

but received no comment in response to the publication.

#### e. Final Decision

We are granting Beall's petition for exemption. The manufacturer satisfies the criterion that its total motor vehicle production in its most recent year of production does not exceed 10,000. In its petition, Beall noted that it produced 79 vehicles in the 12 months period prior to requesting the exemption, of which 64 were dump body type trailers that would be covered by the requested temporary exemption. Based on this, we conclude that Beall is eligible for the requested exemption.

The agency may grant such a petition if it finds that the petitioner would suffer financial hardship if an exemption were not granted, that the petitioner has tried in good faith to comply with the standard, and that an exemption would be in the public interest and consistent with the purposes of the Vehicle Safety Act.

The fundamental problem which is causing Beall to be unable to fully comply with the rear impact requirements relates to the design and function of the vehicle. As stated in the petition for exemption, the bodies at issue are raised as to discharge out of the rear. Therefore, they require the area to the rear of the vehicle, where the rear impact protection material would ordinarily be located, to be clear enough for the discharge to proceed smoothly. Despite significant expenditures of capital and labor in pursuit of compliance, Beall was unable to bring its vehicle into compliance. While engineering research and possible alternative solutions are being considered, the company currently requires a temporary exemption in order to sell its vehicles in their current state.

Beall has shown the necessary aspects to receive a temporary exemption on the basis of financial hardship. These include demonstrated financial hardship, good faith efforts to comply with the standard, and a showing that receiving the exemption would be in the public interest. We discuss these below.

First, Beall's financial statements show substantial financial hardship. As stated above, Beall estimates that it could lose substantial money if it is unable to sell its dump body trailers. Furthermore, given the economic downturn in recent months, we believe that it is likely that Beall's economic condition has deteriorated further since it originally submitted its petition.

Second, the petitioner has shown a good faith effort to comply with the standard. Again, as stated above, the petitioner has undertaken substantial

research and design efforts in order to try and comply with the standard. It has worked on designing internal solutions, partnered with the Mechanical Engineering department at Montana State University, and tried to find third-party suppliers that could design equipment that could overcome the formidable design challenges. It has also searched for alternative means of compliance, such as plastically deforming devices and mounting the box higher on the vehicle. Finally, it continues to work on design changes that could allow it to comply with the full FMVSSs.

Third, we believe that the public interest is served by granting this exemption. There is a problem in practicability in complying with the requirements of the standard. This is a trailer that requires a controlled release of the materials from the dump body, which complicates the ability to install a rear impact protection system that does not interfere with the trailer's operation. Additionally, these trailers are used primarily in road construction applications, thereby removing them generally from the flow of traffic (although they may still be used in some in-traffic situations, such as transport to and from road construction sites). Coupled with the very low number of vehicles expected to be produced during the temporary exemption, the negative safety impact of the exemption will be insignificant. In contrast, permitting this type of vehicle to be sold to the public serves the public interest.

*Public Interest Considerations.* Dump body trailers are used primarily for road-paving and other construction tasks, and frequently discharge road material via the rear of the vehicle. In considering whether granting a petition is in the public interest, NHTSA also considers the impact of not granting the exemption on consumer choice and the economy, as well as the relative impact of the exemption on safety. Beall states that the failure to receive an exemption could cause the closure of the Pioneer Truckweld operation and the layoff of 38 employees in U.S. operations. Given the relatively few companies that produce these sort of specialized trailers, we believe that the exemption would have benefits with regard to enhancing consumer choice and facilitating construction projects. Also, we note again that given the relatively low number of vehicles produced by the petitioner over its history, and the fact that they are primarily used in road construction tasks as opposed to being driven in the flow of traffic, the safety impact of the lack of required rear

impact protection equipment is likely to be relatively small.

