that the fuel systems in the gasoline versions of these light-duty vehicles could not meet the FMCSA requirement of § 393.67(c)(7)(ii). However, Ford noted that the diesel versions complied with the 20 gallon per minute minimum filling rate. Ford applied for exemptions for the gasoline fueled light-duty vehicles from § 393.67(c)(7)(ii), and also 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and display a certification label that the tank conforms to all applicable rules in § 393.67.

On August 10, 1999, the Federal Highway Administration (FHWA), now the FMCSA, published a Notice of Intent to grant Ford's application for exemption (64 FR 43417). The FHWA requested public comment on Ford's application and the agency's safety analysis and presented other relevant information. After considering all the comments received, the agency granted an exemption to Ford on December 20, 1999 (64 FR 71184). In that notice (at 71185), the agency noted that the 20 gallon per minute rate, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are allowed to dispense fuel.<sup>1</sup> The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of 17 gallons per minute.

<sup>1</sup> As noted in our discussion below, the Environmental Protection Agency (EPA) standard is 10 gpm.

The FMCSA published a notice of intent on November 2, 2001 (66 FR 55727), to renew Ford's exemption and renewed the exemption on December 27, 2001 (66 FR 66970). Also on the same day, FMCSA published a Notice of Intent to extend the exemption to additional Ford vehicles of similar design (66 FR 66971). The agency granted that exemption on March 27, 2002 (67 FR 14765).

The chronology for the GM vehicles followed a similar pattern. The vehicles that were the subject of the petition were the G-vans (Chevrolet Express and GMC Savannah) and full size C/K trucks (Chevrolet Silverado and GMC Sierra). In a comment to the docket concerning the Ford petition, dated September 9, 1999, GM stated its support for the agency's preliminary determination and petitioned for the same exemption for its vehicles. On December 20, 1999, the FMCSA published a Notice of Intent to grant GM's application for exemption (64 FR 71186). The agency granted GM's petition on April 26, 2000 (65 FR 24531). The FMCSA published a notice of intent to renew the exemption on December 27, 2001 (66 FR 66972). It was renewed on March 27, 2002 (67 FR 14764).

In addition to the safety regulations published by the FMCSA and the NHTSA, vehicles and internal-combustion engines are subject to environmental protection regulations published by the EPA. In many cases, they are also subject to energy-efficiency regulations published by the Department of Energy (DOE). Occasionally, these regulations published by the EPA or the DOE can have an influence on the safety regulations, as in this case.

### Related EPA Regulations

The EPA issued four final rules under Title 40 of the CFR relevant to the fuel-tank fill rate issue. Although the EPA rules address the reduction of emissions from vehicle fueling, they are relevant to the FMCSA safety regulations concerning fuel tank fill rates. This is because they place a number of refueling regulatory requirements on various parties. These include: Controls on the dispensing rate of gasoline and methanol from pumps, the rate at which gasoline and methanol fuels can be accepted into the tanks of certain vehicles, the ability of the vehicle fuel systems to safely handle vapors released during fueling, and the ability of the fuel systems to safely prevent any spitback of fuel during the fueling process.

The four EPA rules are: (1) A final rule concerning evaporative emissions

testing and fuel pump dispensing rates, issued March 24, 1993 (58 FR 16002), (2) a final rule concerning on-board refueling vapor recovery (ORVR) systems to control refueling emissions, published in the **Federal Register** on April 6, 1994 (59 FR 16262), (3) a final rule concerning Control of Emissions of Air Pollution From Highway Heavy-Duty Engines, published in the **Federal Register** on October 21, 1997 (62 FR 54693), and (4) a final rule for covering, among other things, on-board refueling vapor recovery (ORVR) systems for heavy-duty vehicles, issued October 6, 2000 (65 FR 59895).

