

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 13, 2006.

**David I. Maurstad,**

*Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

#### Federal Motor Vehicle Safety Standards; Definition of "Motorcycle"; Denial of Petition for Rulemaking

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking from GG Quad North America requesting that NHTSA redefine the term "motorcycle" so that the vehicle it seeks to import and sell, a four-wheeled vehicle with a motorcycle-like body, would be classified as a motorcycle and thus be subject to the Federal motor vehicle safety standards (FMVSSs) for motorcycles. Currently, the petitioner's vehicle is classified as a passenger car. Since the initial FMVSSs were issued in 1967, the term "motorcycle" has been defined to exclude motor vehicles designed to travel on four wheels in contact with the ground.

NHTSA is denying the petition because the petitioner has not shown that redefining "motorcycle" to include the petitioner's vehicle would be consistent with the safety purposes of the National Traffic and Motor Vehicle Safety Act. Denial of the petition means that the petitioner's vehicle will remain classified as a passenger car. Before it can be imported, offered for sale or sold in the United States, it must meet all FMVSSs applicable to that type of motor vehicle.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Ms. Gayle Dalrymple of the NHTSA Office of Crash Avoidance Standards, at 202-366-5559.

For legal issues, you may call Ms. Dorothy Nakama of the NHTSA Office of Chief Counsel at 202-366-2992.

You may send mail to both of these officials at the National Highway Traffic

Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Petition for Rulemaking

Today's document responds to a May 19, 2006 petition for rulemaking from GG Quad North America (GG Quad), which wishes to import and sell the "Quad" in the United States. The Quad is a motor vehicle manufactured in Switzerland by Grüter & Gut Motorradtechnik GmbH. The petitioner describes the Quad as being in every respect a motorcycle other than its fourth wheel. "The Quad is equipped with a BMW-motorcycle power plant." It uses "motorcycle controls such as: foot-operated gear shifter, handlebar-mounted clutch, separately-operated front and rear brake systems, handle bars, saddles for the operator and tandem passenger, and the open operating environment associated with motorcycling." The petitioner's Web site states that the top speed is 115 plus miles per hour. <http://www.gg-quad-northamerica.com/SpecificationsAndOptions.htm>.

The petitioner states that the Quad meets all FMVSSs for motorcycles. However, since the Quad has four wheels, the petitioner notes that it "falls outside the current NHTSA definition of a motorcycle."

According to the petitioner's Web site, the Quad is authorized for on-road use in Europe, Russia, Japan, and Dubai. <http://www.gg-quad-northamerica.com/FrequentlyAskedQuestions.htm>.<sup>1</sup> The petitioner's Web site further indicates that the Quad has been in production since 2004 and that there are a total of 200 Quads in those four countries. <http://www.gg-quad-northamerica.com/index.htm>.

The petitioner requests that the current definition in 49 CFR 571.3(a) of "motorcycle,"

a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

be revised to read as follows:

a motor vehicle with motive power, other than a low-speed vehicle, having a seat or saddle for the use of the rider and designed to travel on two, three or four wheels in contact with the ground provided that its curb weight is less than 1,000 pounds.<sup>2</sup>

<sup>1</sup> According to its manufacturer's Web site, the Quad is authorized in Germany and Switzerland. <http://www.gg-technik.ch/eng/frameset.html>.

<sup>2</sup> NHTSA defines the term "low speed vehicle" as follows:

*Low-speed vehicle (LSV)* means a motor vehicle,

(1) That is 4-wheeled,

(2) Whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per

hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and

(3) Whose GVWR is less than 1,361 kilograms (3,000 pounds).

49 CFR 571.3(a).

In the event that its petition is denied, the petitioner asked for guidance as to how it "may import and sell the Quad in the United States under the laws that it administers."

In support of its petition, the petitioner makes four principal arguments.

First, the petitioner argues that the configuration of the Quad "makes it unreasonable, impracticable, and inappropriate for it to comply with the FMVSS that apply to passenger cars."

Second, the petitioner argues that the Quad is safer than any two-wheeled motorcycle because it is more stable (due to its low center of gravity and a wide track), has better stopping ability (due to its four-wheel disc brakes) and has quick response to steering input.