In consideration of the foregoing, we conclude that compliance with the requirements of FMVSS No. 224, *Rear Impact Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Beall Corporation is granted NHTSA Temporary Exemption No. EX 09-03, from FMVSS No. 224. The exemption covers only dump body trailers manufactured by the company. The exemption shall remain for three years as indicated in the **DATES** section of this notice.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: August 14, 2009.

**Ronald L. Medford,**

*Acting Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in Ohio

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. § 139(J)(1). The actions relate to a proposed highway project, the Interstate Routes 70 and 71 and interchanges, in the City of Columbus, Franklin County, State of Ohio (FRA-70-8.93, Project Identification Number 77369). Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. § 139(J)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 16, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Ryder, Program Delivery Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215; telephone: (614) 280-6849; e-mail: [Roger.Ryder@fhwa.dot.gov](mailto:Roger.Ryder@fhwa.dot.gov); FHWA Ohio Division Office's normal business hours are 8 a.m. to 4:30 p.m. (eastern time). You may also contact Mr. Ferzan Ahmed, Ohio Department of Transportation, 400 E. William Street, Delaware, Ohio 43015; telephone: (740) 833-8367; e-mail: [Ferzan.Ahmed@dot.state.oh.us](mailto:Ferzan.Ahmed@dot.state.oh.us).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following major highway improvements in the State of Ohio: To reconstruct the I-70/I-71/SR 315 freeway system known as Columbus' South Innerbelt and involves changing the I-70 and I-71 lanes assignments, adding additional through lanes on I-70 and I-71 and reconfiguring the I-70/I-71/SR 315 west interchange and the I-70/I-71 east interchange. The improvements will also consolidate access to the downtown area by moving ramps to the periphery of the I-70/I-71 overlap section and compelling motorists traveling to and from downtown Columbus to use one-way urban corridor streets. Motorists will access downtown Columbus via one-way urban corridor streets that run parallel to the north side of the I-70/I-71 overlap and along both sides of I-71. These streets collect traffic from the freeway to distribute it throughout the downtown. The Mound Street corridor will be used for westbound traffic along the I-70/I-71 overlap and the Fulton Street corridor for eastbound traffic. Along I-71 traffic will utilize Lester Drive and Willow Alley for southbound traffic while northbound traffic will use a new urban corridor street parallel to Parsons Avenue. The improvements will provide for three (3) through lanes in each direction for I-70, two (2) through lanes in each direction for I-71 and the elimination of the weaving between interstate routes in the overlap section by keeping the I-70 lanes to the inside and bringing the I-71 lanes along the outside. The project length is approximately 8.7 miles.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on January 14, 2009, in the Finding of No Significant Impact (FONSI) issued on July 8, 2009, and in other documents in the FHWA

administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above. The EA and FONSI can be viewed at ODOT District 6 Office in Delaware, Ohio and on ODOT's Web site at <http://www.7071study.org>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401-7671(q).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)-300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401-406; Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001-4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources;

E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on August 13, 2009.

**Patrick A. Bauer,**

*Acting Division Administrator, Columbus, Ohio.*

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

*Funding Opportunity Title:* Notice of Funds Availability (NOFA) inviting applications for the FY 2010 Funding Round of the Native American CDFI Assistance (NACA) Program.

*Announcement Type:* Announcement of funding opportunity.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 21.020

**DATES:** Applications for Financial Assistance (FA) and/or Technical Assistance (TA) awards through the FY 2010 Funding Round of the NACA Program must be received by 5 p.m. Eastern Time (ET), October 7, 2009.

*Executive Summary:* Subject to funding availability, this NOFA is issued in connection with the FY 2010 Funding Round of the NACA Program (the FY 2010 Funding Round). The NACA Program is administered by the Community Development Financial Institutions Fund (the Fund).

#### I. Funding Opportunity Description

A. Through the NACA Program, the Fund provides: (i) FA awards to CDFIs that have at least 50 percent of their activities directed toward serving Native American, Alaskan Native, and/or Native Hawaiian Communities (Native CDFIs) that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted