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**Benito De Leon,**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-97-3202]

#### Waiver for Canadian Electric Utility Motor Carriers From Alcohol and Controlled Substances Testing

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of petition for waiver; request for comments.

**SUMMARY:** The FHWA is announcing its intent to waive certain Canadian electric utility motor carriers and drivers from the alcohol and controlled substances testing requirements in connection with certain limited emergency operations. The FHWA has received a petition from Hydro Quebec and Eastern Utilities Associates to waive these carriers. The FHWA would waive those Canadian electric utility motor carriers and drivers who enter the United States at the emergency request of a member New England Mutual Assistance Roster utility to quickly restore electric utility service for the New England electric utilities and their customers. The FHWA is proposing this action in accordance with the Commercial Motor Vehicle Safety Act of 1986. This waiver for Canadian electric utility motor carriers would extend only to the alcohol and controlled substances testing requirements for drivers required to be licensed under the commercial driver's license (CDL) requirements.

**DATES:** Submit comments on or before April 13, 1998.

**ADDRESSES:** All signed, written comments must refer to the docket number appearing at the top of this document. Submit all comments 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 between 10 a.m. and 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. David Miller, Office of Motor Carrier Research and Standards, (HCS-10),

(202) 366-4009; Mr. Michael Falk, Office of Chief Counsel, (HCC-20), (202) 366-1384; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, 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 on-line for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at URL: <http://www.nara.gov/nara/fedreg> and at the Government Printing Office's databases at URL: [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).

##### *Under What Authority Does the FHWA Have Responsibility To Act?*

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, Title XII, October 27, 1986, 100 Stat. 3207-170), as amended, requires the FHWA to provide notice and an opportunity for comment before the FHWA waives a regulation as it applies to individuals or commercial motor vehicles. The specific section of the law, now codified at 49 U.S.C. 31315, provides the following:

After notice and an opportunity for comment, the Secretary of Transportation (Secretary) may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the **Federal Register** with reasons for the waiver. (Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1029).

This waiver authority has been delegated to the Federal Highway Administrator [49 CFR 1.48(v) (1996)].

On October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act), Pub. L. 102-143, 105 Stat. 959, was enacted and codified at 49 U.S.C. 31306. The Omnibus Act amended the CMVSA and required the Secretary to issue regulations requiring alcohol and controlled substances testing of CMV drivers who are subject to the CDL requirements of the CMVSA.

The final rule implementing such testing requirements was published on February 15, 1994. See 59 FR 7302, codified at 49 CFR part 382. This 1994 rule replaced the controlled substances testing rule in 49 CFR part 391, and instituted alcohol testing. With subpart H of part 391 completely superseded by part 382 on January 1, 1996, the most recent compliance dates in part 391 for foreign-based motor carriers were removed. See 60 FR 54, January 3, 1995.

The Omnibus Act applies only to motor carriers and drivers operating in the United States, which includes foreign motor carriers and their drivers. The only express reference to foreign-based operations is the requirement that regulations established under the statute be "consistent with international obligations of the United States," and that the Secretary "shall consider applicable laws and regulations of foreign countries." 49 U.S.C. 31306(h). Thus, the statute requires foreign-based drivers to be subject to testing to the extent such rules are consistent with United States international obligations, and the Secretary is granted the authority to deem the requirement satisfied by, and must take into consideration, the laws and regulations of other nations.

As part of its consideration of foreign laws, the FHWA solicited information from interested parties regarding the applicability of part 382 to foreign-based drivers. 57 FR 59536 (December 15, 1992) (advance notice of proposed rulemaking); 59 FR 7528 (February 15, 1994) (notice of proposed rulemaking). In the notice of proposed rulemaking (NPRM), the FHWA proposed to apply part 382 to foreign-based operations beginning on January 1, 1996, while continuing to explore the possibility of entering into agreements to recognize other nations' testing programs for purposes of compliance with part 382. On September 22, 1995 (60 FR 49322), based upon comments received and the FHWA's intent to provide regulatory flexibility for foreign motor carriers, the agency established July 1, 1996, as the effective date for large foreign motor carriers and their drivers to comply with these regulations; and July 1, 1997, as the effective date for small foreign motor carriers and their drivers to comply with these regulations.

