



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0142]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption from Castignoli Enterprises

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

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Castignoli Enterprises' (Castignoli) application for a limited 5-year exemption to allow a sleeper berth to be installed in the bed of a Ford F350 pickup truck that, when operated in combination with certain trailers, is a commercial motor vehicle (CMV) under the Federal Motor Carrier Safety Regulations (FMCSRs). A sleeper berth installed in the bed of the pickup truck does not meet the access, location, exit, communication, or occupant restraint requirements for sleeper berths as prescribed in the FMCSRs. The Agency has determined that allowing the sleeper berth to be installed in the bed of the pickup would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption will likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is applicable [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending Thursday, October 19th, 2023!

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-

0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and

the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Castignoli's Application for Exemption

Castignoli applied for an exemption from 49 CFR 393.76(a)(3), (b)(2), (c), (d), and (h) to allow a sleeper berth to be installed in the bed of a Ford F350 pickup truck. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.76 of the FMCSRs provides various requirements for sleeper berths installed in in CMVs. Specific to Castignoli's exemption application:

1. Section 393.76(a)(3), "*Access,*" requires a sleeper berth to be constructed so that an occupant's ready entrance to, and exit from the sleeper berth is not unduly hindered.
2. Section 393.76(b)(2), "*Location,*" requires a sleeper berth located within the cargo space of a motor vehicle to be securely compartmentalized from the remainder of the cargo space.
3. Section 393.76(c), "*Exit from the berth,*" requires a direct and ready means of exit from a sleeper berth into the driver's seat or compartment.
4. Section 393.76(d), "*Communication with the driver,*" requires a sleeper berth which is not located within the driver's compartment and has no direct entrance into the driver's compartment to be equipped with a means of communication between the occupant and the driver. The means of

communication may consist of a telephone, speaker tube, buzzer, pull cord, or other mechanical or electrical device.

5. Section 393.76(h), “*Occupant restraint*,” requires a motor vehicle manufactured on or after July 1, 1971, and equipped with a sleeper berth to be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle. The restraint system must be designed, installed, and maintained to withstand a minimum total force of 6,000 pounds applied toward the front of the vehicle and parallel to the longitudinal axis of the vehicle.

The applicant states that he is the owner/operator of Castignoli, and is the “solo driver of a hot shot hauler, F350 1-ton pickup with trailer . . .”¹ The applicant states that as a solo driver, “there is no ready need for access between the sleeper berth and the driver’s compartment.” In addition, the applicant states:

I plan to incorporate the sleeper berth into the bed of the tow vehicle. The utilization of this type of sleeper berth, would allow myself (as the sole driver) to meet the hours of [10-hour] service rest period requirements by utilizing a sleeper berth incorporated into the bed of the vehicle (Rear covered, ventilated, insulated, bed with cap and full size twin mattress) in lieu of a motel each evening. The tow vehicle/trailer combination would not be operating on the roadway during my 10-hour rest period, so there is no benefit in having the access requirements to the driver compartment, nor any need for communication with the driver (myself), nor any occupant restraint requirement as the vehicle is not moving while I am sleeping. The sleeper berth is separate from the trailer behind the tow vehicle, and is therefore separate from the cargo.

The current FMCSR regulatory requirements for sleeper berth access seem to rely on the assumption that one driver is driving while another driver is in the sleeper berth, and that the truck is moving always. The situation that I have as a single driver is that when I am off duty, the vehicle is not moving and therefore direct

¹ In trucking, the term “hot shot” commonly refers to either the truck or the freight – often both. In the former sense, its normally a Class 3-5 truck used in combination with a variety of trailers to run for hire freight, whether for a single customer or less-than-truckload. The truck is often a ¾ to 1 ½ ton pickup outfitted with weight-distributing gooseneck or fifth-wheel-type connections to a trailer.

access to the sleeper berth area should not be required, and since the vehicle is not moving there is no need for occupant restraint systems nor a means for communication with the driver. All other dimensional requirements, ventilation, and protection against exhaust and fuel leaks will be met.

