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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0111]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for Ford Motor Company

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

ACTION: Notice of renewal of exemption, request for comments.

SUMMARY: FMCSA announces its decision to renew for a period of 5 years Ford Motor Company's (Ford) current exemption allowing motor carriers to operate Ford's Transit-based commercial motor vehicles (CMV) that do not meet the exhaust system location requirements in the Federal Motor Carrier Safety Regulations (FMCSR). The FMCSRs require (1) the exhaust system of a bus powered by a gasoline engine to discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus and (2) the exhaust system of every truck and truck tractor to discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab. Although the Ford Transit does not meet these requirements, it has undergone performance-based testing that demonstrates that the exhaust system achieves a level of safety equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. Ford performed carbon monoxide (CO) concentration tests, which used CO monitors at various locations within the vehicle to measure the concentration of CO ingress into the occupant compartment (from the vehicles' own powertrain and exhaust system), under various driving conditions

including idle and top speed. The tests showed that the resulting CO concentration is below every threshold used by Federal Agencies. The Agency has concluded that granting this exemption renewal will maintain a level of safety equivalent to, or greater than, the level of safety provided by the rule restricting the location of exhaust systems on CMVs to ensure that exhaust fumes will not affect the driver's alertness or health or the health of passengers.

DATES: The renewal outlined in this notice extends the exemption from August 15, 2017, through August 15, 2022. Comments on the decision must be received on or before [Insert 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2015-0111 using any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.
- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted without change to

http://www.regulations.gov, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the “help” section of the *http://www.regulations.gov* Web site as well as the DOT’s *http://docketsinfo.dot.gov* Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

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.

SUPPLEMENTARY INFORMATION:**Background**

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from certain portions of the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)). The Agency must provide the public with 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 the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Ford's Application for Exemption

On December 1, 2014, Ford applied for an exemption from 49 CFR 393.83 to allow motor carriers to operate Ford-manufactured Transit-based CMVs that do not comply with the exhaust system location requirements. Section 393.83, “Exhaust systems,” includes requirements regarding the location of exhaust systems on CMVs to ensure that exhaust fumes will not affect the driver’s alertness or health or the health of passengers. Specifically, § 393.83(c) states that “[t]he exhaust system of a bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus”; and § 393.83(e) states that “[t]he exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.”

According to the 2014 exemption application:

Although Ford Transit vehicles may not satisfy the exhaust system location requirements of § 393.83, Ford has several internal requirements applicable to the design of the tailpipe system that ensure the system will provide high levels of safety for its customers. Ford’s requirements address passenger compartment exhaust gas intrusion and management of high temperature components. These requirements include testing of the system and basic design requirements for the location of the tailpipe in relation to underbody components like the brake lines and fuel lines. Most significantly Ford uses internal performance based tests that demonstrate the system achieves a level of safety equivalent to or greater than, the level of safety that would be obtained by complying with the regulation. The main test of interest is the Carbon Monoxide Concentration test. This performance based test uses CO monitors at various locations in the vehicle to measure the concentration of CO ingress into the occupant compartment (from vehicles’ own powertrain and exhaust system) under various driving conditions including idle and top speed.

Ford tested the 2015 model year Transit in accordance with “Ford global common engineering test procedures,” which limits CO levels to 27 parts-per-million (ppm) for a 30 minute Time Weighted Average (TWA) during continuous driving. Ford stated that the 27 ppm limit is based on the Environmental Protection Agency’s (EPA)

Acute Exposure Guideline Level limits for CO exposure for 8 hour TWA, which is more severe than both the Occupational Safety & Health Administration's (OSHA) permissible exposure limit of 50 ppm for an 8 hour TWA and the National Institute of Occupational Safety and Health's (NIOSH) permissible exposure limit of 35 ppm for a 10 hour TWA. Under "worst-case conditions," Ford measured the CO level to be 17 ppm for the model year 2015 Transit, well below the EPA, OSHA, and NIOSH limits.

Additionally, Ford stated that it has internal requirements to establish the appropriate clearance required between a vehicle and the ground to meet a minimum level of on-road functionality. Ford has specific departure angle requirements for the vehicle to reduce tailpipe contact with the ground, curbs, ramps, etc., during various driving modes, thus avoiding damage to the exhaust system that may adversely affect the exhaust function.

FMCSA published a notice of the application in the Federal Register on April 17, 2015, and asked for public comment (80 FR 21294). FMCSA granted the exemption on August 12, 2015 (80 FR 48408). The Agency concluded that granting the temporary exemption to allow the operation of model year 2015 Ford Transit-based gas bus models (of all gross vehicle weight ratings), vans over 10,000 pounds gross vehicle weight rating, and corresponding future Transit-based models of the same design produced during the effective period of the exemption will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. Ford conducted performance-based testing that demonstrates that the design of the exhaust system for the model year 2015 and later Fort Transit CMVs (1) results in CO exposure limits that are

well below EPA, OSHA, and NIOSH established thresholds, and (2) will maintain a level of safety that is equivalent to the level of safety achieved without the exemption. The exemption was granted for a 2-year period, beginning August 12, 2015 and ending August 14, 2017.

Ford's Request to Renew the Exemption

At the time the exemption was granted, the term of temporary exemptions was limited by statute to a maximum of 2 years. However, on December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act, which now allows an exemption to be granted for a period of 5 years (49 U.S.C. 31315(b)(2)) if FMCSA finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" (31315(b)(1)). Ford has requested a 5-year extension for the exemption from 49 CFR 393.83 to allow motor carriers to operate model year 2015 Ford-manufactured Transit-based CMVs, and later model year Transit-based models that do not comply with the exhaust system location requirements.

Basis for Renewing Exemption

FMCSA is not aware of any evidence showing that the operation of model year 2015, 2016, or 2017 Ford Transit-based gas bus models (all gross vehicle weight ratings), vans over 10,000 pounds gross vehicle weight rating, and Transit-based models of the same design produced during the current exemption has resulted in any degradation of safety. The Agency believes that extending the exemption for a period of 5 years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. Performance-based testing conducted by Ford has

demonstrated that the design of the exhaust system for the model year 2015 and later Ford Transit CMVs (1) results in CO exposure limits that are well below EPA, OSHA, and NIOSH established thresholds, and (2) will maintain a level of safety that is equivalent to the level of safety achieved without the exemption.

The renewal outlined in this notice extends the exemption from August 12, 2017 through August 12, 2022, and requests public comment. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or commercial motor vehicles fail 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.

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 a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Request for Comments

FMCSA requests comments from parties with data concerning the safety record of motor carriers operating Model Year 2015 Ford-manufactured Transit based CMVs, and corresponding future Transit-based models of the same design in accordance with the conditions of the exemption. The Agency will evaluate adverse evidence submitted

during the comment period and at any time during the 5-year period of the exemption. If safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA will take immediate steps to revoke the Ford exemption.

Issued on: November 8, 2017

Larry W. Minor
Associate Administrator for Policy

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