##### *What Has Prompted This Notice?*

Hydro Quebec, an electric utility motor carrier based in Quebec, Canada, and Eastern Utilities Associates, an electric utility motor carrier based in Boston, Massachusetts have petitioned the FHWA to waive from compliance with 49 CFR part 382 Canadian member

electric utility motor carriers responding to a request for assistance by a United States member of the New England Mutual Assistance Roster. The New England Mutual Assistance Roster members include both United States and Canadian electric utility motor carriers. The Canadian utilities and their drivers, who would never enter the United States under normal conditions, are not subject to alcohol and controlled substances testing until entering the United States. There are no equivalent Canadian testing rules. Hydro Quebec argues it would be in the public interest and it would not diminish the safe operation of commercial motor vehicles in the United States to allow it to be waived from the alcohol and controlled substances testing rules for the sole purpose of responding to a New England Mutual Assistance Roster member's request for assistance in an emergency.

The New England Mutual Assistance Roster members stress electric utility service restoration requires clear thinking and unhampered ability. The members also stress it is imperative that the mutual emergency assistance work force, including drivers, be free of drug use and alcohol abuse.

The Canadian utilities belonging to the New England Mutual Assistance Roster at this time are the following four utilities (any other Canadian electric utility motor carriers in the provinces of Ontario, New Brunswick, Nova Scotia, and Quebec responding to the six New England States would also be eligible to use this proposed waiver from compliance).

1. Hydro-Quebec 75 Boulevard Rene-Levesque ouest, Montreal, Quebec H2Z 1A4
2. Ontario Hydro 700 University Avenue, Toronto, Ontario M5G 1X6
3. New Brunswick Power Corporation 515 King Street, P.O. Box 2000, Fredericton, New Brunswick E3B 4X1
4. Nova Scotia Power Incorporated, P.O. Box 910, Halifax, Nova Scotia B3J 2W5

The FHWA would limit participation in this waiver to Canadian electric utility motor carriers responding to any New England Mutual Assistance Roster member utility's request for emergency assistance.

#### *What Proposed Conditions Apply to This Proposed Waiver?*

The FHWA proposes the following five conditions, modified from the New England Mutual Assistance Roster principles, would serve as the basis for this proposed waiver governing emergency assistance between the

Canadian utilities and the New England utilities in the United States.

1. The emergency assistance period begins when the Responding Canadian Electric Utility Motor Carrier's (the Responding carrier) drivers or equipment cross the United States-Canada border transporting equipment and supplies to the Requesting New England Mutual Assistance Roster Motor Carrier (the Requesting Carrier). The emergency assistance period terminates when the Responding Carrier completes the transportation of such drivers or equipment and crosses back into Canada across the Canada-United States border.

2. The drivers of the Responding Carrier must at all times during the emergency assistance period in the United States continue to be drivers of the Responding Carrier and must not be deemed drivers of the Requesting Carrier for any purpose.

3. The Responding Carrier must make available at least one supervisor in addition to the crew foremen. All instructions for work to be done by the Responding Carrier's crews must be given by the Requesting Carrier to the Responding Carrier's supervisor(s); or, when the Responding Carrier's crews are to work in widely separated areas, to such of the Responding Carrier's foremen as may be designated for the purpose by the Responding Carrier's supervisor(s).

4. All time sheets and work records pertaining to the Responding Carrier's drivers furnishing emergency assistance must be kept by the Responding Carrier.

5. The Requesting Carrier must indicate to the Responding Carrier the type and size of trucks and other equipment desired as well as the number of job functions of drivers requested, but the extent to which the Responding Carrier makes available such equipment and drivers must be at the Responding Carrier's sole discretion.

#### *To Whom Would the Canadian Utilities Be Providing Emergency Assistance?*

The FHWA would limit this proposed waiver to emergency assistance provided by the Canadian electric utility motor carrier members in the four named Canadian provinces to any member of the New England Mutual Assistance Roster in the New England region of the United States. The following six States make up the New England region of the United States.

