Issued on September 1, 1999.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3355; Notice 4]

Red River Manufacturing, Inc.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

For the reasons explained below, we are granting the application by Red River Manufacturing, Inc., of West Fargo, North Dakota, for a renewal of NHTSA Temporary Exemption No. 98–3 from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. Red River applied again on the basis that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 CFR 555.6(a).

We published notice of receipt of the application on March 5, 1999, and afforded an opportunity for comment (64 FR 10737).

We granted Red River a 1-year temporary exemption from Standard No. 224 on April 1, 1998 (63 FR 15909). The exemption was to expire on April 1, 1999, but Red River filed a timely application for renewal, and, as provided by 49 CFR 555.8(e), the exemption will continue in effect until we make a decision on its application. The company has requested an extension of this exemption until April 1, 2002. The discussion that follows is based on information contained in Red River's application.

Why Red River Says That it Needs to Renew its Temporary Exemption

On April 1, 1998, we granted Red River a temporary exemption of one year from Standard No. 224. See 63 FR 15909 for our decision.

Among other kinds of trailers, Red River manufactures and sells two types of horizontal discharge trailers which discharge their contents into hoppers, rather than on the ground. This makes it impractical to comply with Standard No. 224 by using a fixed rear impact guard. One type of horizontal discharge trailer is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The other type is used to haul feed, seed, and agricultural products such as sugar beets and potatoes, from the fields to hoppers for storage or processing. Both types are known by the name ''Live Bottom.''

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Live Bottom trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear impact guards*. Red River, which manufactured 225 Live Bottom trailers of all kinds in the 12 months preceding the filing of its application on December 22, 1998, has asked for a renewal of its exemption until April 1, 2002, in order to continue its efforts to develop a rear impact guard that conforms to Standard No. 223 and can be installed in compliance with Standard No. 224, while retaining the functionality and price-competitiveness of its trailers.

Why Red River Says That Compliance Would Cause it Substantial Economic Hardship

Live Bottoms accounted for almost half of Red River's production in 1997. In the absence of an exemption, Red River believes that approximately 60 percent of its work force would have to be laid off. Its projected loss of sales is $8,000,000 to $9,000,000 per year (net sales have averaged $14,441,822 over its 1995, 1996, and 1997 fiscal years).

We require hardship applicants to estimate the cost required to comply with a standard, as soon as possible, and at the end of a one, two, or three year exemption period. Red River estimates that even a 3-year exemption will require a retail price increase that will result in a loss of 35 percent of Live Bottom sales. Further, ''more than 50 percent of available engineering time would be required for compliance and related modifications in this time frame, resulting in a significant reduction in support for non-Live Bottom products, and a 5% decline in non-Live Bottom sales.''

Why Red River Says That it Has Tried to Comply With the Standard in Good Faith

In its initial application for a temporary exemption, Red River explained that, in mid 1996, its design staff began exploring options for compliance with Standard No. 224. Through a business partner in Denmark, the company reviewed the European rear impact protection systems. Because these designs must be manually operated by ground personnel, Red River decided that they would not be acceptable to its American customers. Later in 1996, Red River decided to investigate powered retractable rear impact guards. The initial design could not meet the energy absorption requirements of Standard No. 223. The company then investigated the use of pneumatic-over-mechanical retractable rear impact guards, and developed a prototype design which it began testing in the field in May 1998. This testing is disclosing a number of problems as yet unresolved. In the meantime, Red River consulted three commercial suppliers of underride devices but none produces a guard that could be used on the Live Bottoms.

Red River intends to continue its compliance efforts while an exemption is in effect, and believes that three years will enable it to conclude definitively whether it is feasible to design and manufacture a compliant rear guard that meets the requirements of its customers, and, if it is not feasible, to petition the agency for rulemaking to exclude Live Bottoms from Standard No. 224.

Red River was able to conform its other trailers with Standard No. 224.

Why Red River Says That Exempting it Would Be Consistent with the Public Interest and Objectives of Motor Vehicle Safety

In its initial application, Red River argued that an exemption would be in the public interest and consistent with traffic safety objectives because the Live Bottom ''can be used safely where it would be hazardous or impractical to use end dump trailers, such as on uneven terrain or in places with low overhead clearances.'' These trailers are ''valuable to the agricultural sector'' because of the advantages they offer in the handling of relatively fragile cargo. An exemption ''would have no adverse effect on the safety of the general public'' because the Live Bottom spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Live Bottom is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Red River reiterates these arguments in its application for renewal of its temporary exemption. It adds that it knows of no rear end collisions involving horizontal discharge trailers that have resulted in injuries, nor any instances in which there has been an intrusion by a horizontal discharge trailer into the passenger compartment of a vehicle impacting the rear of such a trailer.

Comments Received From the Public on the Application

We received four comments on Red River's application for renewal of its temporary exemption. Two commenters

opposed granting the renewal, and two commenters supported it.

Timpte Trailer Co. of David City, Nebraska, identified itself as a manufacturer of bulk commodity trailers ''with the same limited engineering resources'' as Red River, and opposed granting Red River's request. Timpte related that it was able to design a ''live bottom'' trailer with a telescoping rear underride protection system ''which complied with FMVSS 224 on its original effective date.'' However, this added to the trailer's weight and cost, and Timpte says that the exemptions granted Red River and two other ''live bottom'' manufacturers placed Timpte at an unfair competitive advantage. As a consequence, it had to suspend production of its ''live bottom'' trailer and release approximately 20 percent of its workforce. Timpte argues that Red River has had adequate time to comply with the underride requirement, and that Timpte's system proves that this type of trailer can be equipped with a workable rear underride protection system that meets Federal requirements. It ''strongly objects'' to extending Red River's exemption.

E.D. Entyre & Co. of Oregon, Illinois, filed a similar comment in opposition. It designed a ''live bottom'' trailer with a retractable rear underride guard which it introduced in August 1998. The total engineering and test time spent on this retractable design ''was approximately two man months and the mechanism has a manufacturing cost of approximately $500.'' The company believes that the extension should be denied ''since a solution has been shown to be technically feasible,'' and complying companies have been placed at a competitive disadvantage.

Red River's application was supported by Dan Hill & Associates, Inc., which has been producing ''live bottom'' trailers pursuant to a temporary exemption we gave it in 1998, and Robert J. Crail, Transportation Engineering Consultant. Dan Hill states that it and Red River have dominated the horizontal flow discharge trailer market for the last few decades. In view of this experience, and understanding that Entyre has produced less than 20 complying ''live bottom'' trailers, Dan Hill comments that ''Entyre's lack of experience in the horizontal discharge market [may have] erroneously lead Entyre to believe that it has successfully complied with a very complex issue.'' In any event, Dan Hill further comments that Entyre is a far larger company than it and Red River, with ''considerably more resources to allocate to research and development.'' With respect to Timpte, Dan Hill comments that Timpte does not manufacture a horizontal discharge trailer for the road construction industry and thus does not have the problems associated with the asphalt paver/trailer interface.

Mr. Crail reiterates his previous support of Red River. He has examined one of its trailers and is convinced ''that it will take at least an additional three years for Red River to determine whether it is feasible to manufacture an impact guard for these trailers.'' He believes that the impact of an exemption upon safety will be minimal, given the small number of trailers that would be covered by an exemption and the fact that ''the Live Bottom trailers are used mostly off roads.''

Our Findings and Decision

In granting a temporary exemption, we must find that a manufacturer has made a good faith effort to comply with the standard from which it has requested exemption. While the fact that another manufacturer may have achieved compliance indicates that a particular technological problem is not insoluble, it does not mean that a petitioner has failed to make a good faith compliance effort. It does indicate, however, that, during the period of any renewed exemption, a petitioner should carefully examine these solutions for applicability to its own product. The fact that Timpte and Entyre have commented that their ''live bottom'' trailers comply with Standard No. 224 should alert Red River that an alternative may exist to the prototype design that it began testing in May 1998 and which has disclosed a number of problems. We note that Red River's principal competitor, Dan Hill & Associates, Inc., believes that it will have a complying ''swing-in'' guard by February 1, 2001. For these reasons, we do not believe that Red River has sustained its request for an exemption for a period as long as April 1, 2002, and we are providing one commensurate with the extension granted Dan Hill, until February 1, 2001.

In the absence of extending the exemption, it appears that Red River could not produce trailers that have accounted for over 50 percent of its net sales, with the accompanying dislocation of its work force that this would entail. Given the apparent minimal risk to safety presented by a trailer that spends comparatively little of its life being operated on the public roads (construction trailers) and in which the rear tires can act as a buffer in the absence of an impact guard (agricultural trailer), and the public interest in maintaining full employment, Red River has met its burdens under the statutory procedures.

Accordingly, for the reasons set forth above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 224, and that an exemption would be in the public interest and consistent with the objectives of traffic safety. NHTSA Temporary Exemption No. 98–3 from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection,* applicable to horizontal discharge trailers, is hereby extended to expire on February 1, 2001. That date is slightly more than five years after Standard No. 224 was issued, and NHTSA does not anticipate providing further extensions of exemptions from compliance with Standard No. 224.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

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Ricardo Martinez,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 3)]

Railroad Revenue Adequacy—1998 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On September 9, 1999, the Board served a decision announcing the 1998 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Illinois Central Railroad Company) is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1998, determined to be 10.7% in *Railroad Cost of Capital—1998,* STB Ex Parte No. 558 (Sub-No. 2) (STB served May 17, 1999). In this proceeding, the Board applied the