

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

[Docket No. NHTSA-2001-8827; Notice 4]

Dan Hill and Associates, Inc.; Red River Manufacturing; Decision on Applications for Renewal of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 224

This notice grants the application by Dan Hill and Associates, Inc. ("Dan Hill"), of Norman, Oklahoma, for a renewal of its temporary exemption from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. This notice also defers a decision on a similar renewal petition by Red River Manufacturing ("Red River") of West Fargo, North Dakota. Dan Hill asserted that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Red River argued that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

Notice of receipt of the applications was published on March 31, 2003 (68 FR 15550), and comments solicited from the public.

Dan Hill and Red River have been the beneficiaries of temporary exemptions from Standard No. 224, and renewals of exemptions, from January 26, 1998 to April 1, 2003 (for **Federal Register** notices granting the petitions by Dan Hill, see 63 FR 3784 and 64 FR 49047; by Red River, see 63 FR 15909 and 64 FR 49049; for the most recent grant applicable to both petitioners, see 66 FR 20028). The information below is based on material from the petitioners' original and renewal applications of 1998, 1999, 2001, and their most recent applications.

Dan Hill and Red River filed their petitions at least 60 days before the expiration of their existing exemption. Thus, pursuant to 49 CFR 555.8(e), their current exemptions will not expire until we have made a decision on the current requests.

The Petitioners' Reasons Why They Continue to Need an Exemption

Dan Hill. Dan Hill manufactures and sells horizontal discharge semi-trailers (Models ST-1000, CB-4000, and CB-5000, collectively referred to as "Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is

designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear Impact Guards*. Dan Hill argued that installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional. Paving contractors will be forced to use either competitors' horizontal discharge trailers that comply with Standard No. 224 or standard dump body trucks or trailers which, according to Dan Hill, have inherent limitations and safety risks. In spite of continued exemptions since the effective date of the standard, Dan Hill averred that it has been unable to engineer its trailers to conform.

Dan Hill and Red River jointly filed a petition in March 2001 for rulemaking with NHTSA to amend Standard No. 224 to exclude horizontal discharge trailers. The agency granted this petition on May/June 2003 and will issue a Notice of Proposed Rulemaking in the near future.

Red River. Red River has previously applied for exemptions on the basis that compliance would cause it substantial economic hardship. The company has now applied for an exemption on the basis that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of a nonexempted motor vehicle. Red River believed "petitioning on the basis of equal overall safety ([49 CFR] 555.6(d)) is more appropriate because Red River is now part of a larger family of companies and because the merits of Red River's requested renewal of its exemption under Sec. 555.6(d) are straightforward and clear." Red River referenced its continuing but unsuccessful efforts to develop a means to conform its horizontal discharge trailers to Standard No. 224, and its petition for ameliorative rulemaking, filed jointly with Dan Hill.

Dan Hill's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith to Comply With Standard No. 224

Dan Hill is a small volume manufacturer. Its total production in the 12-month period preceding its latest

petition was 55 units, a substantial decline from the 151 units reported in the petition preceding the current one. In the absence of a further exemption, Dan Hill asserted that the majority of its "work force in the Norman, Oklahoma plant would be laid off resulting in McClain County losing one of its largest single employers." If the exemption were not renewed, Dan Hill's gross sales in 2003 would decrease by approximately \$5,526,522. Its cumulative net income after taxes for the fiscal years 2000, 2001, and 2002 was \$271,058. It projects a net income of \$46,267 for fiscal year 2003.

The **Federal Register** notices cited above contain Dan Hill's arguments of its previous good faith efforts to conform with Standard No. 224 and formed the basis of our previous grants of Dan Hill's petitions. Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It concentrated its efforts between 1998 and 1999 in investigating the feasibility of a retractable rear impact guard, which would enable Flow Boys to continue to connect to pavers. The company examined various alternatives: installation of a fixed rear impact guard, redesign of pavers, installation of a removable rear impact guard, installation of a retractable rear impact guard, and installation of a "swing-up" style tailgate with an attached bumper. Its efforts to conform, from September 1999 until December 2000, involved the design of a swing-in retractable rear impact guard. Its review of its design, by Tech, Inc., showed that this, too, was not feasible. Among other things, Tech, Inc., was concerned that "the tailgate, hinges, and air cylinders will not meet the criteria of the Standard 224—plasticity requirement," and that "the bumper is a potential safety hazard" because if the gate were raised and "a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death." A copy of Tech Inc.'s report has been filed in the docket as part of Dan Hill's 2001 petition. The report also indicated that the costs associated with this design may be cost prohibitive "when trying to win business in a highly competitive, yet narrow marketplace." Having concluded that compliance of horizontal discharge trailers with Standard No. 224 was unattainable, Dan Hill filed the petition for permanent relief through rulemaking, mentioned above.

Red River's Reasons Why Compliance Would Preclude Sale of Its Horizontal Discharge Trailers and Why These Trailers Provide an Overall Level of Safety at Least Equal to That of Nonexempted Trailers

Under 49 U.S.C. 30113(b)(3)(B)(iv), as implemented by 49 CFR 555.6(d), we may grant a temporary exemption of up to two years on finding that compliance with Standard No. 224 "would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles."