1. Connecticut
2. Maine
3. Massachusetts
4. New Hampshire
5. Rhode Island
6. Vermont

The following 19 electric utilities presently make up the United States members of the New England Mutual Assistance Roster. In the future, any new members in the above named six States would also be eligible to receive emergency assistance from the waived Canadian electric utilities.

1. Bangor Hydro-Electric Company, 33 State Street, P.O. Box 932, Bangor, Maine 04401
2. Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199
3. Burlington Electric Department, 585 Pine Street, Burlington, Vermont 05401
4. Central Maine Power, 83 Edison Drive, Augusta, Maine 04336
5. Central Vermont Power Service Corporation, 77 Grove Street, Rutland, Vermont 05701
6. Citizens Utilities Company, Box 604, Newport, Vermont
7. Commonwealth Electric Company, 2421 Cranberry Highway, Wareham, Massachusetts 02571
8. Concord Electric Company, One McGuire Street, Concord, New Hampshire 03301
9. Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107  
Includes the following five electric utility divisions.
  - a. Blackstone Valley Electric
  - b. Eastern Edison
  - c. EUA Service Corporation
  - d. Montaup Electric
  - e. Newport Electric
10. Exeter & Hampton Electric, 114 Drinkwater Road, Kensington, New Hampshire 03874
11. Fitchburg Gas and Electric Company, 285 John Fitch Highway, P.O. Box 2070, Fitchburg, Massachusetts 01420
12. Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, Vermont 05402-0580
13. New England Electric System, 25 Research Drive, Westborough, Massachusetts 01582
14. Northeast Utilities, P.O. Box 270, Hartford, Connecticut 06141-0270
15. Public Service of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, New Hampshire 03105
16. Taunton Municipal Lighting Plant, 55 Weir Street, Taunton, Massachusetts 02780
17. The United Illuminating Company, 157 Church Street, New Haven, Connecticut 06506
18. Vermont Electric Power Company, Inc., RR 1, Box 4077, Rutland, Vermont 05701

19. Vermont Marble—Power Division, 61 Main Street, Proctor, Vermont 05765.

*What If the Government of Canada Imposes Testing on United States Motor Carriers Entering Canada?*

The FHWA would also expect the four named Canadian electric utility motor carriers to seek reciprocity with the Government of Canada for the United States electric utility motor carriers in the New England Mutual Assistance Roster, if the Government of Canada or the affected provinces promulgate regulations that do not currently apply to those carriers under United States laws or regulations. In this way, the Government of Canada would treat the United States electric utility motor carriers the same as the United States Government would treat Canadian electric utility motor carriers responding to the same types of electric utility emergencies.

*Would a Waiver of the Canadian Electrical Utilities Be in the Public Interest and Not Diminish the Safe Operation of Commercial Motor Vehicles?*

The FHWA has determined this waiver meets the requirements of 49 U.S.C. 31315 and believes it would be in the public interest to provide a limited waiver to the Canadian electric utility motor carriers. The Canadian electric utility motor carriers and their drivers do not normally operate in or through the United States. Unlike a Canadian for-hire or private motor carrier that regularly delivers or picks up products, or a provincial or Canadian Federal government entity regularly traversing a State to service provincial citizen interests, the Canadian utilities would, on rare occasions, enter the United States for limited periods of time for the sole purpose of restoring electrical service to United States citizens. The FHWA believes such limited and infrequent operations in the United States would not diminish the safe operations of commercial motor vehicles and is in the public interest, especially in the affected localities.

The FHWA believes, through mutual cooperation with Canadian authorities, the Canadian Federal and provincial governments have sufficient regulations in place for Canadian electric utility motor carriers to limit drivers' use of alcohol and controlled substances while operating commercial motor vehicles wholly within Canada. See Standard 6, Items 12.1 through 12.6, 13.1, and 13.2 of the National Safety Code for Motor Carriers, Canada, December 1994. Under current FHWA regulations, these

Canadian motor carriers would not be subject to United States alcohol and controlled substances testing rules, unless they came into the United States for a few days on rare occasions. Read literally, the FHWA's current regulations would require these Canadian electrical utility motor carriers to set up programs to conduct testing for drivers who may never come across the United States-Canadian border or for drivers that cross the border on a very limited emergency basis. This is unreasonable in the FHWA's view. The FHWA does believe, however, it is reasonable to require testing for those Canadian for-hire, private, and government motor carriers and drivers who regularly operate in the United States.