The 1993 rule added § 80.22(j) to Title 40 setting a maximum dispensing rate of 10 gallons (37.9 liters (L)) per minute (/m) for most gasoline and methanol pumps, effective January 1, 1996. Certain facilities with low sales volume were given two additional years to comply. It also added new regulations which address, among other things, the standard for the fuel-dispensing spitback test for 1996 and later model year light-duty vehicles (0–6000 lbs GVWR) (§ 86.096–8), 1996 and later model year light-duty trucks (6,001–8,500 lbs GVWR) (§ 86.096–9), and 1996 and later model year Otto-cycle (standard four-cycle electronic ignition) heavy-duty vehicles (8,501–10,000 lbs GVWR) and engines (§ 86.096–10).

The 1994 rule sets forth additional requirements for controlling vehicle refueling emissions through the use of vehicle-based systems (that is, on-board vapor recovery (ORVR) systems). The requirements are to be phased in beginning with model year 1998 for light-duty vehicles, model year 2001 for light-duty trucks (0–6000 lbs GVWR), and model year 2004 for light-duty trucks (6,001–8,500 lbs GVWR). The 1994 rule carries forward the spitback standard published in 1993, although the EPA provides an alternative assessment procedure that is combined with the ORVR testing requirement.

Although the EPA had proposed that heavy-duty vehicles (8,501–10,000 lbs GVWR) be subject to the same on-board vapor recovery requirements as light-duty vehicles, it decided not to include them in the 1994 final rule. EPA noted that only a small number of heavy-duty vehicles are gasoline powered, and that its final rule would apply to 91 percent of all gasoline-fueled trucks. EPA's spitback and ORVR rules are not applicable to diesel fuels and diesel fueled vehicles because the Reid Vapor Pressure<sup>2</sup> of diesel fuel is very low (e.g.,

<sup>2</sup> The pressure exerted by a vapor in equilibrium with the solid or liquid phase of the same substance. Also, the partial pressure of the

less than 1 pound per square inch (psi)) and, thus, spitback and refueling emissions are insignificant.

The EPA 1997 final rule adopted a new emissions standard and related provisions for diesel heavy-duty engines intended for highway operation. The standards affect emission levels and durability of emissions controls. They apply beginning with the 2004 model year.<sup>3</sup>

The EPA final rule concerning control of emissions from highway heavy-duty engines, published October 6, 2000 (65 FR 59896) adopted ORVR standards for model year 2005 and later heavy-duty vehicles (see 40 CFR 86.1816–05(e)). ORVR standards are applicable to all complete heavy-duty vehicles<sup>4</sup> from 8,501 lbs GVWR to 10,000 lbs GVWR. The ORVR standards will be phased in with 80 percent compliance required in 2005 model year vehicles and 100 percent compliance required in 2006 model year and later vehicles.

However, as noted above, EPA requirements on evaporative emissions limit fuel-dispensing rates for gasoline and methanol pumps. The rates may not exceed 10 gpm (37.9 L/m). This action was taken to ensure that vehicles designed to prevent spitback during refueling at 10 gpm would not experience in-use fueling rates beyond the rate they were designed to accommodate. Also, a 10 gpm maximum fuel-dispensing rate is an inherent design parameter for vehicles designed to meet ORVR emission standards. ORVR vehicles that are refueled at dispensing rates above 10 gpm would likely exceed ORVR emissions standards because the vehicle's carbon canister is not designed to adsorb hydrocarbon vapors satisfactorily at these higher dispensing rates.

Retailers and wholesale purchasers-consumers handling over 10,000 gallons (37,854 L) of fuel per month were required to comply with the EPA final rule starting July 1, 1996. Other retailers and wholesale purchasers-consumers were required to comply by January 1, 1998. Any dispensing pump that is dedicated exclusively to heavy-duty

substance in the atmosphere above the solid or the liquid. (Source: <http://chemengineer.miningco.com:80/library/glossary/bldef9050.htm>)

<sup>3</sup> The terms of the Consent Decree that accelerated the compliance date to October 1, 2002 affects engines in diesel-fueled CMVs that are not the subject of this NPRM.

<sup>4</sup> The Clean Air Act defines heavy-duty vehicles as those with a GVWR of greater than 6,000 pounds. However, EPA has classified vehicles between 6,000 and 8,500 pounds GVWR as light-duty vehicles, while treating them as heavy-duty for statutory purposes. See 65 FR 59897 (October 6, 2000), at 59898.

vehicles, boats, or airplanes is exempt from this requirement. EPA intends to make future rule changes to clarify that: (1) The 10 gpm refueling requirement also applies to ethanol pumps; and (2) the exemption does not apply to pumps used to refuel heavy-duty vehicles which meet ORVR emissions standards (that is, the exemption only applies to heavy-duty vehicles above 10,000 lbs GVWR).

#### **Inconsistency Between FMCSA and EPA Fuel Tank Fill Rate Requirements**

The changes in the EPA regulation created an inconsistency between the fuel tank fill rate requirements of FMCSA and those of the EPA. As discussed above, § 393.67(c)(7)(ii) of the FMCSRs requires a CMV fuel tank of 25 or more gallons capacity to accept fuel at a fill rate of at least 20 gpm. That is twice the maximum nozzle flow rate of 10 gpm for gasoline and methanol fuel pumps allowed by EPA regulations at 40 CFR 80.22(j). Ford and GM brought this inconsistency to the attention of the FMCSA as it applies to vehicles defined at 49 CFR 390.5, which are subject to the FMCSRs, and, by extension, State regulations compatible with Part 393. It is also twice the maximum fill fuel dispensing rate specified by the EPA at 40 CFR 80.22(j), and twice the fuel fill rate specified for the various fuel spitback tests at 40 CFR 86.1246–96.

The EPA regulations concerning gasoline dispensing rates have already been implemented, and pumps subject to the regulations (*i.e.*, all pumps except those dedicated to heavy-duty vehicles, boats, or planes) were required to comply with the 10 gpm (37.9 L/m) maximum dispensing rate requirements by January 1, 1998. Furthermore, depending upon the vehicle class, many of today's vehicles are already designed to meet ORVR and spitback emissions standards based on the EPA 10 gpm fuel fill rate requirements. Considering both of these issues, the 20-gallon per minute fill rate required under the FMCSRs is incompatible with the EPA regulations for those vehicles. It is possible that some of the gasoline- or methanol-fueled vehicles with GVWRs above 8,500 lbs GVWR might be fueled at facilities not subject to the EPA regulation on fuel dispensing rates. However, as noted in the agency's August 10, 1999 notice concerning the original Ford petition, Ford believed the 20-gpm rate:

“ \* \* \* to be more a subject of convenience. With virtually all filling stations using the industry standard automatic shut-off nozzles, it is unlikely that fuel will be spilled even while using a high flow rate delivery system. These standard

nozzles substantially reduce any potential safety risk introduced by filling an Econoline vehicle at a rate above its capacity of 17 gallons per minute.”

Ford also noted that the 17-gpm rate is only 15 percent less than the FMCSA requirement at § 393.65 (64 FR 43417, at 43418).

The original applications for exemptions from Ford, and subsequently from GM, sought temporary solutions to the inconsistency between FMCSA safety regulations intended to prevent potential injuries from the spillage of fuel during the refueling process, and EPA regulations intended to protect against environmental harm resulting from fuel spillage and the release of fuel vapors into the atmosphere. This rulemaking is intended to provide a long-term resolution to the inconsistency between these safety and environmental regulations, while ensuring that the respective goals of FMCSA and EPA are not compromised.

As stated in the August 10, 1999 notice (at 43418), the gasoline-fueled Ford Econoline Series light-truck-platform vehicles in question were and continue (during the 2-year exemption) to be built with the fuel tanks mounted between the frame rails. They use a fuel pipe system routed to minimize exposure in the event of a crash. The maximum filling rate does not exceed 17 gpm. Thus, as far as those Ford vehicles for the exempted series were concerned, the agency subsequently determined the intent of the FMCSR safety requirement was satisfied because the fill rate was only slightly less than the FMCSR-mandated rate (December 20, 1999; 64 FR 71184, at 71185). That is, for those vehicles not fueled at facilities dispensing gasoline at the EPA-mandated limit of 10 gpm, *i.e.*, those vehicles that might be fueled at locations used exclusively for refueling heavy-duty vehicles, the agency determined that the level of safety would be equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii).

As stated in the FMCSA December 20, 1999 notice (64 FR 71186, at 71187), the GM G and C/K vehicles were and continue to be equipped with fuel tanks mounted between the frame rails. They use a fill pipe system conforming to EPA requirements. Furthermore, for those vehicles with a GVWR of less than 14,000 lbs (6,400 kilograms (kg)), the EPA requires the vehicle to pass its Fuel Dispensing Spitback test (40 CFR § 86.099–10(b)2(C); §§ 86.1811 through 1815 paragraphs (d)(1)(iv) (in each case),

and § 86.1816–05(d)(4)).<sup>5</sup> Thus again, for the duration of the 2-year exemption, FMCSA determined that safety concerns associated with different fill rates are addressed by the requirement that these vehicles must successfully comply with the spitback test.

In the original December 20, 1999 notice concerning the GM petition (at 71187), GM agreed with Ford that the 20 gallon per minute fill requirement is a matter of convenience. The GM vehicles that were the subject of its petition for a 2-year exemption were and continue to be equipped with fuel systems similar to those of the Ford vehicles, that is, with fuel tanks mounted between the frame rails, and designed to conform to FMVSS 301 requirements.

GM also suggested that the applicability of the FMCSA's fuel fill rate regulation should be restricted to vehicles equipped with side-mounted fuel tanks. GM contended that many of the FMCSR requirements were developed for heavy-duty vehicles, rather than the type of vehicles that were the subject of its petition. Many heavy-duty vehicles with side-mounted fuel tanks have fill openings directly on the fuel tank. Heavy-duty vehicles are also likely to be fueled at a location where the fuel fill rate exceeds 10 gallons per minute. (As noted earlier in this document, only pumps used exclusively to fuel heavy trucks, boats, and airplanes are exempt from the EPA's fuel dispensing rate requirement.)

The FMCSA agrees with the assessment that the current FMCSR 20 gpm minimum fuel tank fill-rate has become a customer convenience requirement rather than a safety requirement for all vehicles. FMCSA further believes the EPA design constraints the vehicles must comply with for emissions and fuel spitback testing adequately address any problems such vehicles could encounter during refueling.

#### **Proposal Concerning Fuel Fill Rate Requirements**

As discussed in the FHWA's August 10, 1999 Notice of Application from Ford Motor Company (64 FR 43417, at 43418), FMCSA believes the fill pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with EPA regulations

<sup>5</sup> In a final rule concerning evaporative emissions test procedures (40 CFR 86, published March 24, 1993 [58 FR 16002]), EPA noted that heavy-duty vehicles over 14,000 lbs (6,400 kg) GVWR are typically designed with filler necks so short that fuel can be dispensed directly into the fuel tank. These vehicles would therefore not be expected to experience spitback. Therefore, they are exempt from the spitback test requirements (58 FR 16002, at 16006).

concerning gasoline fuel pumps. The FMCSR mandates that these vehicles be capable of receiving fuel at twice the maximum rate that these pumps are allowed to dispense fuel by EPA regulations. The FMCSA also continues to believe that a revision to the fuel fill rate requirements should not present a safety problem because the vehicles using the fill pipe and fueling system designs under consideration here are not likely to be fueled at locations where fuel could be dispensed at the higher rate.

The FMCSA believes that the other existing regulatory requirements, including a restricted fuel-pump dispensing rate, fuel fill rate for many (if not most) of these light-duty vehicles and light-duty trucks, plus required spitback and on-board refueling tests adequately address the safety of fueling these vehicles. (These requirements are discussed in detail under the above heading "Related EPA Regulations.") Therefore, the FMCSA proposes to require gasoline- and methanol-fueled vehicles with a GVWR of 8,500 pounds (3,744 kg) or less to comply with the applicable spitback and onboard refueling regulations of the Environmental Protection Agency under 40 CFR parts 86 and 88 (part 88 concerns clean-fuel vehicles). For gasoline- and methanol-fueled vehicles with a GVWR of 14,000 pounds (6,400 kg) or less, the FMCSA proposes to require that the vehicle comply with the applicable fuel-spitback prevention regulations and onboard refueling regulations of the Environmental Protection Agency under 40 CFR part 86.

