

Issued on: March 7, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0029]

Beall Corporation; Receipt of Petition for Renewal of Temporary Exemption From FMVSS No. 224

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of a petition for renewal of a temporary exemption from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Beall Corporation, d/b/a Pioneer Truckweld has petitioned the agency for renewal of a temporary exemption from certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 224, *Rear Impact Protection*. This notice of receipt of an application for renewal of a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than April 12, 2013.

FOR FURTHER INFORMATION CONTACT:

William H. Shakely, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41-318, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- **Web Site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on "Help and Information" or "Help/Info."

- **Fax:** 1-202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** 1200 New Jersey Avenue SE., West Building Ground

Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. Chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard 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 manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"¹ the statute also expressly provides for renewal of an exemption on reapplication. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters

¹ 49 U.S.C. 30113(b)(1).

provided in the statute. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard.

Finally, we note that under 49 CFR 555.8(e), "If an application for renewal of a temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal." The subject petition for renewal has been submitted by the deadline stated in 49 CFR 555.8(e).

II. Rear Impact Protection Requirements

FMVSS No. 224, *Rear Impact Protection* requires most trailers and semitrailers weighing 10,000 pounds or more to be fitted at the rear with a rear impact (underride) guard meeting the requirements of FMVSS No. 223, *Rear Impact Guards*. The rear impact guard is attached to the rear of the trailer (within 12 inches (305 mm) of the rear extremity of the trailer or semitrailer) and acts to prevent a light vehicle from sliding under the trailer chassis in a crash.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Beall Corporation, d/b/a Pioneer Truckweld (Beall) has submitted a petition requesting renewal of its temporary exemption from the rear impact protection requirements of FMVSS No. 224. A copy of the petition has been placed in the docket for this notice.² The basis for the petition is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Beall has requested a renewal of its exemption for a period of three years.

Beall is an Oregon corporation that manufactures trailers. The Pioneer Truckweld operation manufactures dump body trailers. In a **Federal Register** document dated August 20, 2009, Beall was granted a temporary exemption from the rear impact protection requirements of FMVSS No. 224 for dump body trailers.³ The exemption was granted for a period from the date of publication until

August 20, 2012. The petition for renewal states that the Pioneer Truckweld operation manufactured five trailers in the 12-month period prior to filing the petition, all of which were affected by the exemption.

Beall states that the denial of the requested exemption will result in substantial economic hardship. According to the statements of the petitioner, the denial of the exemption could cost the company 40 percent of its projected sales during the period covered by the exemption. Additionally, Beall asserts that if the exemption is denied, it would lose the entire \$800,000 goodwill investment associated with the 2001 purchase of Pioneer Truckweld. Beall states that these effects could lead to the closure of the Pioneer Truckweld operation and the laying off of its 17 employees.

Beall also provides specific financial information for the years 2009 through 2011, along with projections with and without an exemption. This information has been placed in the docket for this notice.⁴

In explaining why it has not been currently able to meet the rear impact protection requirements, Beall points to a number of technical challenges associated with designing a compliant rear impact protection system. Namely, it states that a device designed to satisfy FMVSS No. 224 for dump body applications must also be capable of moving clear, so that the hopper of the paving machines can pass through the space initially occupied by the rear impact protection device. It argues that if the paving machine cannot position itself underneath the dump body, the asphalt will spill out as the dump body raises and unloads the asphalt. The petitioner states that it has been pursuing the design of acceptable systems in a joint project with the Mechanical Engineering Department at Montana State University, using techniques such as finite element analysis and physical testing. In addition, it claims to have designed acceptable guards for a number of non-asphalt paving applications.

Beall states it has considered several alternative means of compliance. These include plastically deforming devices and hinged and retractable devices. However, the petitioner believes that there are a number of problems with regard to these solutions. First, due to clearance issues, space for retractable

devices is not readily available, and redesign of the vehicle to accommodate such devices could result in decreased stability. Second, the petitioner states that the asphalt paving surface has the effect of rendering these sorts of devices unusable over time. Finally, Beall notes that trailers could be operated with these devices in the retracted position, resulting in no safety benefits. Beall indicates that it has been unable to find a third-party manufacturer that has designed a device that would perform in a paving application.

Beall states that under a temporary exemption, it would continue to pursue a compliant rear impact protection device that would meet the current standards, including attachment and methods of maintenance to ensure proper function while in service. The petitioner states that it will continue to work with other resources available to the paving industry to develop an acceptable solution.

Beall believes that it would be in the public's interest to allow the Pioneer Truckweld operation to manufacture the equipment required to improve and expand the road building effort in the western United States while an intense effort is maintained by Pioneer Truckweld to design an acceptable underride device that will perform well in a paving operation.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete. The agency has tentatively concluded that the petition from Beall is complete. The agency has not made any judgment on the merits of the petition, and is placing a copy of the petition and supporting information in the docket.

The agency seeks comment from the public on the merits of Beall's petition for renewal of a temporary exemption from FMVSS No. 224. We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

(Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.95 and 501.8)

Issued on: March 4, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

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² To view the petition, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.

³ 74 FR 42142 (Aug. 20, 2009).

⁴ Although the petition indicates that Beall requested confidential treatment of this information, Beall subsequently informed the agency by email that it would not be requesting such treatment. This email has been placed in the docket.