A requirement that its horizontal discharge trailers comply with Standard No. 224 would preclude their sale, according to Red River. The petitioner discusses a range of options using fixed and retractable guards, concluding that "the design and manufacturing problems associated with the development of a retractable rear impact guard for construction horizontal discharge trailers are enormous—perhaps, even insurmountable."

Nonexempted trailers are equipped with rear underride guards. Red River's horizontal discharge trailers will not be equipped with these guards, but, in Red River's opinion, an equivalent level of safety exists because the geometry of these trailers is similar to that of "wheels-back" trailers that are specifically exempted from Standard No. 224. Further, if measurements were based "on the traditional dry van approach, and a plane was passed through the rear door and rear frame of the Red River trailers, the plane would be less than six inches beyond the rear tire."

In addition, according to Red River, the design affords protection against passenger compartment intrusion in rear-end collisions in that the maximum forward movement of a motor vehicle involved in a rear-end collision is 24 inches; it is not likely that any part of the trailer would strike the colliding vehicle's windshield.

Red River noted that the trailer beds of end dump trailers have to be raised in order for their cargo to be off-loaded by gravity, contrasted with the more controlled discharge of cargo by horizontal discharge trailers. Further, use of end dump trailers is problematic on uneven terrain or where overhead obstacles such as bridges and power lines are present.

For all these reasons, Red River submitted that its horizontal discharge trailers have an overall level of safety at least equal to that of end dump trailers that comply with Standard No. 224.

Arguments Presented by Dan Hill and Red River Why a Renewal of Their Temporary Exemptions Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill. Dan Hill previously argued that an exemption would be in the public interest and consistent with traffic safety objectives because, without an exemption, "within a short time, production of the trailer will cease entirely. This would mean a significant loss to many people in the state, including shareholders, lenders, employees, families, and other stakeholders." The amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens. Dan Hill also cited its efforts before 2001 to enhance the conspicuity of Flow Boy trailers by: (1) Adding "High intensity flashing safety lights; (2) Doubling the legally required amount of conspicuity taping at the rear of the trailer; (3) [adding] Safety signage; (4) [adding] Red clearance lights that normally emit light in twilight or night-time conditions; and (5) Installation of a rear under-ride protection assembly 28" above the ground and 60" in width." We assume that these features continue to be offered on its trailers.

With respect to the current petition, Dan Hill concluded that "the general public benefits from better and improved roads as a result of the horizontal discharge method of delivering and discharging hot mix asphalt and other road building materials." It also asserted that "contractors benefit from the discharge system because they operate more efficiently, [and] experience greater safety records which results in lower costs." Such trailers "present a safe alternative to the standard dump body truck or trailer" because "the location of the rear-most axle of the Flow Boy causes its rear tires to act as a buffer and limits the maximum forward movement of a motor vehicle involved in a rear-end collision with a horizontal discharge trailer * * *"

Red River. Red River argued that, "because of the functionality and safety of Red River's construction horizontal discharge trailers, the exemption requested here would be in the public interest."

According to Red River, an exemption would be consistent with considerations of safety as well. The trailers spend a large portion of their operating time off the public roads. Further, "typical hauls are short and have a minimal amount of highway time when compared with other semi-trailers." As noted above,

Red River knows of no rear end collisions involving this type of trailer that has resulted in injuries.

No comments were received on the applications in response to the **Federal Register** notice.

Dan Hill's arguments are as cogent and relevant today as they have been in the past, and continue to support our findings that to require compliance would create substantial economic hardship to a manufacturer which has tried in good faith to comply with Standard No. 224, and that a temporary exemption would be in the public interest and consistent with the objectives of traffic safety. Accordingly, we hereby extend NHTSA Temporary Exemption No. 2001-3 from Standard No. 224 for a period of three years, to expire on May 1, 2006.

Red River's petition for extension is based on a different argument than that which supported its previous exemption: That in the absence of an exemption, it will be otherwise unable to sell a motor vehicle whose overall level of safety is at least equal to that of a complying vehicle. In our opinion, manufacturers of these trailers appear to have demonstrated that the design of their trailer is incompatible with the requirements of Standard No. 224, and that it is impracticable to engineer a horizontal discharge trailer that meets both the letter of the standard and the mission needs of the trailer. The decision to be made in a final rule whether or not to exclude horizontal discharge trailers from Standard No. 224 will include a weighing of relevant safety factors. It seems wisest, therefore, to postpone a discussion of safety considerations and a conclusion regarding them until the issuance of the agency's decision notice responding to the NPRM. Accordingly, we are making no findings on Red River's application and taking no further action at the present time regarding it. Red River's exemption will continue until the effective date of any amendment of Standard No. 224 to exclude horizontal discharge trailers. If the standard is not so amended, we shall proceed to make a decision on the basis of its 2003 petition and such information that we receive during the rulemaking process that may be relevant to such a decision.

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

Issued on May 19, 2003.

Jacqueline Glassman,
Chief Counsel.

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