

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.