The FHWA believes that the alcohol and controlled substances testing rules would prevent Canadian electric utility motor carriers and their Canadian drivers from responding quickly and effectively to requests for electrical emergency relief within the United States. The FHWA believes it would be contrary to the public interest to enforce rules that would delay efforts to protect lives and property.

Conversely, safe operation of commercial motor vehicles may well depend upon rapid emergency response, e.g., to restore electricity to traffic signals. The safety of the public would also depend upon rapid emergency response, e.g., to restore electricity as a source of heat and light to hospitals, the elderly, and homes in general. The FHWA adopted the alcohol and controlled substances testing rules to enhance safety. The regulatory burdens the testing requirements entail are not justifiable when their effect, during limited periods when electric power failures can most effectively be contained or mitigated, is to increase the risks to public health and welfare.

The FHWA does not believe this proposed waiver will impair the safety of the Canadian electric utilities' motor vehicle operations during emergencies. Other applicable provisions of the Federal Motor Carrier Regulations (49 CFR parts 300 through 399) would remain in effect, unless an authority having the power to declare an emergency, as set forth in 49 CFR 390.23, does so. Commercial driver's license requirements in 49 CFR part 383 (and those under the Canadian National Safety Code) would not be waived even if 49 CFR 390.23 was used to grant specific relief.

For more than 60 years motor carriers have been prohibited from permitting drivers to drive while using liquor or narcotic drugs. See 1 M.C.C. 1, at 19

(1936). Based upon data reported to FHWA by motor carriers, motor carriers generally use drivers who test almost 98 percent free of controlled substances and almost 100 percent free of alcohol. See 63 FR 2172, January 14, 1998. The FHWA believes that it should not force the Canadian electrical utility motor carriers to begin a program the FHWA believes would have little benefit to the citizens of the United States.

**Analyses and Notices**

The FHWA has initially determined that this action is not a significant action within the meaning of the Department of Transportation's policies and procedures.

The FHWA believes it is necessary to provide a shorter comment period than normal for this proposal. This action is needed for the winter season when the FHWA believes the New England Mutual Assistance members would most need the assistance of the Canadian electric utility motor carriers covered by this action. The FHWA believes it is imperative to provide New England citizens the greatest amount of protection against the loss of life and property by providing relief should the need arise. The FHWA does not anticipate great interest in, or a large number of comments on, this proposal. Thus, the FHWA believes a 30-day comment period is sufficient for this proposed action.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the initial effects of this waiver on small entities with twenty or less truck tractors or straight trucks.

*Initial Flexibility Analysis (IFA)*

This action proposes to provide a limited waiver to certain Canadian electric utility motor carriers and their drivers. The FHWA believes there are a maximum of four affected small entities at this time. These would be the Canadian electric utilities named above. Additional Canadian electric utilities would be eligible for this proposed waiver, if the electric utilities are domiciled and operate primarily (i.e., 51 percent or more) in one of the four Canadian provinces of Ontario, Quebec, New Brunswick, or Nova Scotia.

The United States electric utilities named would be required, without this waiver, to limit the responders available to restore highway safety, e.g., traffic signals, and restore electric power to their customers. Failure to grant the waiver may delay the efficient and quick response to restore electric power to prevent highway accidents and

incidents, and to save lives from cold weather.

The FHWA believes no other Federal rules exist for alcohol and controlled substances testing of Canadian electric utility motor carriers responding to New England Mutual Assistance roster members. The FHWA is aware of Nuclear Regulatory Commission (NRC) and Department of Energy (DOE) testing requirements for alcohol and controlled substances, but believes these are limited to nuclear power plants and DOE installations in the United States. The FHWA believes the four named Canadian electric utility motor carriers would not be required by the NRC or DOE to require alcohol and controlled substances testing to restore electric power to United States customers. The FHWA would like information from New England Mutual Assistance Roster members whether NRC or DOE have regulations requiring such testing.

Based upon this IFA evaluation, the FHWA believes any impact upon these small entities is highly unlikely. Furthermore, the FHWA notes the Omnibus Act mandates alcohol and controlled substances testing and the CMVSA mandates the waiver authority irrespective of the size of the entities.

For the reasons in the IFA above, the FHWA initially certifies this action would not have a significant economic impact on a substantial number of small entities. The FHWA will conduct a final flexibility analysis based upon any comments to the docket.

This proposed waiver has been analyzed in accordance with the principles and criteria contained in the Unfunded Mandates Reform Act of 1995 (the Unfunded Mandates Act) (Pub. L. 104-4, 109 Stat. 48). The FHWA has determined this action does not have sufficient unfunded mandate implications to warrant the preparation of an unfunded mandate assessment.

The amendments made by this proposed waiver would not have a substantial direct effect on States, nor on the relationship or distribution of power between the national government and the States because these changes proposed here do little to limit the policy making discretion of the States.

The waiver is not intended to preempt any State law or State regulation. Moreover, the changes made by this waiver would impose no additional cost or burden upon any State. Nor would the waiver have a significant effect upon the ability of the States to discharge traditional State governmental functions.

For purposes of section 202 of the Unfunded Mandates Act, the waiver of alcohol and controlled substances

testing requirements would not impose a burden greater than \$100 million.

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, the FHWA estimates this proposal would have an annual burden savings of about \$21,000. The FHWA, therefore, is not required to prepare a separate unfunded mandate assessment for this proposed waiver.

The information collection requirements associated with compliance by Canadian motor carriers and drivers with part 382 was included in the information collection budget approval request approved on September 22, 1997, by the Office of Management and Budget (OMB) under the PRA and has been assigned OMB control number 2125-0543, approved through September 30, 2000.

The FHWA estimates four Canadian electric utility motor carriers would send no more than 100 drivers to the United States for an emergency relief effort. The FHWA estimates these four Canadian electric utility motor carriers have a few thousand drivers each since they are monopolies in the areas they serve, but would only send a couple dozen drivers to an emergency in the United States.

The FHWA has calculated the information collection burden on these carriers in complying with part 382 based upon figures submitted and approved by the OMB in 1997. See Docket No. FHWA-1997-2313-7. The four motor carriers would share an estimated information collection start-up cost of \$US 10,000 (excluding laboratory set-up costs) and an estimated recurring annual cost of \$US 21,000 and 240 hours of time. The FHWA excluded laboratory start-up information collection costs because the approximately 70 laboratories across the United States and Canada able to perform the analysis of urine specimens have been in operation for at least one year and have incurred the start-up costs in prior years. The Canadian motor carriers would not incur the laboratory's start-up costs. The FHWA has calculated into the figure, though, the information collection cost of setting up contracts with the laboratories to conduct the testing.

The FHWA has included revised spreadsheets for these calculations in this docket for review. Refer to the docket number appearing at the top of this document.

If the FHWA grants this waiver, the FHWA will submit a request to the OMB, on a Form OMB-83C, to reduce the information collection burden by these amounts, or revised amounts based upon comments to this docket.

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Authority:** 49 U.S.C. 31301 *et seq.*; and 49 CFR 1.48.

Issued on: March 4, 1998.

**Kenneth R. Wykle,**

*Administrator, Federal Highway Administration.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3420]

#### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

The proposed information for which OMB approval is being sought pertains to the content of petitions for exemption from the minimum driving range requirement for dual fuel electric passenger automobiles. This may be necessary for a manufacturer to secure a favorable corporate average fuel economy (CAFE) calculation.

**DATES:** Comments must be received on or before May 11, 1998.

**ADDRESSES:** Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to U.S. Department of Transportation, Docket Management, PL-401, 400 Seventh Street, Southwest, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that one original plus two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.