

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.

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[FR Doc. 03-13064 Filed 5-23-03; 8:45 am]

BILLING CODE 4910-59-P