#### **Applicability of FMVSS 301 to Certain Additional CMVs**

The FMCSA periodically codifies published regulatory guidance. Therefore, this NPRM also proposes to place in the FMCSRs previously published FMCSA regulatory guidance concerning the applicability of FMVSS 301 (Fuel System Integrity) to CMVs that have a GVWR of 10,000 lbs or less. In addition to the concern raised about the Ford and GM vehicles, there is another family of vehicles that fall under the definition of CMVs: Passenger vehicles designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce, and similar vehicles carrying placardable amounts of hazardous materials.

The existing Regulatory Guidance, published on April 4, 1997 (65 FR 16369, at 16417), reads as follows:

*Question:* Must a motor vehicle that meets the definition of a "commercial motor

vehicle" in § 390.5 because it transports hazardous materials in a quantity requiring placarding under the Hazardous Materials Regulations (49 CFR parts 171–180) comply with the fuel system requirements of Subpart E of Part 393, even though it has a gross vehicle weight rating (GVWR) of 10,000 pounds or less?

*Guidance:* No. FMVSS No. 301 contains fuel system integrity requirements for passenger cars and multipurpose passenger vehicles, trucks, and buses that have a GVWR of 10,000 pounds or less and use fuel with a boiling point above 0 deg. Celsius (32 deg. Fahrenheit). Subpart E of part 393 was issued to provide fuel system requirements to cover motor vehicles with a GVWR of 10,001 or more pounds. FMVSS No. 301 adequately addresses the fuel systems of placarded motor vehicles with a GVWR of less than 10,001 pounds and compliance with subpart E of part 393 would be redundant. However, commercial motor vehicles that are not covered by FMVSS No. 301 must continue to comply with subpart E of part 393.

Motor vehicles that meet the fuel system integrity requirements of NHTSA § 571.301 would be exempt from the requirements of FMCSA Subpart E of Part 393. The FMCSA proposes to include this provision under § 393.67 rather than § 393.65. Since the NHTSA standard deals with the overall integrity of liquid fuel systems, referencing it in the FMCSRs would take the place of a set of component-oriented standards for the class of smaller vehicles that are considered CMVs under the FMCSRs.

#### **Rulemaking Analyses and Notices**

##### *Regulatory Notices*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

##### **Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FMCSA has determined that this proposed regulatory action is not significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT.

This proposed rule would revise the regulations concerning the fuel systems of certain light-duty vehicles used as CMVs. First, it would exclude from the fuel system integrity requirements of the FMCSRs certain light-duty vehicles that

are required to comply with the fuel system integrity requirements of FMVSS 301. Second, it would revise the requirements of section 393.67, Fill pipe, to bring them into conformity with EPA regulations. The FMCSA believes these changes would simplify motor carriers' ability to comply with the FMCSRs, and would not diminish the safe operation of these vehicles.

Based on the information presented here, FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Unless a motor carrier operates pumps that are used exclusively to fuel heavy-duty vehicles, motor carriers have been required to comply with the limitation on fueling rate since January 1, 1998.

Under provisions of The National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") (49 U.S.C. 30101, *et seq.*, codified at 49 U.S.C. 30112) and NHTSA's implementing regulations, vehicles must be certified to meet all applicable FMVSSs at the time of their manufacture. Since the fuel systems of vehicles under 10,000 lbs GVWR are required to comply with FMVSS 301, there is no need for the FMCSA to require a separate fuel certification label on the fuel tanks of these vehicles.

This rulemaking imposes no requirements that would generate new costs for motor carriers. Those entities would see no change to their operations, provided they ensure that their CMVs with GVWRs of up to 10,000 pounds already comply with FMVSS 301, and their gasoline- and methanol-fueled CMVs comply with the applicable EPA regulations. This rulemaking is being proposed to harmonize the fuel system integrity requirements of FMCSA with those of the NHTSA and the EPA.

##### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this proposed rulemaking on small entities. Motor carriers would not be subject to any new requirements under this proposal. Generally, they would only have access to vehicles that comply with the FMVSSs and the EPA requirements. As a result, motor carriers may incur only minimal new costs, considerably less than the guideline of \$100 million or more in any one year.

Therefore, the FMCSA has preliminarily determined that this regulatory action would not have a significant economic impact on a substantial number of small entities. The FMCSA invites public comment on this determination.

**Executive Order 12988 (Civil Justice Reform)**

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children.

The agency has determined that this proposed rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this NPRM is not economically significant under Executive Order 12866. Second, the agency has no reason to believe that the proposed rule would result in an environmental health risk or safety risk that would disproportionately affect children. The vehicles that are the subject of this rulemaking are required to comply with both NHTSA and EPA standards concerning fuel system integrity and fuel tank fill rate. The agency has preliminarily determined that the proposed rule would have no significant environmental impacts.

**Executive Order 12630 (Taking of Private Property)**

This proposed rule would revise the FMCSRs concerning fuel system integrity and fuel tank fill rate, as they apply to gasoline-fueled CMVs, to bring them into conformance with current NHTSA and EPA regulations. It would also make permanent the exemptions previously granted at the request of Ford and GM.

No new action is required on the part of those motor carriers that currently operate or plan to operate on U.S. highways, because these vehicles are already required to comply with the NHTSA and EPA requirements referenced in this proposal. If the FMCSA issues a final rule, motor carriers operating vehicles on or after that rule's effective date, in compliance with the NHTSA and EPA requirements,

would not need to apply for an exemption.

The FMCSA therefore has preliminarily determined that this proposed rule has no taking implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 13132 (Federalism)**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has preliminarily determined this proposed rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although the States are required to adopt part 393 as a condition for receiving Motor Carrier Safety Assistance Program grants, the additional training and orientation that would be required for roadside enforcement officials would be minimal, and it would be covered under the existing grant program. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**Paperwork Reduction Act**

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

**National Environmental Policy Act**

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has preliminarily determined in an environmental assessment (EA) that this proposed action would not have an adverse effect on the quality of the environment. A copy of the EA is contained in the public docket.

This notice of proposed rulemaking involves: (1) A revision of the FMCSRs'

CMV fuel fill rate requirements to align them with those of the EPA for gasoline and methanol-fueled vehicles up to 14,000 lbs GVWR; (2) making permanent the terms of the exemptions previously granted to motor carriers operating certain gasoline-fueled commercial motor vehicles manufactured by Ford and by GM; and (3) incorporating into the FMCSRs previously issued regulatory guidance concerning the applicability of the agency's fuel tank rules to vehicles subject to the NHTSA fuel system integrity standard at the time of manufacture.

The agency's proposed revision to the FMCSRs would not cause a change in the EPA's regulations, nor would it require a change in the design, operation, or fueling of these vehicles. It would simply acknowledge the existence of a different set of fuel fill-rate regulations for gasoline- and methanol-fueled vehicles, promulgated by the EPA to improve air quality by reducing vapor emissions from refueling, which were not considered at the time the fuel tank fill rate provision was added to the FMCSRs in 1952. The proposal would also make permanent the exemptions previously granted to motor carriers operating certain gasoline-fueled CMVs manufactured by Ford and GM which comply with the EPA regulations applicable to them. Finally, the proposal would also explicitly acknowledge these vehicles' compliance with FMVSS 301, thus eliminating redundancy with NHTSA regulations. The FMCSA has preliminarily determined that these proposals would have no significant impact on the environment. Thus, the proposed action does not require an environmental impact statement. FMCSA invites comments from the public to assess any potential environmental impacts associated with this proposal.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have preliminarily determined that it is not a "significant energy action" under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It would revise the regulations concerning fuel system integrity and fuel tank fill rate, as they apply to gasoline-fueled CMVs, to bring them into conformance with current NHTSA and EPA regulations. It has no direct relation to energy consumption. The Administrator of the

Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Unfunded Mandates

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1531 *et seq.*). The FMCSA merely seeks to implement a regulation that is inherently a design requirement for the vehicle and does not lend itself to roadside verification. Persons performing inspections at the roadside would likely receive orientation on this proposal (if it becomes a rule) as part of their regular in-service training. However, they would not be trained, equipped, or expected to check fuel tank fill rates at the roadside. Also, since the FMCSA is proposing to codify an existing exemption that had already been provided for light-duty CMVs with certain VINs, the agency anticipates that minimal, if any, additional training would be required. The inspectors would only need to refer to a reference card listing those grandfathered VINs. To the extent that States incur costs due to implementation of this proposal, they would be minimal and covered under the existing MCSAP grant program.

#### List of Subjects in 49 CFR Part 393

Highway and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, the FMCSA proposes to amend title 49, CFR, subchapter B, chapter III, part 393 as follows:

#### PART 393—[AMENDED]

1. The authority citation for part 393 would continue to read as follows:

**Authority:** Sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Section 393.67 is proposed to be amended by adding new paragraphs

(a)(7) and (f)(4), and revising paragraph (c)(7) to read as follows:

#### § 393.67 Liquid Fuel Tanks.

(a) \* \* \*

(7) Motor vehicles that meet the fuel system integrity requirements of 49 CFR 571.301 are exempt from the requirements of this subpart, as they apply to the vehicle's fueling system.

\* \* \* \* \*

(c) \* \* \*

(7) *Fill pipe.*

(i) Each fill pipe must be designed and constructed to minimize the risk of fuel spillage during fueling operations and when the vehicle is involved in a crash.

(ii) For diesel-fueled vehicles, the fill pipe and vents of a fuel tank having a capacity of more than 25 gallons (94.75 L) of fuel must permit filling the tank with fuel at a rate of at least 75.8 L/m (20 gallons per minute) without fuel spillage.

(iii) For gasoline- and methanol-fueled vehicles with a GVWR of 8,500 pounds (3,744 kg) or less, the vehicle must permit filling the tank with fuel dispensed at the applicable fill rate required by the regulations of the Environmental Protection Agency under 40 CFR 80.22.

(iv) For gasoline- and methanol-fueled vehicles with a GVWR of 14,000 pounds (6,400 kg) or less, the vehicle must comply with the applicable fuel-spitback prevention and onboard refueling vapor recovery (ORVR) regulations of the Environmental Protection Agency under 40 CFR part 86.

(v) Each fill pipe must be fitted with a cap that can be fastened securely over the opening in the fill pipe. Screw threads or a bayonet-type point are methods of conforming to the requirements of paragraph (c) of this section.

\* \* \* \* \*

(f) \* \* \*

(f)(4) *Exception.* The following previously exempted vehicles are *not* required to carry the certification and marking specified in Paragraphs (f)(1) through (3) of this section:

(i) First group of Ford E-Series vehicles identified as follows: The vehicle identification numbers (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).

(ii) Second group of Ford E-Series vehicles identified as follows: The VINs contain E35 or E55 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\*, F7UA-9002D\*, YC25-9002-D\* (a new fuel tank for E37 series vehicles), or 2C24-9002-E\* (a new fuel tank for E55 series vehicles) where the asterisk (\*) represents a "wild card" character (any character of the alphabet).

(iii) Ford F-Series vehicles identified as follows: The VINs contain an F53 code in the fifth, sixth, and seventh positions. The fuel tanks are marked with part numbers 1C34-9K007-F\*, 1C34-9K007-G\*, and 1C34-9K007-H\* where the asterisk (\*) represents a "wild card" character (any character of the alphabet).

(iv) GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with gross vehicle weight ratings over 10,000 pounds identified as follows: The VINs contain either a "J" or a "K" in the fourth position. In addition, the seventh position of the VINs on the G-Van would contain a "1."

\* \* \* \* \*

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**Annette M. Sandberg,**

*Administrator.*

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