Third, the petitioner argues that the Quad is safer than a three-wheeled motorcycle and offers the following reasons for that belief:

- The petitioner states that the center of gravity of most sidecar and three-wheeled motorcycle configurations is much higher than that of the Quad. The Quad's lower center of gravity provides improved stability and safety.

- The petitioner says that the center of gravity for a motorcycle with sidecar is located at a point between the axis of the two motorcycle wheels and the intersecting axis at 90 degrees of the sidecar wheel. The center of gravity point is not in line with the thrust line and "causes adverse yaw when accelerating the sidecar vehicle." In contrast, according to the petitioner, the Quad lines up the center of gravity and thrust line by design, avoiding adverse yaw under acceleration and deceleration.

- The petitioner states that most three-wheeled motorcycles use the "telescopic fork front suspension" of the base two-wheeled motorcycle. The petitioner asserts "[f]ront fork suspension does not respond well to input from bumps when loaded from the side" and that a side loading condition occurs when turning and causes binding in the sliding tubes. The petitioner states that the Quad overcomes such side load limitations by "using double, unequal length, a-arms or wishbone suspension with coil-over shocks in a fully four-wheel independent arrangement."

- The petitioner asserts that there are three-wheeled motorcycles designed with controls similar to those on

hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and

(3) Whose GVWR is less than 1,361 kilograms (3,000 pounds).

49 CFR 571.3(a).

passenger cars, such as a foot throttle, foot-operated brakes and clutch, steering wheel, and hand gear changer. The petitioner argues that its vehicle operates like a traditional motorcycle.

- Finally, the petitioner says that many sidecars and three-wheeled motorcycles use motorcycle tires, which are “designed for leaning into a turn and keeping a constant sized rubber contact patch on the road while maneuvering a motorcycle.” According to the petitioner, since three-wheeled motorcycles and sidecars do not lean or bank, using “traditional motorcycle tires” on them limits available traction for three-wheeled motorcycles. The petitioner asserts: “The Quad is designed to use low profile, flat tread, DOT-certified tires.<sup>3</sup> A wider tire keeps a large footprint in contact with the road, maximizing traction during all conditions of operation.”

Fourth, the petitioner argues that redefining “motorcycle” as it requests is in the public interest and offers three reasons for that belief.

- The Quad can help reduce traffic congestion since it can be operated, as a motorcycle, in high occupancy vehicle or carpool lanes in most jurisdictions.

- “Americans with disabilities” will be able to operate the Quad. The petitioner noted that drivers with leg disabilities are unable to operate a two-wheeled motorcycle because they cannot hold it upright at a stop. However, the Quad “has a provision of control modification” so that persons who cannot use foot controls can operate the Quad using hand controls. The petitioner also expressed the view that the Quad will “appeal to senior citizens in retirement communities, or to those who no longer feel confident in operating a two-wheeled motorcycle but enjoy the open environment that the Quad offers.”

- The petitioner stated that the Quad provides environmental benefits, noting that the “fuel mileage is generally 35 mpg.”

#### Agency Decision

The agency has carefully considered this petition for rulemaking to redefine “motorcycle” to accommodate its product and denies it for the reasons set forth below.

<sup>3</sup> Unlike the practice in many countries, in the U.S., the Federal government does not certify or approve motor vehicles or motor vehicle equipment. The responsibility for certifying that motorcycle tires meet applicable motorcycle tire safety standards is on the motorcycle tire manufacturer, and motorcycle manufacturer.

#### Statutory Background

The purpose of the Vehicle Safety Act is “to reduce traffic accidents and deaths and injuries resulting from traffic accidents.” 49 U.S.C. Section 30101. Given that purpose, Congress determined that it was necessary to “prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment.” Id. Each standard is required to be “practicable,” “meet the need for motor vehicle safety,” and “be stated in objective terms.” 49 U.S.C. Section 30111(a). The Act provides further that in prescribing a motor vehicle safety standard, the Secretary shall—

\* \* \*

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

49 U.S.C. 30111(b).

#### Definitions and Federal Motor Vehicle Safety Standards for Different Types of Motor Vehicles

Pursuant to the mandate to issue FMVSSs, NHTSA has defined a variety of types of motor vehicles, including motorcycles and passenger cars, and established standards for them. NHTSA defines the term “motorcycle” as: “a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.” 49 CFR 571.3(b). This definition was established at the same time as the initial Federal Motor Vehicle Safety Standards in 1967,<sup>4</sup> and has not been amended. NHTSA defines “passenger car” as “a motor vehicle with motive power, except a low-speed vehicle, multipurpose passenger vehicle, motorcycle, or trailer, designed for carrying 10 persons or less.”<sup>5</sup> 49 CFR 571.3(b). Thus, unlike the case of a motorcycle, whether a vehicle is a “passenger car” does not depend on the number of wheels it is designed to travel on in contact with the ground.

