motorcycle brake systems have continued to evolve and improve since Standard No. 122 was adopted in 1972, and that one area of improvement is brake lever force which has gradually been reduced. However, the five-pound minimum specification ''is preventing further development and improvement'' of brake system characteristics. This limit, when applied to the CBR1100XX ''results in an imprecise feeling when the rider applies low-level front brake lever inputs.''

On November 5, 1997, Honda submitted a petition for rulemaking to amend Standard No. 122 to eliminate the minimum brake actuation force requirement. We granted Honda's rulemaking petition on March 16, 1999. Honda interprets this action as ''signifying that the agency believes a further review of the issues raised in the petition appears to have merit.''

The CBR1100XX is equipped with Honda's Linked Braking System (LBS) which is designed to engage both front and rear brakes when either the front brake lever or the rear brake pedal is used. The LBS differs from other integrated systems in that it allows the rider to choose which wheel gets the majority of braking force, depending on which brake control the rider uses.

According to Honda, the overall braking performance remains unchanged from a conforming motorcycle. Exempted CBR1100XX vehicles meet ''the stopping distance requirement but at lever forces slightly below the minimum.''

Honda's Reasons Why a Temporary Exemption Is in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Honda argued in 1997 that granting an exemption would be in the public interest and consistent with objectives of traffic safety because it

> * * * should improve a rider's ability to precisely modulate the brake force at low-level brake lever input forces. Improving the predictability, even at very low-level brake lever input, increases the rider's confidence in the motorcycle's brake system.

Honda repeated those arguments in 1998 and 1999. It has asserted that a renewal allows further refinement and development of the LBS. It believes that the LBS has ''many desirable characteristics—especially during emergency braking—that could reduce the number of rear brake locks-up crashes.''

Our Findings in Support of Granting Honda's Application

We find persuasive the same reasons supporting granting Honda's application as we did before. As we said in granting Honda's initial petition in 1997 (62 FR 52372):

> The distinctive motorcycle brake system setting which Honda seeks to evaluate in the United States is a ''new motor vehicle safety feature'' that can be evaluated in the field. * * * Further, the level of safety provided should be at least equal to the level provided by Standard No. 122 * * * Honda * * * asserts that the lower force to modulate the brake lever would improve the rider's control over the brake force. This improved control, and thus predictability over the brake's function, would also improve the rider's confidence in the brakes and motorcycle.
>
> NHTSA concurs with Honda that new technology that may lead to greater rider control over the brake force thus resulting in reduced stopping distances and better crash avoidance is in the public interest and consistent with efforts to improve traffic safety.

And we conclude that a renewal should allow further refinement and development of the LBS.

In consideration of the foregoing, it is hereby found that an 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 Standard No. 122. It is also hereby found that the renewal of the temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, NHTSA Temporary Exemption No. 97–1 is extended to, and will expire on, September 1, 2000.

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

Issued on August 9, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–20961 Filed 8–12–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–4357; Notice 2]

Aprilia, S.p.A.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

We are granting the application by Aprilia S.p.A. of Noale, Italy, for a temporary exemption from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The basis of the request was 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)(B)(iv).

We published notice of receipt of the application on August 28, 1998, and provided an opportunity for comment (63 FR 46097).

Paragraph S5.2.1 of Standard No. 123 requires that, if a motorcycle is equipped with rear wheel brakes, those brakes be operable through the right foot control, though the left handlebar is a permissible brake control location for motor driven cycles (Item 11, Table 1). Aprilia would like to use the left handlebar as the control for the rear brakes of its Leonardo 150 motorcycle, whose 150 cc engine produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The Aprilia can attain speeds up to 106 km/h (65.7 mph). The frame of the Leonardo ''has not been designed to mount a right foot operated brake pedal, which is a sensitive pressure point able to apply considerable stress to the frame, causing failure due to fatigue * * *.'' Aprilia ''intends to begin sales into the United States for market testing purposes during the 1999 sales year and would like to present a model line including the Leonardo 150 motorcycle.'' Absent an exemption, it would be unable to do so because the vehicle would not fully comply with Standard No. 123. It requested an exemption for calendar years 1999 and 2000.

Aprilia argued that the overall level of safety of the Leonardo 150 equals or exceeds that of a non-exempted motor vehicle for the following reasons. The Leonardo 150 is 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.'' Thus, the Leonardo 150 can be operated without requiring special training or practice. In response to NHTSA's justification for standardization of motorcycle controls, Aprilia argued that ''any driver will not hesitate when confronted with an emergency'' because ''the use of a left hand lever for the rear brake is highly 'intuitive'' and easy to use * * *.''

Admitting that ''the human foot can apply much more force than can the hand,'' Aprilia believes that ''with the modern hydraulically activated disc brakes used on the Leonardo 150, more than enough brake actuation force is available from the hand of even the smallest rider.'' Further, ''it takes much longer for the rider's foot to be placed over the pedal, and the foot force applied, than it does for the rider to reach and squeeze the hand lever.''

