

*Notice of Petition Published at:* 67 FR 48701 (July 25, 2002).

*Vehicle Eligibility Number:* VSP-389.

4. *Docket No. NHTSA-2002-12732*

*Nonconforming Vehicles:* 1997-2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002.

*Substantially similar U.S.-certified vehicles:* 1997-2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002.

*Notice of Petition Published at:* 67 FR 48700 (July 25, 2002).

*Vehicle Eligibility Number:* VSP-390.

5. *Docket No. NHTSA-2002-13333*

*Nonconforming Vehicle:* 1997 BMW 850 Series passenger cars.

*Substantially similar U.S.-certified vehicle:* 1997 BMW 850 Series passenger cars.

*Notice of Petition Published at:* 67 FR 59593 (September 23, 2002).

*Vehicle Eligibility Number:* VSP-396.

6. *Docket No. NHTSA-2002-13382*

*Nonconforming Vehicles:* 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.

*Substantially similar U.S.-certified vehicles:* 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.

*Notice of Petition Published at:* 67 FR 62521 (October 7, 2002).

*Vehicle Eligibility Number:* VSP-397.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 03-14196]

#### Grant of Application of Suzuki Motor Corp. for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Suzuki Motor Corporation of Japan (submitted by American Suzuki Motor Corporation) for a temporary exemption of two years for its AN 400 scooter, from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The applicant asserts that Acompliance 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. Sec. 30113(b)(3)(iv).

The safety issues raised by this petition are identical to those raised in previous petitions by Suzuki and other manufacturers. Further, given the opportunity for public comment on these issues in the years 1998-2001 (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 a decision on this petition. See, e.g., Aprilia and Honda (66 FR 59519) and Aprilia (65 FR 1225).

#### The Reason Why the Applicant Needs 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. Suzuki 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 manufacturer will be unable to sell the AN 400 because the vehicle would not fully comply with Standard No. 123.

#### Arguments Why the Overall Level of Safety of the Vehicle to be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioner has argued that the overall level of safety of the AN 400 equals or exceeds that of a non-exempted motor vehicle, for the following reasons. The vehicle 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, and the vehicle can be operated without requiring special training or practice.

Suzuki informed us that its AN 400 "can easily meet the braking performance requirements in FMVSS 122," and enclosed a test report dated August 26 and 27, 2002, in support.

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

Suzuki argued that the level of safety of the AN 400 is at least equal to that of vehicles certified to meet Standard No. 123. In its opinion, scooters like the AN 400 "are of interest to the public [as] evidenced by . . . the favorable public comment on [similar] exemption requests and the number of scooters sold under the granted exemptions."

#### NHTSA's Decision on the Application

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motorscooters with more than 5 hp, the petitioner will be unable to sell its AN 400 if it does 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 by Suzuki, Aprilia, Honda, and others, 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.

Suzuki's argument that an exemption would be in the public interest because of the comments in support of previous exemption requests for similar scooter-type vehicles is a valid one, absent any data indicating that the overall level of safety is not at least equal to that of complying vehicles.

In consideration of the foregoing, we hereby find that the petitioner has met their burden of persuasion that to require compliance with Standard No. 123 would prevent it 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, Suzuki Motor Corporation is hereby granted NHTSA Temporary Exemption No. EX02-3 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 brakes be operable through the right foot control. This exemption applies only to the Suzuki AN 400, and will expire on December 1, 2004. (49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on January 2, 2003.

Jeffrey W. Runge,  
Administrator.

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