

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws.

Accordingly, FTA hereby provides notice of the availability of the asset further described below. Any Federal agency interested in acquiring the affected land and improvements thereon should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land and improvements thereon, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property contains approximately 75,882 square feet, or 1.74 acres, of land and improvements thereon situated at Marion Drive and Copper Beech Drive in Kingston, Massachusetts. The MBTA constructed a road and cul-de-sac across the parcel from Marion Drive to Copper Beech Drive for emergency access to Kingston Station and Layover Facility and will retain an easement in the road. The area east of the road is level and landscaped. A retention pond is located west of the road. The area west of the pond is steeply sloped up to the adjacent property. The MBTA also constructed a water main along the southwest side of the parcel.

Issued on: December 14, 1999.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 99-32914 Filed 12-17-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA-99-6632; Notice 1]

Ford Motor Co.; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) has determined that certain 2000 model year Ford Focus vehicles it produced are not in full compliance with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, "Light Vehicle Brake Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that

the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.4.3(b) of FMVSS No. 135 states that the brake fluid warning statement lettering shall be "located so as to be visible by direct view, either on or within 100 mm (3.94 inches) of the brake fluid reservoir filler plug or cap." Ford manufactured approximately 11,000 model year 2000 Focus vehicles that may not comply with the requirement that the brake fluid label be located within 100 mm of the reservoir filler plug or cap. The vehicles were manufactured between October 7, 1999 and October 20, 1999. According to Ford, the location of the labels containing the required lettering was not controlled and, while clearly visible by direct view, some labels were located such that the lettering is 120 to 130 mm distance from the reservoir filler cap. Ford believes this condition to be inconsequential as it relates to motor vehicle safety.

Ford stated in its Petition that the noncompliance was precipitated by a production change. Prior to the production change, the labels were affixed by Ford during vehicle assembly. The production change resulted in the brake fluid warning labels being affixed by the supplier of the vehicle component on which the labels are mounted. The supplier was not aware of the importance of the positioning of the brake fluid warning label on the vehicle component.

Ford's petition included a brake fluid warning label of the type affixed to the 2000 model year Focus. Ford also provided photographs of an engine compartment in which the label is properly located (approximately 75 mm from the brake fluid reservoir cap) and an engine compartment with an improperly located label. Ford supported its claim that the noncompliance is inconsequential by stating that the subject labels meet all other federal requirements, and the location of these labels does not present reasonably anticipated risks to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC

20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 19, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 14, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99-32857 Filed 12-17-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Office of Motor Carrier Safety**

[OMCS Docket No. OMCS-99-6354]

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

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

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

SUMMARY: The OMCS is announcing its proposal to deny the application of PacifiCorp Electric Operations (PacifiCorp) for an exemption from the OMCS' controlled substances and alcohol random testing requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). PacifiCorp has 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 company requested regulatory relief but did not offer alternatives that would have comparable deterrent effects. The OMCS intends to deny 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.

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) (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 OMCS 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 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 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.

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.

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. PacifiCorp stated:

PacifiCorp does not anticipate any adverse safety impacts from this exemption due to the current low level of positive random results and the company's intention to continue its for-cause, pre-employment and return-to-work drug and alcohol screening programs.

The current program that chooses the company's Commercial Drivers License holders for random screens operates at an annual 50 percent sampling for drugs and a 10 percent sampling for alcohol. This program has an adverse effect on the productivity of PacifiCorp's employees in both union and supervisory ranks. Administering and arranging each random screen can take up to two supervisory hours and three to four non-supervisory hours out of an eight-hour workday. This impact is becoming more critical as the electric utility enters a new era of competition.

The approximately \$150,000 spent each year on random drug and alcohol screens takes funds away from innovative traffic safety programs that PacifiCorp could develop. This amount does not include the aforementioned cost of lost productivity, which could easily double this figure.

Basis for Proposal to Deny the Exemption

The OMCS has carefully reviewed PacifiCorp's application for an exemption from the controlled substances and alcohol random testing requirements of 49 CFR 382.305, but does not believe that a motor carrier's low positive testing rate is, 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.

Generally, the controlled substances and alcohol testing requirements are applicable to every person who operates a CMV (as defined in 49 CFR 382.107) in commerce in any State and is subject to the commercial driver's license (CDL) requirements (49 CFR part 383). The rules are also applicable to each employer¹ of these individuals. The regulations require pre-employment controlled substances testing, and post-accident, random, reasonable suspicion, return-to-duty (for drivers removed from duty after a positive test result), and follow-up testing for controlled substances and alcohol.

The selection of drivers for random alcohol and controlled substances testing must be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver must have an equal chance of being tested each time selections are made. The employer must randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing, currently 10 and 50 percent, respectively.

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. Since PacifiCorp appears to have an annual average of 1,600 drivers, 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).

While PacifiCorp's positive test rates are low, some of its drivers were not deterred from using controlled substances, and misusing alcohol. PacifiCorp said that it did "not anticipate any adverse safety impacts from this exemption." 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.

The current post-accident and reasonable suspicion testing requirements would remain in effect even if PacifiCorp's request were granted, but the OMCS 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 will allow PacifiCorp to achieve the same level of safety currently achieved through a program that includes all the required elements.

Although PacifiCorp argues that the money spent each year on random drug and alcohol testing takes funds away from innovative traffic safety programs that the company could develop, it gave no specific examples of safety programs that would have been conducted. The agency does not intend to accept such claims at face value.

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 application from PacifiCorp. 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 make its decision 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.

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¹ Employer means any person (including the United States, a State, District of Columbia, tribal government, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.