Aprilia argued that ''reducing this ''latency time'' to a minimum, especially for inexperienced riders, has obvious safety benefits.'' Finally, the hand lever reduces the possibility of loss of control because of rear wheel locking in an emergency braking situation because of ''the increased sensitivity to brake feedback with the hand lever.''

Aprilia pointed out that European regulations allow motorcycle manufacturers the option of choosing rear brake application through either a right foot or left handlebar control, and that Australia permits the optional locations for motorcycles of any size with automatic transmissions.

An exemption would be consistent with objectives of motor vehicle safety, Aprilia argued, because it believes that its disc brake system provides ''better resistance to fade and better performance under wet conditions.'' The design of the vehicle ''has been tested by long use in Europe and the rest of the world'' without safety concerns being raised. An exemption would be in the public interest because the emissions ''of the small engines have been demonstrated to be lower than alternative means of transportation such as large motorcycles or automobiles.'' The introduction of ''this type of motor vehicle will provide the American consumer with a broader range of choice of low-cost transportation.''

NHTSA received one comment on Aprilia's application, from Peugeot Motocycles of France, which supported it.

In order to grant Aprilia's application, NHTSA must find that an exemption is consistent with the public interest and motor vehicle safety (49 U.S.C. Sec. 30113(b)(3)(A)), and that compliance with the brake control location requirement of Standard No. 123 would prevent Aprilia from selling a motorcycle with an overall safety level at least equal to the safety level of a nonexempt motorcycle (49 U.S.C. Sec. 30113(b)(3)(B)(iv)).

Aprilia has correctly identified NHTSA's principal area of concern: the standardization of motorcycle controls. In adopting Standard No. 123 in April 1972, effective September 1, 1974, the agency justified standardization of motorcycle controls as a means of minimizing operator error in responding to the motoring environment, saying that ''a cyclist, especially the novice and the cyclist who has changed from one make of machine to another, must not hesitate when confronted with an emergency'' (37 FR 7207).

Accordingly, after the close of the comment period, we asked Aprilia to comment on our concern that a left hand lever-operated rear brake may contribute to unfamiliarity and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with conventionally configured controls. At the request of Aprilia's U.S. sales subsidiary, Aprilia U.S.A. Inc. of Woodstock, Georgia, Carter Engineering of Franklin, Tennessee, prepared a report on ''Motorscooter Braking Control Study'' (Report No. CE–99–APR–05, May 1999) comparing braking response times of riders using the left hand control of the Leonardo 150 and the right foot control of the Yamaha XC–125 Riva. We have placed a copy of this report in the docket. Aprilia U.S.A. comments that ''[o]verall, the test subjects'' reaction times on the Leonardo were approximately 20% quicker than their reaction times on the conventional motorcycle.'' Aprilia believes that ''a less complex braking arrangement like that of the Leonardo will improve rider reaction in an emergency situation.'' We interpret the report as indicating that a Leonardo rider's braking response is not likely to be degraded by the different placement of the brake controls, thus directly addressing and meeting our safety concern.

With respect to the public interest and consistency with objectives of motor vehicle safety, the available information suggests that Aprilia's request to operate the rear brake with the left hand instead of the right foot may not degrade the rider's braking response. By allowing exempted vehicles to be sold on a temporary basis for two years, it will be possible for us to gather data on operators' experience with this alternative rear brake control. This information would allow us to make a more informed decision about locations for motorcycle brake controls.

In consideration of the foregoing, it is hereby found that to require compliance with Standard No. 123 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. It is further found that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Aprilia, S.p.A. is hereby granted NHTSA Temporary Exemption No. EX99–9 from the requirement 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 applies only to the Leonardo 150 and will expire on July 1, 2001. 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on: August 9, 1999.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Preemption Determination No. PD–15(R); Docket No. RSPA–97–2968 (PDA–17(R))]

Public Utilities Commission of Ohio Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

PETITIONERS: William E. Comley, Inc. (WECCO) and TWC Transportation Corporation (TWC).

STATE LAWS AFFECTED: Ohio Admin. Code § 4901:2–05–02.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: RSPA affirms its March 29, 1999 determination that there is insufficient evidence that the Public Utilities Commission of Ohio (PUCO) has applied or enforced requirements governing the transportation of hypochlorite solutions in any different manner than provided in the HMR.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

WECCO and TWC applied to RSPA for an administrative determination that Federal hazardous material transportation law preempts an alleged requirement of the State of Ohio, as supposedly applied and enforced by PUCO, with respect to cargo tank motor vehicles used to transport hypochlorite solutions. According to these two companies, PUCO brought enforcement cases against them based on their use of a non-DOT specification cargo tank motor vehicle to transport hypochlorite