<sup>4</sup> 32 FR 2408, at 2409 (February 3, 1967).

<sup>5</sup> NHTSA defines the term “low speed vehicle” as follows:

*Low-speed vehicle (LSV)* means a motor vehicle,

(1) That is 4-wheeled,

(2) Whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and

(3) Whose GVWR is less than 1,361 kilograms (3,000 pounds).

49 CFR 571.3(a).

#### Petitioner Has Not Shown That Redefining “Motorcycle” Would Be Consistent With the Interests of Motor Vehicle Safety

Since the fundamental purpose of the Vehicle Safety Act is to promote vehicle safety, the agency seeks above all to promote that purpose, after due consideration of all relevant factors, in determining whether a particular action should be taken under the Act.

This purpose also informs our interpretation of the Act. While the Act obligates the agency to consider whether a standard is appropriate for the types of vehicles to which it applies, the primary intended effect of that requirement is to require the agency to take care that its standards do not have the effect of eliminating existing vehicle types. It does not compel the agency to take actions to facilitate the proliferation of unusual vehicle designs, particularly those that present new, potentially significant safety risks.

Thus, it is important that the agency take great care in even contemplating the possibility of revising its definitions of motor vehicle types so as to move some vehicles from the passenger car category, which is subject to a wide array of requirements for safety features and systems, to the motorcycle category, which is subject to significantly narrower array of safety requirements. From its earliest years, the agency has demonstrated concern that the combination of vehicle design trends and vehicle type definitional changes could have the effect of making some vehicles subject to less comprehensive arrays of safety requirements than those applicable to motor vehicle types like passenger cars and trucks. In the early 1970’s, the agency issued a number of notices concerning the treatment of three-wheeled motorcycles and very light four-wheeled vehicles under the FMVSS.

Given the steadily rising death toll among motorcyclists, it is particularly important for the agency to exercise great caution in taking any action that would create a new variety of vehicles with motorcycle-like bodies. In June 2006, NHTSA issued a report, *Recent Trends in Fatal Motorcycle Crashes: An Update*,<sup>6</sup> which reported that since 1997, motorcycle rider fatalities have increased by 89 percent from 2,116 to 4,008 in 2004: “The latest 2004 data show that motorcycle rider fatalities increased for the seventh year in a row since 1997.” This report was subsequently updated on August 22,

<sup>6</sup> DOT HS 810 606 Technical Report published by NHTSA’s National Center for Statistics and Analysis.

2006, when NHTSA issued a press release<sup>7</sup> announcing that motorcycle fatalities rose 13 percent from 4,028 in 2004 to 4,553 in 2005, meaning that motorcycle rider fatalities have increased for the eighth year in a row since 1997. The press release provided the following additional information about motorcycle rider fatalities:

- In 2005, the annual number of motorcycle rider fatalities was 10.5 percent of all motor vehicle traffic crash fatalities for that year, compared to 5.0 percent in 1997.

- Motorcycle rider fatalities and motorcycle registrations have both been on the rise since 1997. However, in most of these years, the rate of increase in motorcycle rider fatalities has been higher than the rate of increase in motorcycle registration (as reflected in the rate increase).

- In 2005, motorcycle rider fatalities increased for every age group. The largest percentage increase was in the 50 and over age group, followed by the 20–29 and 30–39 age groups.

With these considerations in mind, the agency assessed the potential impact of allowing the Quad to meet the FMVSSs for motorcycles instead of those for passenger cars. The Quad is substantially less crashworthy than conventional four wheeled vehicles, given their enclosed occupant compartment, or even convertibles. For example, the Quad has limited structure for absorbing crash energies and does not have any safety belts or inflatable protective devices. While the Quad may have some advantages over a motorcycle (of either the two or three-wheeled variety), *e.g.*, it appears to be more stable, it does not appear to be markedly more crashworthy than a conventional motorcycle.

