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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03-16170]

Grant of Application of Motive Power Industry Co., Ltd. for Temporary Exemption from Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Motive Power Industry Co., Ltd., ("Motive Power") of Chang-Hwa Hsien, Taiwan, R.O.C., for a temporary exemption from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard (FMVSS) No. 123 *Motorcycle Controls and Displays*. Motive Power asserted 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).

Given that NHTSA has provided the opportunity for public comment on a number of petitions by manufacturers of similar vehicles 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 as those earlier petitions is not likely to result in any substantive submissions, and that we may proceed to a decision on this petition. See, e.g., the grant of applications by five motorcycle manufacturers (67 FR 62850).

The Reason Why the Applicant Needs a Temporary Exemption

Through its designated agent and United States Distributor, Cosmopolitan Motors Inc. of Hatboro, Pa., Motive Power has applied for an exemption for three models "of scooter configuration," identified as the My BuBu 100: P100DA; My BuBu 125: PA125DA; and T-Rex 150: CP 150D. These motor vehicles are defined as "motorcycles" (49 CFR 571.3(b)) and must comply with all FMVSS that apply to motorcycles, including FMVSS No. 123.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of FMVSS 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. Motive Power petitioned to use the left handlebar as the control for the rear brakes of three of its motorcycles whose engines produce more than 5 brake horsepower. It describes the vehicles as

incorporating "a typical step-through "scooter" floorboard platform without the conventional stationary frame mounted motorcycle foot pegs." This configuration does not incorporate "and would not support a brake pedal, the pedal pivot, hydraulic components or cable linkage and stresses associated with a foot actuated rear brake control." Redesigning the scooters to comply with the rear brake control location requirement would destroy their appeal, in Motive Power's opinion, "making them non-competitive in any market." Absent an exemption from FMVSS No. 123, therefore, Motive Power asserted that it will be unable to sell in the United States the scooter models named above.

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, Motive Power has argued that the overall level of safety of the motorcycles covered by its petition is at least equal to that of a non-exempted motor vehicle for the following reasons. The three scooter models covered by the petition are equipped with automatic transmissions and have the rear brake control located on the left handlebar, "as is typical for scooters extensively used throughout the world." According to Motive Power, the location of all controls is identifiable and accessible, and eliminating the left hand operated clutch lever, the left foot operated gearshift lever and the right foot operated rear brake control "results in greatly simplified operation."

In addition, Motive Power represented that these models meet the brake stopping distance requirements of FMVSS No. 122, Motorcycle Brake Systems, and enclosed copies of tests, which have been placed in the docket with the petition.

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

Motive Power argued that "scooters like these are of significant and growing interest to the public," as evidenced by the number of exemption petitions NHTSA has received and granted for this type of vehicle.

NHTSA's Decision on the Application.

It is evident that, unless FMVSS No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, Motive Power will be unable to sell its motor scooters in the United States if it does not receive a temporary exemption from