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.

[FR Doc. 03–7655 Filed 3–28–03; 8:45 am]

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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

can be operated without requiring special training or practice.

Malaguti stated that it has ''independent U.S. lab test data by an NHTSA approved lab as well as European Union TUV testing, and Malaguti factory testing data proving that the phantom 200cc, Madison 200cc, Madison 400cc, and B–2 500cc motor scooters exceed the requirements in FMVSS No. 123.'' It asserted that all four models ''meet the braking requirements of ECE 93/14 as well.''

Yamaha identified itself as ''the importer and distributor of Yamaha brand motor vehicles produced by a host of Yamaha affiliates throughout the world.''

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

In Malaguti's opinion, its scooters provide a ''much more natural braking response by the rider than non-exempted vehicles.'' The exemption would also be in the public interest ''because Malaguti is promoting environmentally clean and efficient urban transportation.''

Yamaha simply concludes that its ''request is consistent with the intent of the National Traffic and Motor Vehicle Safety Act.''

NHTSA's Decisions on the Applications and Request

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

Malaguti's public interest and safety arguments are similar to those of other petitioners, which we have found sufficient, regarding braking response and the effect of an exemption in enhancing the environment and urban transportation. We note that Yamaha made no public interest argument or provided support for its conclusion that an exemption would be consistent with the purposes of the Vehicle Safety Act. However, the exemption requested is not one of first impression, and the arguments of other petitioners support public interest and safety findings applicable to the Yamaha Vino as well.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. Malaguti S.p.A. is hereby granted NHTSA Temporary Exemption No. EX03–1 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption covers only the Phantom 200cc, Madison 200cc, Madison 400cc, and B–2 500cc models and expires on March 1, 2005.

2. Yamaha Motor Corporation USA is hereby granted NHTSA Temporary Exemption No. EX03–2 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption covers only the Vino 125 model and expires on March 1, 2005.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on March 26, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–7654 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646]

Rail Rate Challenges in Small Cases

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on Wednesday, April 16, 2003, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of Board processing of rail rate challenges that are not suitable for handling under the Board's constrained market pricing procedures. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, April 16, 2003. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 8, 2003. Each speaker should also file with the Board his/her written testimony by April 11, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and testimony should refer to STB Ex Parte No. 646, and should be sent to: Surface Transportation Board, Attn: STB Ex Parte No. 646, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Beryl Gordon, (202) 565–1616. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, regarding rail rate challenges in small cases to be considered by the Board. This hearing will provide a forum for the oral discussion of any proposals that interested persons might wish to offer for handling small cases involving a challenge to the reasonableness of rates charged by a rail carrier. The Board is also interested in participants' views on how small rate cases should be defined or identified.

Date of Hearing

The hearing will begin at 10:00 a.m. on Wednesday, April 16, 2003, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate

Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 8, 2003.

Testimony

Each speaker should file with the Board his/her written testimony by April 11, 2003.

Paper Copies

Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (as soon as possible but no later than April 8, 2003) and testimony (by April 11, 2003).