The applicant states that because of mobility issues associated with a partially fused spine, it is easier for him to access a sleeper berth installed in the bed of the pickup truck as opposed to a sleeper berth that could be installed in the back seat of the pickup truck that meets the requirements of the FMCSRs. The exemption would apply only to Castignoli's sole driver and pickup truck. Castignoli believes that the sleeper berth installed in the bed of the pickup truck will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Comments

FMCSA published a notice of the application in the **Federal Register** on April 24, 2018, and asked for public comment (83 FR 17883). The Agency received sixty-five comments, all from individuals. Nearly all of the commenters (61) supported the exemption application. These commenters stated that sleeper berth requirements should be flexible enough to allow a sleeper berth to be accessed from outside the driver compartment for solo operators, and without the regulatory requirements pertaining to access, exit from the berth, communication with the driver, and occupant restraint for vehicles that are not moving during the sleeper berth rest period. Two commenters opposed the exemption application, expressing concerns that a sleeper berth installed in the bed of a pickup truck will not be large enough to allow the driver enough space to get adequate rest. Two commenters did not express support or oppose the exemption application.

FMCSA Decision

The FMCSA has evaluated the Castignoli exemption application, and the comments received. The Agency believes that granting the temporary exemption to allow a sleeper berth to be installed in the pickup truck bed will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. Sleeper berths provide an option for drivers to obtain the rest necessary under the hours-of-service rules in part 395 of the FMCSRs without having to pay lodging costs at a hotel/motel. In the case of team driving operations, a sleeper berth allows one person to obtain the necessary rest (a “relief driver”) while the other person is driving, allowing a vehicle to be operated continuously and thereby increasing productivity.

Previous rulemakings have specifically noted the use of sleeper berths by relief drivers in team driving operations. The sleeper berth requirements were revised in April 1974 to increase the minimum interior dimensional requirements for sleeper berths in CMVs (39 FR 14710). In that final rule, the Federal Highway Administration’s Bureau of Motor Carrier Safety (the predecessor to FMCSA) stated that “In sleeper berth trucking operations it is of critical importance that *relief drivers* be fresh and alert when they assume their driving tasks.” [Emphasis added.] Additionally, when considering possible changes to the shape of the sleeper berth, the Bureau of Motor Carrier Safety stated that use of “slant-back” cab designs which incorporate a slanted rear cab wall and do not provide a rectangular sleeper berth compartment was not permissible because it “represents an intrusion into the *relief driver’s* sleeping space.” [Emphasis added.]

In team driving operations, it is important for the person in the sleeper berth (i.e., the relief driver) to be able to communicate with the person driving the vehicle, to be able to directly access the driver’s seat or compartment, and to be restrained when the

vehicle is in motion. These provisions are not applicable, however, in the case of Castignoli where a solo driver is operating a pickup truck and a trailer, and the sleeper berth is only used by the solo driver when the vehicle is not in motion. In this operating scenario, FMCSA believes that as long as the sleeper berth dimensional (§ 393.76(a)(1)), shape (§ 393.76(a)(2)), equipment (§ 393.76(e)), ventilation (§ 393.76(f)), and protection against exhaust and fuel leaks and exhaust heat (§ 393.76(g)) provisions are satisfied, the solo driver will be able to obtain the necessary rest and there will be no degradation in safety. Additionally, the Agency believes that allowing flexibility in the location of the sleeper berth is likely to improve the overall level of safety to the motoring public by allowing drivers additional options to get their mandatory rest periods.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending Thursday, October 19, 2023. During the temporary exemption period, Castignoli will be allowed to utilize a sleeper berth installed in the bed of a pickup truck that, when operated in combination with certain trailers, is a CMV. The sleeper berth must comply fully with the requirements of § 393.76(a)(1), § 393.76(a)(2), § 393.76(e), § 393.76(f), and § 393.76(g). The sleeper berth shall be used only by the owner/operator of Castignoli, and no other person is permitted to be in the sleeper berth while the vehicle is in motion.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Castignoli fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than

was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that Castignoli's use of a sleeper berth installed in the bed of pickup truck when operating as a CMV is not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to Castignoli Enterprises operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: October 10, 2018.

Raymond P. Martinez,
Administrator.

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