The net effect on vehicle safety of granting this petition would depend in part on the vehicle purchasing choices that Quad purchasers would have made in the absence of the availability of a Quad subject only to motorcycle FMVSSs. The petitioner suggests that as some motorcyclists age, they would switch from a motorcycle to a Quad instead of switching to a conventional vehicle like a passenger car. To the extent that granting this petition would have this result, there would be a lessening of safety. Likewise, to the extent that aging motorcyclists would purchase and operate Quads at higher speeds than they would two or three wheeled motorcycles, this too could reduce safety.

Based on the foregoing, NHTSA declines to redefine its longstanding definition of “motorcycle.” As stated in the background section, NHTSA’s statutory mandate is to “reduce traffic accidents and deaths and injuries resulting from traffic accidents.” We see no safety benefit in encouraging more of a vehicle type with the safety record outlined above. Although petitioner asserts that its particular four-wheeled vehicle is safer alternative to two-or three-wheeled motorcycles, it nevertheless does not appear to meet any of the FMVSSs applicable to other four-wheeled vehicles, notably the passenger car standards. The agency recognizes that the number of Quads on the road is so limited that generation of meaningful crash data is not possible. Nevertheless, the agency has no data to allay its concerns described above. It does not have any data from any country where the four-wheeled vehicles are used in combined traffic with motorcycles, passenger cars, and other vehicle types as to the crash experience of four-wheeled “motorcycles” compared with the other vehicle types.

We also note that a redefinition of “motorcycle” to include four-wheeled vehicles would not apply only to the petitioner’s products. Such a redefinition would encourage many (particularly lower-end) vehicle manufacturers to manufacture products that do not meet passenger car or multipurpose passenger vehicle safety standards, but to manufacture four-wheeled “motorcycles.” Permitting such an easy means to evade the more stringent passenger car or multipurpose passenger vehicle standards would not meet the need for motor vehicle safety.

Although the petitioner suggests a number of ways in which granting the petition might be in the public interest, the agency does not believe that those public interest arguments are sufficient to outweigh the agency’s safety concerns. While agency has on at least one occasion adjusted its vehicle type definitions to allow a new class of vehicles (low speed vehicles) to come into being, it did so for vehicles that have very low speed capability and were expected to be operated in controlled environments, like gated communities, on roads with low posted speed limits. In addition, there were more substantial countervailing public interest arguments for permitting the LSV category than for permitting the Quad. In the final rule establishing the low speed vehicle category, the agency noted:

This final rule responds to a growing public interest in using golf cars and other similar-sized, 4-wheeled vehicles to make short trips for shopping, social and recreational purposes primarily within retirement or other planned communities with golf courses. These passenger-carrying vehicles, although low-speed, offer a variety of advantages, including comparatively low-cost and energy-efficient mobility. Further, many of these vehicles are electric-powered. The use of these vehicles, instead of larger, gasoline-powered vehicles like passenger cars, provides quieter transportation that does not pollute the air of the communities in which they are operated.

(63 FR 33194; June 17, 1998)

NHTSA notes that persons with disabilities are not excluded from using motorcycles. Those who cannot use one or both of their legs currently ride three-wheeled motorcycles or two-wheeled motorcycles with a side car. The foot brake on a motorcycle can also be modified for hand use. For those who “no longer feel confident in operating a two-wheeled motorcycle but enjoy the open environment that the Quad offers,” convertible passenger cars provide a safe means of travel.

For these reasons, especially given the consistent rise in motorcycle deaths since 1997, NHTSA is unwilling to take chances with the lives of American motorists, and therefore declines to permit a new permutation of a vehicle type that is already contributing to a rise in the highway death rate.

Finally, the petitioner has asked that if NHTSA denies its petition, we provide advice on how it may import and sell the Quad in the United States. The denial of this petition means that before the Quad can be sold in the United States, the petitioner must ensure and certify that the Quad meets all applicable passenger car standards (See 49 CFR Part 571).

In accordance with 49 CFR Part 552, this completes the agency’s review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: November 17, 2006.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

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<sup>7</sup> NHTSA 07–06, Tuesday August 22, 2006.