

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."

With respect to the current petition, Dan Hill concludes 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 asserts 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 argues 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.

How You May Comment on the Applications by Dan Hill and Red River

If you would like to comment on the applications, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL-401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL-401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: April 30, 2003.

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

Issued on March 26, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03-14758]

Grant of Applications of Two Motorcycle Manufacturers for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by two motorcycle manufacturers for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The applicants assert that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(iv).

The manufacturers who have applied for a temporary exemption are Malaguti USA, Miami, Florida, on behalf of Malaguti S.p.A. of Bologna, Italy, and Yamaha Motor Corporation USA of Cypress, California. Malaguti's petition covers four vehicles it describes as "motor scooters:" the Phantom 200cc, the Madison 200cc and 400cc, and the

B-2 500cc. Yamaha seeks relief for its Vino 125 (125cc) machine.

Because the safety issues are identical we have decided to address both the petitions in a single notice. Further, given the opportunity for public comment on these issues in the years 1998-2002 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on these petitions. See, e.g., most recently the grant of applications by five motorcycle manufacturers (67 FR 62850).

The Reason Why the Applicants Need a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Malaguti and Yamaha petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (*i.e.*, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturers will be unable to sell the motorcycle models named above because the vehicles would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioners have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motor vehicle for the following reasons. All vehicles for which petitions have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles